NO. A14-1307

State of Minnesota
In Supreme Court

MoneyMutual, LLC,
Appellant,

vs.

Scott Rilley, Michelle Kunza, Linda Gonzales and Michael Gonzales, individually and on behalf of the putative classes,
Respondents.

BRIEF OF *AMICI CURIAE* THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND MINNESOTA CHAMBER OF COMMERCE

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May a State exercise personal jurisdiction over an out-of-state business solely on the basis of that business's national media advertising, maintenance of a website, and automated marketing emails to certain state residents?

Apposite Authority:

Walden v. Fiore, 134 S. Ct. 1115 (2014)

Griffis v. Luban, 646 N.W.2d 527 (Minn. 2002)

World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980)

Fastpath, Inc. v. Arbela Techs. Corp., 760 F.3d 816 (8th Cir. 2014)

U.S. Const. amend. XIV, § 1 (Due Process Clause)

INTEREST OF AMICI CURIAE THE UNITED STATES CHAMBER OF COMMERCE AND MINNESOTA CHAMBER OF COMMERCE[1]

The Chamber of Commerce of the United States of America is the world's largest business federation, with 300,000 direct members, and indirectly represents the interests of more than three million businesses and professional organizations across the country. The U.S. Chamber appears in this matter to address its members' vital interest in the limits imposed on the exercise of personal jurisdiction by the Due Process Clause of the Fourteenth Amendment. *See Walden v. Fiore*, 134 S. Ct. 1115, 1121 (2014) ("The Due Process Clause of the Fourteenth Amendment constrains a State's authority to bind a nonresident defendant to a judgment of its courts."); U.S. Const. amend. XIV, § 1.

The Minnesota Chamber of Commerce represents businesses of all industries and sizes throughout Minnesota. Its mission is to enhance the competitiveness of Minnesota companies. It appears in this matter to address the potential effect on Minnesota businesses of the broad personal-jurisdiction rule announced below. As *amici* explain below, if that rule were applied by courts outside of Minnesota, it could have a detrimental effect on a large number of Minnesota businesses that might be haled into the courts of numerous other States around the country simply because they engage in

[1] Pursuant to Minn. R. Civ. App. P. 129.03, *amici curiae* certify that no counsel for a party authored this brief in whole or in part and that no person or entity other than *amici*, their members, and their counsel made any monetary contribution to the preparation or submission of the brief.

commonplace business operations such as maintaining a publicly-available website on the Internet and engaging in nationwide advertising.

INTRODUCTION

Just last year, in *Walden v. Fiore*, 134 S. Ct. 1115 (2014), the U.S. Supreme Court reaffirmed the due process principle that a State may not exercise specific personal jurisdiction over a nonresident defendant unless that defendant has purposefully established sufficient contacts with that State. The Court took special care to clarify two important aspects of this standard. First, specific jurisdiction requires a "substantial connection" between the defendant and the forum State that "arise[s] out of contacts that the defendant *himself* creates," rather than out of contacts generated by the plaintiff or third parties. *Id.* at 1121-22 (internal quotation marks omitted). And second, this "substantial connection" must be based on "the defendant's contacts with the *forum State itself*, not the defendant's contacts with persons who reside there." *Id.* at 1122 (emphasis added). Put another way, "the plaintiff cannot be the only link between the defendant and the forum." *Id.*

The specific jurisdiction analysis utilized by the Court of Appeals in its decision below is squarely inconsistent with the Supreme Court's decision in *Walden*. The Court of Appeals did not examine whether MoneyMutual, a Nevada corporation, had purposefully acted to establish a substantial connection with the State of Minnesota, as *Walden* requires. Instead, it erroneously held that MoneyMutual could be haled into court in Minnesota on the basis of acts by the *plaintiffs*—Minnesota residents who saw MoneyMutual's advertisements in national media, accessed its website, and received

follow-up marketing emails only after they had reached out to the company. *Rilley v. MoneyMutual, LLC*, 863 N.W.2d 789, 793 (Minn. Ct. App. 2015).

The Court of Appeals' reasoning, if applied to other cases, would inflict considerable harm on one of the most important and fastest-growing sectors of America's and Minnesota's economy: e-commerce companies. These companies typically provide services and information through websites and mobile apps that are accessible nationwide. Under the Court of Appeals' logic, an e-commerce company could be sued in any State, even if it has no office there, does not ship goods there, and does not target its activities at that State by any other means. Subjecting e-commerce companies—and all other businesses with an Internet presence—to universal jurisdiction in this manner does not comport with "fair play and substantial justice," *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945), and therefore violates the fundamental due process limitation on the scope of specific personal jurisdiction. This Court should therefore reverse the Court of Appeals' far-reaching expansion of personal jurisdiction.

ARGUMENT

The Court Of Appeals' Approach To Specific Personal Jurisdiction Would Improperly Subject Many E-Commerce Companies To Universal Personal Jurisdiction In Violation Of The Due Process Clause.

I. The Court of Appeals erroneously focused on Minnesota residents' fortuitous internet contacts with MoneyMutual, rather than inquiring whether the company itself established contacts with the State.

The Court of Appeals relied on four aspects of plaintiffs' connections with MoneyMutual in reaching its conclusion that MoneyMutual was subject to specific

personal jurisdiction in Minnesota: (1) plaintiffs accessed MoneyMutual's website from Minnesota; (2) plaintiffs saw MoneyMutual's advertising in national media while residing in Minnesota; (3) after plaintiffs (and other individuals who were Minnesota residents) submitted loan applications to MoneyMutual, the company forwarded those applications to lenders; and (4) once plaintiffs and other Minnesota residents had started or submitted loan applications, MoneyMutual emailed them follow-up "marketing offers." *Rilley*, 863 N.W.2d at 795-96. None of these purported grounds for jurisdiction satisfies the Due Process Clause's requirement that a *defendant* establish contacts *with the forum State*; contacts with individuals who are residents of the forum State (that are not also contacts with the forum State itself) do not suffice.

A. Websites accessible in the forum State

A defendant's maintenance of a nationally accessible website is not a legitimate basis for specific personal jurisdiction. Specific jurisdiction requires that the defendant "engage[] in conduct purposefully directed at" the forum State, thereby "reveal[ing] an intent to invoke or benefit from the protection of its laws." *J. McIntyre Mach., Ltd. v. Nicastro*, 131 S. Ct. 2780, 2790-91 (2011); *see also Hanson v. Denckla*, 357 U.S. 235, 253 (1958) ("[I]t is essential in each [specific jurisdiction] case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.").

Most websites, like MoneyMutual's here, are "focused generally on customers throughout the United States and the world, rather than on residents of any particular

jurisdiction," and thus do not target one State "any more than [they] . . . target residents of other states." *Shamsuddin v. Vitamin Research Prods.*, 346 F. Supp. 2d 804, 813-14 (D. Md. 2004). Courts have accordingly held that a company's mere use of a website, without more, is not a basis for specific personal jurisdiction. As the Seventh Circuit has put it, "[i]f the defendant merely operates a website, even a 'highly interactive' website, that is accessible from, but does not target, the forum state, then the defendant may not be haled into court in that state without offending the Constitution." *be2 LLC v. Ivanov*, 642 F.3d 555, 559 (7th Cir. 2011); *see also, e.g., Carefirst of Md., Inc. v. Carefirst Pregnancy Ctrs., Inc.*, 334 F.3d 390, 400 (4th Cir. 2003) ("[I]t is clear that, in order for [a company's] website to bring [it] within the jurisdiction of [a State's] courts, the company must have done something more than merely place information on the Internet.").

This Court also has recognized that a generally accessible website is not targeted at any particular State and therefore is not a ground for specific personal jurisdiction. *Griffis v. Luban*, 646 N.W.2d 527, 536 (Minn. 2002). In *Griffis*, a Minnesota resident posted allegedly defamatory messages about an Alabama resident on a newsgroup website. The Alabama resident sued the Minnesota resident in Alabama and obtained a default judgment, which she then sought to enforce in Minnesota. *Id.* at 530. This Court held that the judgment could not be enforced because the Alabama court had lacked personal jurisdiction over the Minnesota defendant when it entered the judgment. The Court explained that the fact that the defendant's online messages "*could* have been read in Alabama, just as they *could* have been read anywhere in the world, cannot suffice to

establish Alabama as the focal point of the defendant's conduct." *Id.* at 536. Because the defendant had not in any way targeted her statements at Alabama, the State of Alabama could not exercise specific personal jurisdiction. *Id.* at 536-37.

Despite *Griffis*—and even though MoneyMutual's website was not targeted at Minnesota (or at any other State)—the Court of Appeals held that the website's existence was relevant to its jurisdictional analysis because the court thought it "unwise to disregard contacts through an openly accessible website[,] given the tendency for commerce to take place via the Internet." *Rilley*, 863 N.W.2d at 795. That reasoning is exactly backwards: as numerous courts have recognized, the ubiquity of electronic communications and transactions today calls for a more *restrained* approach to personal jurisdiction based on electronic contacts, not a more permissive one. "In the context of the Internet," one court has observed, an "expansive theory of personal jurisdiction would shred the[] constitutional assurance[]" of due process "out of practical existence." *GTE New Media Servs. Inc. v. BellSouth Corp.*, 199 F.3d 1343, 1350 (D.C. Cir. 2000); *see also, e.g.*, *Advanced Tactical Ordnance Sys., LLC v. Real Action Paintball, Inc.*, 751 F.3d 796, 803 (7th Cir. 2014) (noting that basing personal jurisdiction on a defendant's maintaining an interactive website would "hardly rule[] out anything in 2014" and thus would "offend 'traditional notions of fair play and substantial justice'" (quoting *Int'l Shoe*, 326 U.S. at 316)).[2]

[2] This is not to say that a defendant's Internet-related activities may never give rise to specific personal jurisdiction. But Internet contacts, like any other kind of contacts,

B. National advertising viewed in the forum State

It was equally improper for the Court of Appeals to rely upon MoneyMutual's advertising in national media. Like a website, national advertising is not targeted or directed at any particular State and thus cannot support a finding of specific jurisdiction. Indeed, prior to this case, the Court of Appeals itself had recognized that national advertising does not constitute "purposeful availment" of the benefits of Minnesota law if it is not targeted at Minnesota. *Now Foods Corp. v. Madison Equipment Co.*, 386 N.W.2d 363, 367 (Minn. Ct. App. 1986) (holding that defendant's ads in national trade magazines that were distributed in Minnesota were "insubstantial" contacts that did not constitute "purposeful and active solicitation of Minnesota customers" (internal quotation marks omitted)).

Other courts, including the Supreme Court and the Eighth Circuit, have similarly rejected reliance on national advertising. Thus, in *Nicastro*, the Supreme Court held that although the defendant had "directed marketing and sales efforts at the United States," it was not subject to personal jurisdiction in New Jersey because "it is [the defendant's] purposeful contacts with New Jersey, not with the United States, that alone are relevant, and the defendant had not directed any marketing at New Jersey. 131 S. Ct. at 2790; *see also Wines v. Lake Havasu Boat Mfg., Inc.*, 846 F.2d 40, 43 (8th Cir. 1988) (holding that

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are relevant only if they involve a "defendant's suit-related conduct" on the Internet that "create[s] a substantial connection with the forum State." *Walden*, 134 S. Ct. at 1121. The contacts upon which the Court of Appeals relied here do not satisfy that requirement.

defendant's "advertising of its product in a nationally distributed trade publication which [was] circulated in Minnesota" was not "a purposeful availment of the benefits and protections of Minnesota law"); *Weber v. Jolly Hotels*, 977 F. Supp. 327, 334 (D.N.J. 1997) ("[A]dvertising on the Internet is not tantamount to directing activity at or to purposefully availing oneself of a particular forum."). Indeed, for a quarter-century, courts have recognized that, "[i]n an age of modern advertising and national media publications and markets, plaintiffs' argument that such conduct would make a defendant amenable to suit wherever the advertisements were aired would substantially undermine the law of personal jurisdiction. Courts generally have refused to adopt such a standard and embark on such a course." *Giangola v. Walt Disney World Co.*, 753 F. Supp. 148, 156 (D.N.J. 1990).

The Court of Appeals held that it could infer that MoneyMutual had targeted its "business strategy" at Minnesota even though its advertisements were in national media, because of the "sheer volume" (1,000 or so) of loan applications that MoneyMutual received from Minnesota residents. *Rilley*, 863 N.W.2d at 794. That inference was clearly improper. The Supreme Court has repeatedly made clear that a defendant's susceptibility to personal jurisdiction should depend on the defendant's own actions, not on the "fortuitous" actions of others. *See, e.g., World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 295 (1980). The absolute number of contacts between a defendant and a State, moreover, is a poor indicator of whether the defendant has targeted its activities at that State. *Cf. Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010) (noting that

if volume of business activity were enough to make a defendant a citizen of a particular State, "nearly every national retailer—no matter how far flung its operations—w[ould] be deemed a citizen of California," which would be a "strange result[]").

C. Loan applications by forum State residents that were forwarded to third parties

The Court of Appeals' reliance on the fact that MoneyMutual forwarded to third parties loan applications from persons in Minnesota runs headlong into *Walden* because it is exactly the sort of contact that the Supreme Court found insufficient to support specific jurisdiction. In *Walden*, a police officer in Georgia confiscated a large amount of cash from two persons whom he knew to be Nevada residents. After returning home, the two individuals sued the officer in Nevada. The Court held that Nevada lacked personal jurisdiction over the officer, explaining that the officer's actions in Georgia "did not create sufficient contacts with Nevada simply because he allegedly directed his conduct at plaintiffs whom he knew had Nevada connections. Such reasoning improperly attributes a plaintiff's forum connections to the defendant and makes those connections decisive in the jurisdictional analysis." *Walden*, 134 S. Ct. at 1125 (internal quotation marks omitted). The "proper question" in a specific-jurisdiction case, the Supreme Court explained, "is not where the plaintiff experienced a particular injury or effect but whether the defendant's conduct connects him *to the forum* in a meaningful way." *Id.* (emphasis added).

Here, MoneyMutual received an application from a Minnesota resident and took "independent action," *Rilley*, 863 N.W.2d at 794, by forwarding the information to a third party outside of Minnesota. The Court of Appeals did not identify any action taken by MoneyMutual targeting Minnesota. In the absence of some action *initiated by MoneyMutual* connecting MoneyMutual to Minnesota, there is no legitimate basis for specific jurisdiction—even if MoneyMutual's action may have an impact on a Minnesota resident. Because there is no such MoneyMutual-initiated contact with Minnesota here, the Court of Appeals erred by justifying its holding on this basis.

D. Emails and other communications sent to forum State residents

Finally, emailing marketing material to Minnesota residents provides no basis for specific personal jurisdiction. Like the other contacts cited by the Court of Appeals, the transmission of marketing emails, faxes, and phone calls—even when initiated by a defendant—constitute contact between the defendant and the recipient, not between the defendant and the recipient's State of residence.

The Eighth Circuit and other courts have therefore repeatedly held, both before and after *Walden*, that emails and other communications such as faxes and telephone calls do not create a "substantial connection" between a defendant and a forum State allowing the State to exercise specific personal jurisdiction. *Viasystems, Inc. v. EBM-Papst St. Georgen GmbH & Co., KG*, 646 F.3d 589, 594 (8th Cir. 2011) (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474-75 (1985)). As the Eighth Circuit more recently held, "emails and phone calls" that a defendant has "directed" to the plaintiff in the forum

state "do not create a 'substantial connection' to [the forum state] sufficient to subject [the defendant] to personal jurisdiction in the state." *Fastpath, Inc. v. Arbela Techs. Corp.*, 760 F.3d 816 (8th Cir. 2014); *see also, e.g.*, *Advanced Tactical Ordnance Sys.*, 751 F.3d at 803 (holding that the use of an email list to "shower past customers and other subscribers with company-related emails" does not establish a relation between a defendant and a forum state); *Digi–Tel Holdings, Inc. v. Proteq Telecomms. (PTE), Ltd.*, 89 F.3d 519, 523 (8th Cir. 1996) (holding that "numerous letters and faxes and . . . several telephone calls to Minnesota" in connection with a particular contract did not establish personal jurisdiction over the defendant in Minnesota); *Jacobs Trading, LLC v. Ningbo Hicon Int'l Indus. Co.*, 872 F. Supp. 2d 838, 847 (D. Minn. 2012) ("The mere making of statements to a resident of a forum state is not the same as directing activity toward the forum state.").

Emails, moreover, are especially poor evidence of contact with a particular forum for purposes of personal jurisdiction analysis. Any "connection between the place where an email is opened and a lawsuit is entirely fortuitous," because "email does not exist in any location at all" and can be opened wherever the recipient happens to be when it is sent. *Advanced Tactical Ordnance Sys.*, 751 F.3d at 803.

In short, the Court of Appeals failed to identify any contacts cognizable under U.S. Supreme Court precedent by which MoneyMutual had established a sufficient contact with the State of Minnesota. As the court itself acknowledged, its decision was based instead on the "residency of the [plaintiffs]" and "MoneyMutual's efforts to reach

[them]." *Rilley*, 863 N.W.2d at 793 (emphasis added). A long line of Supreme Court precedent—most recently *Walden*—establishes beyond doubt that this approach violates due process. *See Walden*, 134 S. Ct. at 1122 ("[O]ur 'minimum contacts' analysis looks to the defendant's contacts with the forum State itself, not the defendant's contacts with persons who reside there." (citing *Int'l Shoe*, 326 U.S. at 319, and *Hanson*, 357 U.S. at 251)).

II. Numerous e-commerce companies could be subjected to personal jurisdiction in every State under the Court of Appeals' reasoning

A. Because most e-commerce companies use nationally accessible websites and nationwide advertising and marketing efforts, the Court of Appeals' analysis would subject them to universal jurisdiction

If left uncorrected, the Court of Appeals' unduly expansive approach to personal jurisdiction will have a serious and detrimental effect on Internet businesses—both those located in Minnesota and those outside the State. A business that takes no affirmative steps to target Minnesota or to avail itself of the protections of Minnesota's legal system could nonetheless be haled into the courts of this State if it has a website that some number of Minnesota residents have accessed, sends emails to Minnesota residents after those residents initiate contact with the business, or advertises in national media that is accessible in Minnesota (along with any number of other states). Almost any business of appreciable size—especially in the world of e-commerce and the Internet—engages in these sorts of activities and, as a result, every such business would have reason to fear that it could be sued in Minnesota under the Court of Appeals' test.

This problem is most evident in the context of commercial websites. Virtually every business today has an Internet presence in the form of a website, and any individual anywhere with an Internet connection can access that website at any time. If an interactive website were sufficient to support specific jurisdiction, "there [would be] no limiting principle" whatsoever to specific personal jurisdiction; a plaintiff could essentially sue almost any business defendant "in every spot of the planet." *Advanced Tactical Ordnance Sys.*, 751 F.3d at 803.

Many start-up businesses, moreover, have models that involve delivery of free services and information via the Internet, relying on advertising to generate revenue. A paradigmatic example is Google, Inc.—currently the fourth largest company in the world by market capitalization.[3] Google provides millions of users with access to free online software—from personal email and calendars to news, weather, and financial updates—and its free search engine remains the most popular way for most people to locate information on the Internet.[4] Google is able to provide these services at no cost to its users by earning revenue from third-party advertisers, who provide the overwhelming majority of Google's income. *See* Google, Google's 2014 10K, at 7-8 (Feb. 6, 2015), *available at* https://investor.google.com/pdf/20141231_google_10K.pdf. Other large

[3] *See* Global 500 2015, Financial Times (June 19, 2015), *available at* http://www.ft.com/intl/cms/s/2/1fda5794-169f-11e5-b07f-00144feabdc0.html#axzz3lT7pShBq.

[4] *See* comScore, comScore Releases March 2015 U.S. Desktop Search Engine Rankings (April 15, 2015), *available at* https://www.comscore.com/Insights/Market-Rankings/comScore-Releases-March-2015-US-Desktop-Search-Engine-Rankings.

Internet companies, such as Yahoo!, Facebook, and Twitter, utilize comparable business models.

These Internet businesses generally have few, if any contacts with states other than their State of incorporation and the State in which their principal place of business is located: they do not maintain offices in most States, they usually do not ship goods anywhere, and they generally do not advertise in local media. Their relationships with users, moreover, are usually initiated by the users, who must affirmatively decide to use the company's services. E-commerce businesses can hardly be said, therefore, to have "purposefully directed" their activity toward states other than their home states. Yet under the specific-jurisdiction test that the Court of Appeals applied, these companies could well be subject to specific personal jurisdiction in every State in which their website is available—which would amount to universal jurisdiction.

The Court of Appeals appeared to recognize this concern, asserting that its decision would not make businesses with an Internet presence subject to universal jurisdiction—because jurisdiction based on Internet contacts or websites would "continue[] to be bounded by due process." *Rilley*, 863 N.W.2d at 795. But the *only* example the court could offer of a circumstance in which a website would not establish specific jurisdiction was a website that had "never been visited by a forum resident." *Id.* That confirms the due process violation—as a practical matter website operators would be subject to jurisdiction in every state, because there are likely few, if any websites that have never been visited by anyone in a particular state. (As explained above, because all

such visits are contacts initiated by third parties, not by the business operating the website, they are irrelevant under the Supreme Court's test, which centers on the actions of *defendants*, not plaintiffs.)

Advertising in national media is nearly as commonplace among modern businesses as the use of a company website. Cable television's share of TV viewership relative to local broadcast TV is at an all-time high,[5] making advertising on national cable networks ever more popular. Internet advertising, for its part, has been increasing steadily over the last decade and is now the fastest-growing form of advertising in the United States.[6] These forms of advertising are received by consumers nationwide on a variety of devices and platforms and, as MoneyMutual explains in its brief, App. Br. at 7 n.1, it is often impossible for a business to exclude particular markets from a cable TV or Internet advertising campaign—which is what the Court of Appeals suggested a business would have to do to avoid being subject to personal jurisdiction based on national advertising. Thus, the Court of Appeals' decision leaves many companies with a Hobson's choice: forgo national advertising and the valuable opportunities to build business that come with it, or advertise nationally and run the risk of being haled into court anywhere in the country.

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[5] *See* Cabletelevision Advertising Bureau, *Why Ad-Supported Cable?* 10, *available at* http://www.thevab.com/pdf/Insights-Center/1_WhyCable.pdf (last visited September 11, 2015).

[6] *See* Pricewaterhouse Coopers, *IAB internet advertising revenue report* 21 (Apr. 2015), *available at* http://www.iab.net/media/file/IAB_Internet_Advertising_Revenue_FY_2014.pdf.

Email marketing has also become ubiquitous among businesses large and small. "[I]t is exceedingly common in today's world for a company to allow consumers to sign up for an email list," which allows consumers to stay informed about the company and its services if they wish. *Advanced Tactical Ordnance Sys.*, 751 F.3d at 803. Through an automated email list, a business can send emails to people in every state without any "deliberate actions by the [business] to target or direct itself toward [any] specific state." *See id.* As with websites and national advertising, therefore, basing specific personal jurisdiction on automated marketing or follow-up emails could make every business with an Internet presence subject to jurisdiction nationwide.

B. Universal jurisdiction over e-commerce companies would impose unnecessary and excessive costs on those businesses and their consumers by eliminating the stability resulting from predictable jurisdictional rules.

Amenability to suit throughout the country would impose a substantial burden on businesses with an Internet presence, including many Minnesota businesses. Many e-commerce companies, in particular, are already popular targets for lawsuits because of the wide variety of services they provide and because they have extremely large numbers of users. If e-commerce companies are also required to deal with the threat of being haled into court anywhere in the country—including jurisdictions with which they have not established any contacts—they will face substantially increased transaction costs that force reductions in the services they provide or increases in the cost of those services. *See, e.g.*, Google 10-K at 11-12 (describing the significant legal risks to Google and the

possibility that legal costs will force it to "change [its] business in an adverse manner"). This would be harmful to consumers and to local economies, both in Minnesota and throughout the country.

The need for stability and certainty in the context of *specific* personal jurisdiction is especially acute. Due process principles have long drawn a vital distinction between general personal jurisdiction—the broad jurisdiction that a State exercises over its own residents—and specific personal jurisdiction, which is a much "more limited form of submission" to a State's authority. *See Nicastro*, 131 S. Ct. at 2787. The concept of specific jurisdiction "gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *World-Wide Volkswagen*, 444 U.S. at 297. Defendants know that they generally have a "due process right not to be subjected to judgment in [the] courts" of a State other than their home State, unless they have affirmatively established contacts with the State itself that make them subject to specific jurisdiction there. *Nicastro*, 131 S. Ct. at 2787; *see also Walden*, 134 S. Ct. at 1123. This knowledge enables companies to avoid unwittingly bearing "the burdens of litigating in a distant or inconvenient forum." *World-Wide Volkswagen*, 444 U.S. at 292.

The Court of Appeals' decision would undermine this legal framework by dramatically reducing defendants' ability to control or predict where they are subject to specific jurisdiction. If any State can exercise specific personal jurisdiction over a

company based on nothing more than the company's nationwide website and advertising, a company with an Internet presence or an ad campaign will have no way of avoiding being subject to suit anywhere in the country—no matter how "distant or inconvenient" *Id.* Applying specific jurisdiction in such an unpredictable and indiscriminate manner would be unfair to defendants and irreconcilable with the Due Process Clause. *See Nicastro*, 131 S. Ct. at 2790 (explaining that "[j]urisdictional rules should avoid the[] costs [of unpredictability] whenever possible"); *Burger King*, 471 U.S. at 475 n.17 (explaining that due process is violated when a defendant "has had no 'clear notice that it is subject to suit' in the forum and thus no opportunity to 'alleviate the risk of burdensome litigation' there" (quoting *World-Wide Volkswagen*, 444 U.S. at 297)); *Advanced Tactical Ordnance Sys.*, 751 F.3d at 803 (holding that if "a plaintiff could sue [an Internet company] anywhere[, s]uch a result would violate the principles on which *Walden* and *Daimler* [*AG v. Bauman*, 134 S. Ct. 746 (2014)] rest").

In sum, "the advent of advanced technology," such as the Internet, "should [not] vitiate long-held and inviolate principles of . . . jurisdiction." *GTE*, 199 F.3d at 1350. It is therefore vital that this Court clarify that Minnesota may exercise specific personal jurisdiction over a defendant only if the defendant has purposefully established contacts with the State itself. Those contacts are absent in this case.

CONCLUSION

The facts of this case involve Minnesota plaintiffs and a Nevada business. Yet those roles could easily have been reversed. If the courts of another State adopted the

reasoning of the Court of Appeals, a Minnesota company could be subject to specific personal jurisdiction in a far-away State for routine business conduct not specifically targeted at the other State.

The constitutional requirement of due process requires defendant-initiated contacts targeted at the forum state itself. That test cannot be satisfied here, because the business activities upon which the Court of Appeal relied were not specifically directed at Minnesota: MoneyMutual maintained a website accessible around the country; it advertised nationally; it sent e-mails only to those Minnesota residents who had themselves initiated contact with the company; and it forwarded information received from such individuals to third parties. These activities do not constitute, as *Walden* requires, a "substantial connection" between the defendant and the forum State that "arise[s] out of contacts that the defendant *himself* creates,"

In short, the decision below stretches the concept of specific personal jurisdiction far beyond its constitutional limits. If it is permitted to stand, it will injuure modern e-commerce, businesses around the country, and set a precedent that might well be used to injure Minnesota businesses as well.

The decision of the Court of Appeals should be reversed.

Respectfully submitted,

Dated: September 21, 2015

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CERTIFICATION OF BRIEF LENGTH

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subds. 1 and 3, for a brief produced with a proportional font. The length of this brief is 5,888 words. This brief was prepared using Microsoft Office Word 2010.

Dated: September 21, 2015

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