Nos. 23-15650, 24-1979

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ANDREW HARRINGTON, ET AL.,

Plaintiffs-Appellees,

v.

CRACKER BARREL OLD COUNTRY STORE INC.,

Defendant-Appellant.

On Appeal from the United States District Court
for the District of Arizona
No. 2:21-cv-00940-DJH
Hon. Diane J. Humetawa, Presiding

BRIEF OF AMICI CURIAE LAW PROFESSORS IN SUPPORT OF APPELLEES AND AFFIRMANCE

Lauren E. Bateman
Allison M. Zieve
Public Citizen Litigation Group
1600 20th Street NW
Washington, DC 20009
(202) 588-1000

Attorneys for Amici Curiae

September 4, 2024

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

INTEREST OF AMICI CURIAE 1

SUMMARY OF ARGUMENT 2

ARGUMENT 5

I. A federal court may constitutionally adjudicate claims of out-of-state members of an FLSA collective action where the court has personal jurisdiction over the defendant as to the claims of the named plaintiffs. 5

A. *Bristol-Myers* rests on constitutional principles that limit state-court authority but are inapplicable in federal court. 5

B. The Fourteenth Amendment does not by its own force limit the personal jurisdiction of federal courts. 7

II. Federal Rule of Civil Procedure 4 does not limit a federal court's exercise of personal jurisdiction over a defendant with respect to the claims of out-of-state opt-in members of an FLSA collective action. 11

A. The text and structure of Rule 4 foreclose Cracker Barrel's interpretation. 11

B. Cracker Barrel's interpretation of Rule 4 would undermine the comprehensive remedial framework of the FLSA. 18

CONCLUSION 21

CERTIFICATE OF COMPLIANCE 22

CERTIFICATE OF SERVICE 23

TABLE OF AUTHORITIES

Cases **Pages**

Board of Trustees, Sheet Metal Workers' National Pension Fund v. Elite Erectors, Inc.,
212 F.3d 1031 (7th Cir. 2000) 8

Bristol-Myers Squibb Co. v. Superior Court of California,
582 U.S. 255 (2017) ..... *passim*

Campbell v. City of Los Angeles,
903 F.3d 1090 (9th Cir. 2018) 15, 17

Daimler AG v. Bauman,
571 U.S. 117 (2014) 13

Goodyear Dunlop Tires Operations, S.A. v. Brown,
564 U.S. 915 (2011) 5

Hanson v. Denckla,
357 U.S. 235 (1958) 6

Hoffmann-La Roche v. Sperling,
493 U.S. 165 (1989) 15, 16, 18, 19

J. McIntyre Machinery, Ltd. v. Nicastro,
564 U.S. 873 (2011) 5, 8, 9

Lorelei Corp. v. County of Guadalupe,
940 F.2d 717 (1st Cir. 1991) 10

Mickles v. Country Club Inc.,
887 F.3d 1270 (11th Cir. 2013) 16

Omni Capital International, Ltd. v. Rudolf Wolff & Co.,
484 U.S. 97 (1987) 7, 12, 13

Republic of Argentina v. Weltover, Inc.,
504 U.S. 607 (1992) 9

Robertson v. Railroad Labor Board,
268 U.S. 619 (1925) 9

State Farm Mutual Automobile Insurance Co. v. Campbell,
538 U.S. 408 (2003) 7

United Rope Distributors, Inc. v. Seatriumph Marine Corp.,
930 F.2d 532 (7th Cir. 1991) 10

Vanegas v. Signet Builders, Inc.,
No. 23-2964, 2024 WL 3841024 (7th Cir. Aug. 16, 2024) 7

Walden v. Fiore,
571 U.S. 277 (2014) 13

Waters v. Day & Zimmermann NPS, Inc.
23 F.4th 84 (1st Cir. 2022) 10, 15, 16

World-Wide Volkswagen Corp. v. Woodson,
444 U.S. 286 (1980) 6, 7

Statutes

28 U.S.C. § 2072(b) 19, 20

29 U.S.C. § 203(b) 19

29 U.S.C. § 206 19

29 U.S.C. § 207 19

29 U.S.C. § 216(b) ..... *passim*

Federal Rules of Civil Procedure

Rule 4 ..... *passim*

Rule 4(b) 11, 15

Rule 4(c) 11, 15

Rule 4(k)(1)(A) 12, 13, 14

Rule 4(k)(1)(B) 12

Rule 4(k)(2) 9

Rule 4(m) ..... *passim*

INTEREST OF AMICI CURIAE[1]

Amici are five law professors who teach civil procedure, including the doctrine of personal jurisdiction. Amici Professors Helen Hershkoff, Arthur Miller, and John Sexton teach civil procedure at New York University School of Law and are three of the co-authors of a leading civil procedure casebook, Friedenthal, Miller, Sexton, Hershkoff, Steinman, & McKenzie, *Civil Procedure: Cases and Materials* (13th ed. 2022). Amicus Professor Alan B. Morrison is an associate dean and teaches civil procedure and constitutional law at the George Washington University Law School. Amicus Professor Adam N. Steinman teaches civil procedure at the Texas A&M University School of Law and is a co-author of the Friedenthal casebook. Professors Miller and Steinman are co-editors of the volume of the leading civil procedure treatise on personal jurisdiction, Charles A. Wright, Arthur R. Miller, and Adam N. Steinman, 4 *Federal Practice & Procedure* (4th ed. 2015).

---

[1] All parties have consented to the filing of this brief. The brief was not authored in whole or part by counsel for a party; no party or counsel for a party contributed money that was intended to fund this brief's preparation or submission; and no person other than the amici and their counsel contributed money intended to fund the brief's preparation or submission. Institutional affiliations of the amici curiae professors are listed for identification purposes only.

The law professors are filing this brief in support of the appellees because they believe that their expertise will assist the Court in considering the proper bounds of the jurisdictional principles at issue in this appeal. As explained below, the appellant's restrictive view of the scope of the federal courts' personal jurisdiction is unsupported by a proper understanding of the Federal Rules of Civil Procedure, the Due Process Clauses of the United States Constitution, and relevant precedent of this Court and the Supreme Court. Restricting the availability of Fair Labor Standards Act (FLSA) collective actions in federal court based on inapplicable concerns about the limits of the authority of state courts and a misunderstanding of the procedures authorizing collective actions would impair Congress's goals in enacting the FLSA and reject decades of settled FLSA practice without advancing the interests served by Fourteenth Amendment limits on state-court authority.

SUMMARY OF ARGUMENT

In *Bristol-Myers Squibb Co. v. Superior Court of California*, 582 U.S. 255 (2017), the Supreme Court held that the Fourteenth Amendment precludes a state court from exercising personal jurisdiction

over a defendant in a tort action brought by a nonresident of the forum state who was injured elsewhere, where the contacts between the defendant and the forum are unrelated to that non-resident plaintiff's claim. The Court's holding was limited in several respects that distinguish it from this case: It addressed state courts, not federal courts; it addressed state-law claims, not federal claims; and it addressed individual actions, not collective actions authorized by federal statute.

The Court limited *Bristol-Myers*'s holding for good reason: It rests on constitutional limitations on the sovereign authority of *state courts* that, as the Supreme Court has explained, inhere in our federal system. The authority of federal courts is not similarly limited by state borders. The only *constitutional* limitation on a federal court's personal jurisdiction over a defendant is whether the defendant has sufficient national contacts with the United States as a whole. Accordingly, the Constitution permits a federal court to assert authority over defendants without regard to the extent of their contacts with the particular state in which the court sits.

Contrary to Cracker Barrel's contention, Federal Rule of Civil Procedure 4 does not subject a federal court's exercise of personal

jurisdiction over opt-in members of an FLSA collective action to the Fourteenth Amendment limits that would apply to a state court. Rule 4 often, but not always, requires a federal court to obtain personal jurisdiction over a defendant using the forms of service that would be available in an action in the relevant state court. As a result, in an *individual* suit brought against a nonresident defendant, the federal court's personal jurisdiction over the defendant will often depend on whether service of process on that defendant would permit a state court (constrained by Fourteenth Amendment due process limits) to exercise personal jurisdiction over that defendant. By contrast, in the context of an FLSA *collective* action under federal law, Rule 4's requirements apply only when the named plaintiff seeks to secure personal jurisdiction over the defendant when she initiates the suit. Once the summons and complaint have been served in compliance with Rule 4, whether the case may proceed as a collective action depends only on whether the requirements of the FLSA are satisfied. The Rules impose no additional requirements for the assertion of personal jurisdiction over the defendant with respect to the claims of opt-in plaintiffs in a collective action, who are not required to serve a summons or complaint.

ARGUMENT

I. A federal court may constitutionally adjudicate claims of out-of-state members of an FLSA collective action where the court has personal jurisdiction over the defendant as to the claims of the named plaintiffs.

A. *Bristol-Myers* rests on constitutional principles that limit state-court authority but are inapplicable in federal court.

"It has long been established that the Fourteenth Amendment limits the personal jurisdiction of *state* courts." *Bristol-Myers*, 582 U.S. at 261 (emphasis added); *see also Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 923 (2011) ("The Due Process Clause of the Fourteenth Amendment sets the outer boundaries of a state tribunal's authority to proceed against a defendant."). The Supreme Court has emphasized that the Fourteenth Amendment's constraints on state-court personal jurisdiction reflect limits on "the power of a sovereign to resolve disputes through judicial process." *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 879 (2011) (plurality opinion). And those limits reflect the Court's view that a state court possesses adjudicative authority only over those who are properly subject to the state's sovereign power because of, for example, their presence within the state or purposeful direction of conduct toward persons within the state. *See id.* at 880–81.

The Supreme Court's holding in *Bristol-Myers* was grounded in these constitutional constraints on states exercising sovereign authority outside of their territorial borders. *Bristol-Myers* holds that a state court cannot assert personal jurisdiction over a defendant in an individual personal-injury action when the defendant neither is "at home" in the state, 582 U.S. at 262, nor has engaged in any forum-related activity that is connected to a nonresident individual plaintiff's "specific claims" arising outside the forum state, *id.* at 265. The decision reflects concerns about "territorial limitations on the power of the respective states." *Id.* at 263 (quoting *Hanson v. Denckla*, 357 U.S. 235, 251 (1958)). Such limitations, the Court stressed, are not determined by fairness concerns, but by the "federalism interest," *id.* at 263, in confining the power of institutions of each state—including courts—within the limits of their sovereign authority to avoid infringements "on the sovereignty of [their] sister States," *id.* (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 293 (1980)).

Repeatedly emphasizing that the decision is grounded in the Fourteenth Amendment's limits on the powers of *state* courts, *id.* at 261–263, the decision in *Bristol-Myers* therefore concerns solely the extent of

"the State['s] ... power to render a valid judgment" over out-of-state defendants, *id.* at 263 (quoting *World-Wide Volkswagen*, 444 U.S. at 294).[2] Because the *Bristol-Myers* decision is based on "the due process limits on the exercise of specific jurisdiction by a State," the Court explicitly stated that it did not address whether and to what extent "the Fifth Amendment" restricts "the exercise of personal jurisdiction by a federal court." *Bristol-Myers*, 582 U.S. at 268–69 (citing *Omni Cap. Int'l, Ltd. v. Rudolf Wolff & Co.*, 484 U.S. 97, 102 n.5 (1987)).

B. The Fourteenth Amendment does not by its own force limit the personal jurisdiction of federal courts.

Bristol-Myers's disclaimer of any application in federal courts reflects a wealth of precedent differentiating potential due process limits on federal-court personal jurisdiction from the constraints the Fourteenth Amendment imposes on state courts. As *Bristol-Myers* noted,

---

[2] Moreover, in contrast to this case under federal law, in *Bristol-Myers*, non-California plaintiffs sought to apply California law to claims that had no connection to California. 582 U.S. at 259. The exercise of state law by state courts raises due process concerns not present here, because of the risk that "such exercises of state law could punish defendants for conduct that is legal where it occurs." *Vanegas v. Signet Builders, Inc.*, No. 23-2964, 2024 WL 3841024, at *12 (7th Cir. Aug. 16, 2024) (Rovner, J., dissenting) (citing *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 421–22 (2003)).

any due process limits on the federal courts find their source in the Fifth Amendment, rather than the Fourteenth. 582 U.S. at 268–69. That distinction makes a difference: The Fourteenth Amendment incorporates limits on the sovereign power of states vis-à-vis other states and their citizens that are inherent in a federal system. But those limits are not relevant to the authority of the federal government that is subject to the Fifth Amendment's Due Process Clause. *See Bd. of Trustees, Sheet Metal Workers' Nat'l Pension Fund v. Elite Erectors, Inc.*, 212 F.3d 1031, 1036 (7th Cir. 2000) ("No limitations on sovereignty come into play in federal courts when all litigants are citizens. It is one sovereign, the same 'judicial Power,' whether the court sits in Indianapolis or Alexandria."). Unlike state authority, federal power is not, as a constitutional matter, limited by state lines. The federal government has "its own direct relationship, its own privity, its own set of mutual rights and obligations to the people who sustain it and are governed by it," without regard to their relationship with any particular state. *Nicastro*, 564 U.S. at 884 (plurality opinion) (citation omitted).

Thus, "personal jurisdiction requires a ... sovereign-by-sovereign analysis," *id.*, under which the power of a state court to render judgment

against a defendant does not, as a constitutional matter, limit the power of a federal court to exercise its adjudicative authority over the same defendant. "Because the United States is a distinct sovereign, a defendant may in principle be subject to the jurisdiction of the courts of the United States," without regard to whether it may be haled into the courts "of any particular State." *Id.* Indeed, "[f]or jurisdiction, a litigant may have the requisite relationship with the United States Government but not with the government of any individual State." *Id.*; *cf.* Fed. R. Civ. P. 4(k)(2) (recognizing that a federal court may exercise personal jurisdiction over a defendant that is "not subject to jurisdiction in any state's courts").

For these reasons, as the Supreme Court long ago recognized, nothing in the Constitution prevents "the process of every District Court" from "run[ning] into every part of the United States." *Robertson v. R.R. Labor Bd.*, 268 U.S. 619, 622 (1925). Under the Due Process Clause of the Fifth Amendment, a federal court may constitutionally exercise personal jurisdiction over any person that has minimum contacts with the United States, as opposed to any particular state or states within it. *See Repub. of Argentina v. Weltover, Inc.*, 504 U.S. 607, 619–20 (1992) (determining

federal-court personal jurisdiction over a foreign entity by considering whether the entity had minimum contacts with the United States sufficient to find that it purposefully availed itself of the privilege of conducting activities within the country); *Lorelei Corp. v. Cnty. of Guadalupe*, 940 F.2d 717, 719 (1st Cir. 1991) ("the constitutional limits of the [federal] court's personal jurisdiction are drawn in the first instance with reference to the [D]ue [P]rocess [C]lause of the [F]ifth [A]mendment"); *United Rope Distribs., Inc. v. Seatriumph Marine Corp.*, 930 F.2d 532, 534 (7th Cir. 1991) ("When a national court applies national law, the due process clause requires only that the defendant possess sufficient contacts with the United States.").

Accordingly, here, because personal jurisdiction over the opt-in plaintiffs is governed by the Fifth Amendment, "statutory limitations governing subject matter jurisdiction and venue," *Waters v. Day & Zimmermann NPS, Inc.*, 23 F.4th 84, 99 (1st Cir. 2022), that would apply in a state court have no relevance. And Cracker Barrel unquestionably has the requisite contacts with the United States in relation to the claims of out-of-state members of the FLSA collective action, which allege that

it engaged in unlawful employment practices towards employees who live and work in the United States. The Constitution requires no more.

II. Federal Rule of Civil Procedure 4 does not limit a federal court's exercise of personal jurisdiction over a defendant with respect to the claims of out-of-state opt-in members of an FLSA collective action.

A. The text and structure of Rule 4 foreclose Cracker Barrel's interpretation.

1. By its own terms, Federal Rule of Civil Procedure 4, which governs the service of a summons and complaint on a defendant, does not limit a federal court's authority with respect to out-of-state opt-in members of an FLSA collective action. Rule 4 establishes a tightly choreographed framework for initiating a defendant's involvement in civil litigation: It provides that "[o]n or after the filing of the complaint … [a] summons—or a copy of a summons that is addressed to multiple defendants—must be issued for each defendant to be served" by the clerk of the court. Fed. R. Civ. P. 4(b). It then imposes an obligation on the plaintiff: The "summons must be served with a copy of the complaint." *Id.* 4(c). And the Rule sets a strict time limit on the plaintiff's obligation to effect service, directing that a court "must dismiss the action" if a

defendant "is not served within 90 days after the complaint is filed." *Id.* 4(m).

In addition to establishing the framework for serving a summons and the complaint on defendants, Rule 4 functions as a gatekeeper over the federal courts' exercise of personal jurisdiction. It provides that, in general, "[s]erving a summons or filing a waiver of service establishes personal jurisdiction over a defendant … who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located." *Id.* 4(k)(1)(A). Accordingly, in the absence of a federal statute authorizing nationwide service or other service beyond the bounds of the district, "a federal court normally looks ... to the long-arm statute of the State in which it sits to determine whether a defendant is amenable to service, a prerequisite to its exercise of personal jurisdiction." *Omni Capital*, 484 U.S. at 105.[3] Because state long-arm jurisdiction is in turn limited by the Fourteenth Amendment's requirements, those Fourteenth Amendment limits are often relevant to whether a federal court can

[3] Even where Rule 4 incorporates state standards generally, it expands them by providing for service on certain defendants within 100 miles of the place of issuance of the summons, regardless of whether that location is beyond the state line, which no state court could constitutionally do. *See* Fed. R. Civ. P. 4(k)(1)(B).

obtain personal jurisdiction under Rule 4(k)(1)(A). *See, e.g.*, *Walden v. Fiore*, 571 U.S. 277, 283 (2014); *Daimler AG v. Bauman*, 571 U.S. 117, 125 (2014).

Domestic defendants, by definition, have the minimum national contacts required by the Due Process Clause of the Fifth Amendment. The scope of a federal court's personal jurisdiction over such defendants, and the manner in which it exercises that jurisdiction, is therefore principally limited by statutes or rules promulgated pursuant to statutory authority, rather than by the Constitution. *See Omni Capital*, 484 U.S. at 108–09. As explained above, however, Fourteenth Amendment limits do not apply of their own force to the federal courts. There is, therefore, no constitutional basis for limiting the powers of federal courts to those of the state courts. Rather, federal courts look to Fourteenth Amendment standards only because, under Rule 4(k)(1)(A) "a federal district court's authority to assert personal jurisdiction in most cases is linked to service of process on a defendant 'who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located.'" *Walden*, 571 U.S. at 283 (quoting Fed. R. Civ. P. 4(k)(1)(A)). Rule 4 thus sets out a carefully defined framework for how

a federal district court hales a defendant before it at the outset of an action and exercises personal jurisdiction over that defendant. Absent any separate authorization, Rule 4(k)(1)(A) for the most part restricts the geographical scope of effective service of process to the territorial limits of a corresponding state court's personal jurisdiction. Once that procedural prerequisite is satisfied at the outset of the litigation, the court obtains and retains personal jurisdiction over the defendant for the remainder of the proceedings.

This framework for service of process and personal jurisdiction applies straightforwardly in the context of collective actions under the FLSA. First, the named plaintiff files the complaint. After the filing of the complaint, the summons and the complaint must be served on the defendants pursuant to Rule 4. To be effective, the process must be served on a defendant within the geographic limits of the personal jurisdiction of the relevant state court with respect to the named plaintiff. That service must take place within 90 days of the filing of the complaint, pursuant to Rule 4(m). And once the named plaintiff effectuates that service, the Rule imposes no additional requirements—related to service of process or to personal jurisdiction—on the members of the collective

action who subsequently opt in. *See Waters*, 23 F.4th at 94 & n.7 (observing that opt-in plaintiffs have no service obligations under Rule 4); *Campbell v. City of Los Angeles*, 903 F.3d 1090, 1104 (9th Cir. 2018) (noting that an opt-in plaintiff's action is "commenced" when her opt-in form is filed).

2. On Cracker Barrel's theory, Rule 4(k)(1)(A) requires each and every opt-in member of an FLSA collective action separately to establish the court's personal jurisdiction over the defendant through the service of process mechanisms found elsewhere in Rule 4. But neither the Supreme Court nor this Court has ever held that every opt-in plaintiff in an FLSA collective action must separately serve the defendant. Further, nothing in the Rule suggests that opt-in members must satisfy its service requirements.

Rule 4(b) ties the issuance of summons to "the plaintiff" who has filed a complaint. *See also* Fed. R. Civ. P. 4(c) ("The plaintiff is responsible for having the summons and complaint served within the time allowed by Rule 4(m)[.]"). In contrast to the service obligation imposed on the original plaintiff, opt-in members in an FLSA action must provide only "consent in writing" to join the "action." 29 U.S.C. § 216(b); *see Hoffmann-*

La Roche v. Sperling, 493 U.S. 165, 170–71 (1989). No party argues, and no court decision suggests, that each opt-in member must file and serve their own summons and complaint. Rather, "the opt-ins who filed consent forms with the court became parties to the suit upon filing [the] forms. Nothing else is required to make them parties." *Waters*, 23 F.4th at 91; *see Mickles v. Country Club Inc.*, 887 F.3d 1270, 1278 (11th Cir. 2018) ("The plain language of § 216(b) [of the FLSA] supports that those who opt in become party plaintiffs upon the filing of a consent and that nothing further … is required.").

As the Supreme Court has recognized, "[s]ection 216(b)'s affirmative permission for employees to proceed on behalf of those similarly situated must grant the court the requisite procedural authority to manage the process of joining multiple parties in a manner that is orderly [and] sensible." *Hoffmann-La Roche*, 493 U.S. at 170. That grant of procedural authority would be hollow, and the benefits of collective actions would be illusory, if Rule 4 imposed a separate requirement that every opt-in member had to separately serve and file a new complaint. Such a requirement would effectively transform an FLSA

collective action into a consolidated proceeding of separately initiated individual actions.

Because opt-in members of an FLSA collective action are not required to file a separate complaint, Rule 4—far from supporting Cracker Barrel—forecloses Cracker Barrel's interpretation. Rule 4(m) requires that a plaintiff serve the complaint and summons within 90 days of the filing of the complaint. If that requirement applied to opt-in members of an FLSA collective action (who never themselves file a complaint), it would apparently require opt-in members to serve a complaint filed by someone else: the named plaintiffs. Even more oddly, Cracker Barrel's interpretation would require opt-in members to effect that service within 90 days of the filing of the complaint by the named plaintiffs, although opt-in members typically would not even be notified that the lawsuit exists until much later, generally after the collective action has been conditionally certified. *See, e.g.*, *Campbell*, 903 F.3d at 1109 (9th Cir. 2018) (observing that a "grant of preliminary certification results in the dissemination of a court-approved notice to the putative collective action members, advising them that they must affirmatively

opt in to participate in the litigation") Neither Congress nor the drafters of the Rules could have intended such a nonsensical result.

In sum, the text and structure of Rule 4 demonstrate that only named plaintiffs in an FLSA collective action are subject to the Rule's service requirements. Once a federal court has acquired personal jurisdiction over a defendant through valid service under Rule 4, due process limits on state-court authority drop out of the picture, and the addition of further employees is governed by section 216(b), not Rule 4.

B. Cracker Barrel's interpretation of Rule 4 would undermine the comprehensive remedial framework of the FLSA.

By balkanizing FLSA collective actions into inefficient state-by-state litigation, Cracker Barrel's interpretation of Rule 4 would undermine Congress's creation of a unified remedial statute that authorizes an employee to sue an employer on behalf of all those who are "similarly situated." 29 U.S.C. § 216(b). As the Supreme Court has observed, Congress has for decades "left intact the 'similarly situated' language providing for collective actions, such as this one. The broad remedial goal of the statute should be enforced to the full extent of its terms." *Hoffman-La Roche*, 493 U.S. at 173.

Of particular relevance here, Congress expected that collective actions under the FLSA would remedy the misconduct of multi-state employers through the efficient procedural mechanism of aggregate litigation. *See* 29 U.S.C. §§ 203(b), 206, 207. For that reason, section 216(b) enables the "efficient resolution in one proceeding" of the claims of all similarly situated employees subject to an employer's unlawful policies or practices. *Hoffman-La Roche*, 493 U.S. at 170. From the creation of the FLSA opt-in procedure in 1947, to the Supreme Court's *Bristol-Myers* decision in 2017, no court had suggested that the procedure was available only to individuals injured by the defendant's conduct in the state where the district court is located.

Cracker Barrel's atextual interpretation of Rule 4, if adopted, would undermine Congress's plain intent in the FLSA to provide for collective actions that include all similarly situated employees. That intention presupposes that the federal district courts would have the power to adjudicate the claims of both the named plaintiffs and the opt-in members of the collective action. If Cracker Barrel's reading of Rule 4 were correct, it would have the effect of overriding the FLSA and thus exceed the authority to issue rules under the Rules Enabling Act, 28

U.S.C. § 2072(b), under which no rule may "abridge, enlarge or modify" the substantive rights of any litigant. By contrast, reading Rule 4 to apply only to the initial service of the complaint on the defendant avoids any Rules Enabling Act issue and fully preserves Congress' intended reach of section 216(b).

* * *

These principles apply straightforwardly to this case. Because this suit was filed in federal court, any constitutional limits on the district court's jurisdiction stem from the Fifth Amendment, and the district court's jurisdiction need not be confined by the defendant's contacts with the state in which the court sits. Indisputably, Cracker Barrel has sufficient contacts with the United States to meet the Fifth Amendment's requirements. Furthermore, because Cracker Barrel employs named plaintiff Dylan Basch at restaurants located in Goodyear and Chandler, Arizona, and his wage theft allegedly occurred in Arizona, Cracker Barrel was amenable to service of the operative complaint. Thus, when Basch served Cracker Barrel with a summons, he met the requirements of Rule 4, the district court was vested with personal jurisdiction over the defendant, and federal law authorized the addition of similarly situated

opt-in plaintiffs. Neither the Constitution nor the Federal Rules of Civil Procedure require more. Because other workers who opt into the collective action are not required to file a complaint, they are not required to satisfy Rule 4. Their decisions to opt in under section 216(b) make them plaintiffs in this collective action.

CONCLUSION

For the foregoing reasons, as well as those set forth in the briefs of the plaintiffs-appellants, this Court should affirm the order of the district court.

Respectfully submitted,

/s/ Lauren E. Bateman

Lauren E. Bateman
Allison M. Zieve
Public Citizen Litigation Group
1600 20th Street NW
Washington, DC 20009
(202) 588-1000

September 4, 2024

Attorneys for Amici Curiae
Law Professors

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-face and volume limitations set forth in Federal Rules of Appellate Procedure 32(a) and 29 as follows: The type face is fourteen-point Century Schoolbook font, and the word count, as determined by the word-count function of Microsoft Word for Office 365, is 4,162, excluding parts of the brief exempted by Federal Rule of Appellate Procedure 32(f) and the rules of this Court.

/s/ Lauren E. Bateman
Lauren E. Bateman

CERTIFICATE OF SERVICE

I certify that on September 4, 2024, I caused the foregoing to be filed with the Clerk of the Court through the Court's ECF system, which will serve notice of the filing on all filers registered in the case, including all parties required to be served.

/s/ Lauren E. Bateman
Lauren E. Bateman