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Traditionally, scholars and courts alike have thought of joinder of parties and personal jurisdiction as separate questions. Party joinder determined who *should be in the lawsuit, whereas personal*

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jurisdiction determined what *power courts could exercise over those parties—a question that invariably becomes more complicated when more parties are added to the lawsuit. The Supreme Court's 2017 decision in* Bristol-Myers Squibb Co. v. Superior Court *forced a reckoning between these two areas of civil procedure. In* Bristol-Myers Squibb, *the Court irreversibly connected specific personal jurisdiction and party joinder by holding that non-Californian plaintiffs could not be part of a California lawsuit because their claims did not share a connection with the defendant's forum contacts, thus concluding that California courts lacked specific jurisdiction over the defendant. The* Bristol-Myers Squibb *ruling, it appears, could affect party joinder in two ways: (1) aggregation of plaintiffs would be less available than before because specific personal jurisdiction would now bar joinder; or (2) aggregation of plaintiffs would be unaffected because it has always been true that personal jurisdiction could bar joinder. This Article articulates a third, hybrid option, concluding that any diminishing effect on joinder after* Bristol-Myers Squibb *is* not *the result of any changes to specific personal jurisdiction or party joinder doctrines, but instead is the natural and practical consequence of defendants no longer waiving personal jurisdiction challenges.*

This Article analyzes both the relevant Federal Rules of Civil Procedure and key Supreme Court decisions on both party joinder and specific personal jurisdiction. In the process, the Article identifies a longstanding connection between the two doctrines that Bristol-Myers Squibb *merely clarified: a lawsuit must arise out of or relate to the defendant's contacts with the forum, meaning that* each plaintiff's *lawsuit must share a connection with the defendant's forum contacts. This Article also analyzes both the perceived and actual effect of* Bristol-Myers Squibb *on plaintiff joinder and concludes that (1)* Bristol-Myers Squibb *has not had any discernable effect on plaintiff-aggregation in traditional, non-class cases; and (2) any decrease in aggregation in recent years was merely a result of increased personal jurisdiction objections by defendants after* Bristol-Myers Squibb *highlighted the connection between jurisdiction and party joinder.*

INTRODUCTION

Whenever Americans suffer a common injury, they often seek to join their claims into one large lawsuit to right the wrong as a group. This has certainly occurred in the wake of the global COVID-19

pandemic in a variety of circumstances.[1] Vaccines are now widely available to all adults nationwide. Many people have already been vaccinated, hoping to put this pandemic behind them. But what if the vaccine does not work as well as expected for some? What if the vaccine actually causes *more* harm to some?

Imagine that MiracleDrug, a company incorporated in Delaware and headquartered in Oregon, produced and began distributing a COVID-19 "cure."[2] Americans rushed to buy the cure and administered it to themselves and high-risk family members immediately after testing positive for COVID-19. At first, it seemed to completely cure a high percentage of current cases. But around nine months after people started taking MiracleDrug's cure, many began noticing an unforeseen side-effect: infertility. No one who had taken the cure was able to conceive children. Hundreds of plaintiffs come together to take MiracleDrug to court.

Because MiracleDrug has made over a million sales of the cure in Texas, and 400 out of the total 800 plaintiffs live there, the plaintiffs decide to bring their mass tort case in Texas state court.[3] All claim that they bought and ingested the cure at home—the Texas residents in Texas and the out-of-state residents in their home states. MiracleDrug did not develop the cure or work on its regulatory approval process in Texas. Instead, MiracleDrug handled all of the development and regulatory approval at its headquarters in Oregon. MiracleDrug moved to dismiss the claims of all nonresident plaintiffs for lack of personal jurisdiction. The court agreed and dismissed all nonresident plaintiffs' claims because (1) Texas courts did not have general jurisdiction over MiracleDrug that was "at home" in Delaware and Oregon; and (2) the court could not exercise specific jurisdiction over the nonresidents' claims because they were not related to MiracleDrug's contacts with Texas, given that those plaintiffs had purchased and taken the cure out-of-state.

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1. *See, e.g.*, McCarthy v. Cuomo, No. 20-cv-2124 (ARR), 2020 WL 3286530, at *3 (E.D.N.Y. June 18, 2020) (collecting cases challenging COVID-19-related state and local restrictions on gatherings); Cross v. Univ. of Toledo, No. 2020-00274JD, 2020 Ohio Misc. LEXIS 121, at *1 (Ct. Cl. July 8, 2020) (class action against a university demanding tuition reimbursement in light of the school closures).

2. This hypothetical "cure" is not meant to represent any of the very real vaccines currently being administered. Indeed, in this hypothetical scenario, the "cure" is even better than the real vaccines because it can be administered to those who are already sick with COVID-19.

3. For the sake of argument and analysis, assume plaintiffs brought all of their claims against MiracleDrug under Texas state law, not federal law, and that it was not removable either under the general diversity statute or the Class Action Fairness Act of 2005 (CAFA). 28 U.S.C. §§ 1332, 1447, 1453 (2012).

This is the same legal analysis the Supreme Court used to dismiss nonresident plaintiffs' claims for lack of personal jurisdiction in its 2017 decision, *Bristol-Myers Squibb Co. v. Superior Court*.[4] The key takeaway from *Bristol-Myers Squibb* is that each plaintiff's claim must exhibit a sufficient "connection" to the defendant's contacts with the forum.[5] The Court decided that because the nonresident plaintiffs could not show any link to Bristol-Myers Squibb's contacts in California, the California state courts could not exercise specific jurisdiction over Bristol-Myers Squibb, the out-of-state defendant.[6] Given the similarities in facts and circumstances of the MiracleDrug hypothetical—the two purposefully align on all relevant considerations—no one doubts that after *Bristol-Myers Squibb* the nonresident plaintiffs could not be joined in the Texas suit against MiracleDrug. But most believe that courts would have permitted the plaintiffs' joinder under the same circumstances prior to *Bristol-Myers Squibb*.[7] Many articles contend that this case and other recent personal jurisdiction cases decided by the Supreme Court have added "new restrictions" to the doctrine,[8] and are concerned that these changes will drastically affect civil aggregation rules and norms,[9] particularly in the context of class action lawsuits.[10]

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4. Bristol-Myers Squibb Co. v. Super. Ct., 137 S. Ct. 1773 (2017). This Article provides a full analysis of the case, in particular parts I.B and III, *infra*.

5. *Bristol-Myers Squibb*, 137 S. Ct. at 1781–82.

6. *Id.* at 1782.

7. Andrew D. Bradt & D. Theodore Rave, *Aggregation on Defendants' Terms:* Bristol-Myers Squibb *and the Federalization of Mass-Tort Litigation*, 59 B.C. L. REV. 1251, 1275, 1281–82 (2018); Scott Dodson, *Personal Jurisdiction and Aggregation*, 113 NW. UNIV. L. REV. 1, 27 (2018); Alan B. Morrison, *Safe at Home: The Supreme Court's Personal Jurisdiction Gift to Business*, 68 DEPAUL L. REV. 517, 534–35 (2019).

8. Bradt & Rave, *supra* note 7, at 1256; Dodson, *supra* note 7, at 28, 33–34; Michael H. Hoffheimer, *The Stealth Revolution in Personal Jurisdiction*, 70 FLA. L. REV. 499, 501 (2018); Charles W. "Rocky" Rhodes & Cassandra Burke Robertson, *Toward a New Equilibrium in Personal Jurisdiction*, 48 U.C. DAVIS L. REV. 207, 213–14, 216–27 (2014).

9. Bradt & Rave, *supra* note 7, at 1256 (noting that *Bristol-Myers Squibb*'s "effects on complex cases will be substantial"); Louis J. Capozzi III, *Relationship Problems: Pendent Personal Jurisdiction After* Bristol-Myers Squibb, 11 DREXEL L. REV. 215, 220 (2018); Dodson, *supra* note 7, at 4–5 ("[R]ecent decisions from the Supreme Court cabining the reach of courts' personal jurisdiction over defendants—including October Term 2016's bombshell *Bristol-Myers Squibb Co. v. Superior Court*—have imbued the doctrine with a powerful disaggregation effect by requiring a close connection between the forum state, each defendant, and each claim." (footnote omitted)).

10. *E.g.*, A. Benjamin Spencer, *Out of the Quandary: Personal Jurisdiction Over Absent Class Member Claims Explained*, 39 REV. LITIG. 31, 32–34 (2019); Daniel Wilf-

While this is perhaps true under a general personal jurisdiction theory,[11] as a matter of specific personal jurisdiction, *Bristol-Myers Squibb* did not veer at all from the Court's "settled principles."[12] This Article discusses how *Bristol-Myers Squibb*'s application of preexisting principles merely revealed a longstanding relationship between personal jurisdiction and joinder, but did not reveal anything particularly new or surprising about the doctrines of either specific jurisdiction or party joinder. In fact, these doctrines have always been connected in that both require a threshold showing of relatedness for a court to exercise jurisdiction. This is apparent in both the relevant Federal Rules of Civil Procedure (FRCP) and caselaw. Each FRCP concerning party joinder[13] requires some threshold showing of relatedness between the parties seeking to be joined and the claims at

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Townsend, *Did* Bristol-Myers Squibb *Kill the Nationwide Class Action?*, 129 YALE L.J.F. 205, 212–25 (2019).

11. *See* Meir Feder, Goodyear, *"Home," and the Uncertain Future of Doing Business Jurisdiction*, 63 S.C. L. REV. 671, 675 (2012) (noting that before *Goodyear* "[L]ower courts widely embraced the notion that any corporation 'doing business' in a state was subject to general jurisdiction there"); Cassandra Burke Robertson & Charles W. "Rocky" Rhodes, *The Business of Personal Jurisdiction*, 67 CASE W. RSRV. L. REV. 775, 780–83 (2017) (summarizing the holdings and effects of recent general and specific personal jurisdiction cases); Rhodes & Robertson, *supra* note 8, at 214 (claiming that recent Supreme Court decisions abandoned a generally accepted view that "[N]ational corporations with substantial operations in all fifty states (such as McDonalds or WalMart) would likely be subject to general personal jurisdiction in all fifty states." (citation omitted)); *infra* Part II.A.4 (general jurisdiction analysis). *But see* Allan R. Stein, *The Meaning of "Essentially at Home" in* Goodyear Dunlop, 63 S.C. L. REV. 527, 532, 535 (2012) (hereinafter "Stein, *Essentially at Home*") (noting that while the "essentially at home" language is new to general jurisdiction, the rationale for this constraint is rooted in *International Shoe*'s suggestion that "[a]n 'estimate of the inconveniences' which would result to the corporation from a trial away from its 'home' or principal place of business is relevant in this connection." (quoting Int'l Shoe Co. v. Washington, 326 U.S. 310, 317 (1945))); Allan R. Stein, *Styles of Argument and Interstate Federalism in the Law of Personal Jurisdiction*, 65 TEX. L. REV. 689, 725 (1987) (hereinafter "Stein, *Styles of Argument*") (citing Helicopteros Nacionales de Colom., S.A. v. Hall, 466 U.S. 408, 417 (1984) for the contention that a nonresident "corporation could not be deemed 'present' in Texas for general jurisdiction purposes simply because of regular purchases in the forum").

12. *Bristol-Myers Squibb*, 137 S. Ct. at 1781.

13. These FRCP include the following: 14(a)(1) (regarding joinder of nonparties by defendants acting as third-party plaintiffs), 19(a)(1) (regarding mandatory party joinder); 20(a) (regarding permissive party joinder), 21 (regarding misjoinder), 23(a)(1)–(2) (regarding class action suits), and 24(b) (regarding permissive party intervention).

issue in the original lawsuit.[14] Key cases involving party joinder also focus on the core concept of "commonality" for aggregation.[15]

Specific personal jurisdiction also depends on a sufficient relatedness showing between the claims at issue and the defendant's contacts with the forum court.[16] The Supreme Court has clarified time and again that a sufficient showing of the relationship between the defendant's minimum contacts and the forum state represents a core requirement for courts to exercise specific jurisdiction.[17] While the relatedness question is undeniably posed for different reasons in each context—joinder mandates relatedness to ensure efficient aggregation of claims and defenses,[18] while specific personal jurisdiction requires relatedness to protect the individual rights of the defendant and to limit the authority the court seeking to exercise jurisdiction[19]—the truth remains that both doctrines necessitate an analysis of whether parties to be joined or defendants to be haled into court are sufficiently related to the original lawsuit. The two relatedness showings have their differences, and the questions are asked for separate reasons, but the answers to those questions are close cousins.

Despite their underlying similarities, scholars and courts alike have long treated joinder and specific personal jurisdiction as separate questions.[20] A joinder analysis determined "who" should be

14. *See infra* Section II.B.

15. *See* Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 349 (2011); Walsh v. Ford Motor Co., 130 F.R.D. 514, 515 (D.D.C. 1990).

16. *See infra* Section II.B.2.

17. *E.g.*, *Bristol-Myers Squibb*, 137 S. Ct. at 1781; Burger King Corp. v. Rudzewicz, 471 U.S. 462, 471–72 (1985); Helicopteros Nacionales de Colom., S.A. v. Hall, 466 U.S. 408, 414 & nn.8–9 (1984); Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945).

18. Dodson, *supra* note at 7, at 8.

19. *See* Jeff Lingwall & Chris Wray, *Fraudulent Aggregation: The Effect of* Daimler *and* Walden *on Mass Litigation*, 69 FLA. L. REV. 599, 606–07 (2017).

20. *See* Finley v. United States, 490 U.S. 545, 559 n.4, 561 n.11 and accompanying text (1989) (Stevens, J., dissenting) (explaining why pendant claims and parties joined in one suit form a single "case" under Article III and noting that Article III does not limit courts' personal jurisdiction and discussing claim joinder under FRCP 20); N. Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50, 54 n.4 (1982) (plurality opinion); *id.* at 97 n.4 (White, J., dissenting) (involving minor issues of both claim-joinder and personal jurisdiction in the bankruptcy context, and discussing them separately—in footnotes of different opinions, no less); L. Elizabeth Chamblee, *Unsettling Efficiency: When Non-Class Aggregation of Mass Torts Creates Second-Class Settlements*, 65 LA. L. REV. 157 (2004) (discussing issues with large-scale aggregation of mass torts without discussing personal jurisdiction); Robin J. Effron, *The Shadow Rules of Joinder*, 100 GEO. L.J. 759, 761 n.4 (2012) (observing that the

included as parties to a lawsuit, whereas personal jurisdiction determined "what" power courts could exercise over those parties. Only recently have scholars started discussing the effects of specific personal jurisdiction over defendants in relation to the aggregation of plaintiffs—a conversation sparked by *Bristol-Myers Squibb*.[21]

As explained below, the questions of plaintiff-joinder and specific personal jurisdiction over defendants have always been connected, and *Bristol-Myers Squibb*'s forced reckoning between the two merely identified that longstanding connection but did not create it. Together these doctrines answer the question of "who" should be involved in any suit: joinder addresses which plaintiffs may bring a collective suit, and specific personal jurisdiction addresses which defendants may be haled into court.[22]

This article proceeds in three parts. Part I provides a doctrinal background of both joinder and personal jurisdiction and explains the scope of the article's analysis. Part II identifies the longstanding linkages between the two doctrines by first examining four acknowledged connections and then introducing a novel relatedness link: both party joinder and specific personal jurisdiction mandate a showing that all parties and claims present in the suit are sufficiently related. This shared relatedness requirement that must be shown both to join plaintiffs and to exercise specific jurisdiction over defendants naturally mandates *Bristol-Myers Squibb*'s conclusion that each plaintiff's lawsuit must share a connection with the defendant's forum contacts. Part III then analyzes the perceived and actual effect of *Bristol-Myers Squibb* on the joinder of plaintiffs and concludes that any decrease in plaintiff-joinder in recent years is the result of increased personal jurisdiction objections, not a result of any recent doctrinal changes in either joinder or personal jurisdiction.

"addition of claims or permissive counterclaims between existing parties generally does not require any inquiry into their relatedness" (citing FED. R. CIV. P. 13(b), 18)); Mary Kay Kane, *Original Sin and the Transaction in Federal Civil Procedure*, 76 TEX. L. REV. 1723, 1736 (1998) (analyzing the transaction standard in a joinder context but without any discussion of personal jurisdiction); Linda S. Mullenix, *Reflections of a Recovering Aggregationist*, 15 NEV. L.J. 1455 (2015) (analyzing trends in aggregation laws without discussing an intersection with personal jurisdiction).

21. Bradt & Rave, *supra* note 7, at 1256 (arguing that *Bristol-Myers Squibb*'s "effects on complex cases will be substantial"); Dodson, *supra* note 7, at 4–5; Lingwall & Wray, *supra* note 19, at 600–01 (2017) (analyzing recent "adjustments to personal jurisdiction" in the context of joinder and aggregation).

22. To be clear, joinder also answers the "who" question by determining which defendants may be sued in the same suit, FED. R. CIV. P. 19, 20, but I use the plaintiff-focused characterization above to maintain the Article's focus on plaintiff-joinder and specific personal jurisdiction over the defendant.

I. BACKGROUND: JOINDER AND PERSONAL JURISDICTION

This Section begins by giving a brief background on the joinder doctrine. It then discusses the relevant Federal Rules of Civil Procedure and explains why I drew certain boundaries to limit the scope of the Article's joinder analysis. Next, this Section outlines the current state of the specific personal jurisdiction doctrine. Finally, it concludes with a full analysis of the relevant factors and the legal reasoning and conclusions in *Bristol-Myers Squibb*.

A. Joinder of Plaintiffs

"Historically, joinder rules were quite restrictive."[23] Over time, states began moving toward more expansive joinder procedures, permitting parties to try cases collectively.[24] The drafters of the FRCP followed suit.[25] The FRCP joinder rules include rules "that allow a case to expand beyond the one plaintiff, one defendant, one claim structure to a case with multiple parties and multiple claims."[26] Lawful consolidation of cases and parties comes with ample benefits, such as "increased efficiency" for courts and parties, "avoidance of duplicative litigation," and the development of more consistent precedent.[27] Aggregation also benefits parties by avoiding piecemeal and duplicative litigation, which dovetails nicely with the rules of res judicata.[28]

Still, attempts to employ the joinder rules are subject to broad judicial discretion.[29] Accordingly, while joinder may be lauded for its

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23. RICHARD D. FREER, CIVIL PROCEDURE § 12.1, at 609 (2d ed. 2009) ("At common law, for example, the writ system . . . permitted the plaintiff to assert only a single, narrowly defined claim. The concept of a case was, correspondingly, quite narrow.").

24. *See, e.g.*, 6A CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 1581 & n.11 (3d ed. 2010).

25. Effron, *supra* note 20, at 767–69.

26. *Id.* at 767. Other federal and state laws and procedural rules also permit joinder, but as explained below, this Article focuses on the FRCP.

27. Dodson, *supra* note 7, at 6–7 (citations omitted).

28. Effron, *supra* note 20, at 768–69 (stating that a broad and permissive joinder policy avoids the duplicative nature of some cases).

29. Robert G. Bone, *Mapping the Boundaries of a Dispute: Conceptions of Ideal Lawsuit Structure from the Field Code to the Federal Rules*, 89 COLUM. L. REV. 1, 100 (1989) (noting that the FRCP drafters believed judicial management questions were "ideally suited" to broad judicial discretion); Douglas D. McFarland, *In Search of the Transaction or Occurrence: Counterclaims*, 40 CREIGHTON L. REV. 699, 703 (2007)

benefits, "'deep[] [commitment of the federal judiciary] to the case-management model' carries with it the notion that such policies might take a backseat to the managerial demands of a given lawsuit."[30] Efficiency is thus used as a way to justify both the grant and denial of a joinder request.[31] Aggregation is also limited by a court's jurisdiction, such that courts will not join non-essential parties in a way that defeats a court's jurisdiction.[32] If a party's joinder is essential, but a court cannot exercise jurisdiction over that party, the court must either proceed without joining the party[33] or dismiss the case entirely.[34] In sum, joinder may have been designed to be liberal,[35] but it cannot subvert federal jurisdiction requirements.[36]

1. Relevant Party-Joinder Federal Rules of Civil Procedure

A brief summary of the joinder rules located in the FRCP is needed to lay the foundation for juxtaposing joinder and personal jurisdiction

(agreeing that joinder questions should be considered as part of an "exercise of broad trial court discretion over trial convenience").

30. Effron, *supra* note 20, at 769 (alterations in original) (quoting Steven S. Gensler, *Judicial Case Management: Caught in the Crossfire*, 60 DUKE L.J. 669, 673 (2010)).

31. *Id.* at 770.

32. *E.g.*, Wecker v. Nat'l Enameling & Stamping Co., 204 U.S. 176, 186 (1907) (rejecting a plaintiff's attempt to join a non-essential, non-diverse defendant as a ruse "to prevent the exercise of the right of removal by the nonresident defendant").

33. Republic of the Philippines v. Pimentel, 553 U.S. 851, 863 (2008) (noting that even joinder of a required party must only occur if feasible: "Required persons may turn out not to be required for the action to proceed after all."); Provident Tradesmens Bank & Tr. Co. v. Patterson, 390 U.S. 102, 108–09 (1968) (analyzing whether a case could proceed without joining a party needed for just adjudication under FRCP 19 where that party would destroy jurisdiction, and concluding that the case rightfully proceeded without joining the party).

34. Massachusetts v. Mellon, 262 U.S. 447, 488 (1923) (determining that because some defendants were necessary parties, without which the suit may not proceed, the plaintiff could not avoid a motion to dismiss where those defendants' joinder destroyed jurisdiction); Cobb v. Delta Exps., Inc., 186 F.3d 675, 681 (5th Cir. 1999) (holding that post-removal joinder of non-diverse defendants destroyed diversity for jurisdictional purposes and required a remand to state court).

35. *See* Effron, *supra* note 20, at 768 n.39 and accompanying text (highlighting Supreme Court cases referring to the "liberal joinder provisions of the Federal Rules").

36. "Courts may only exercise jurisdiction consistent with the Due Process clauses of the Fifth and Fourteenth Amendments, a requirement embodied in that bane of first-year procedure students, *Pennoyer v. Neff*." Lingwall & Wray, *supra* note 19, at 606 (citing Pennoyer v. Neff, 95 U.S. 714, 733 (1877)).

in Part II.[37] This article focuses on the joinder of parties as plaintiffs, so this limits the discussion to the rules on party joinder:

> Rule 14(a)(1) allows a defending party (acting as a third-party plaintiff) to join a "nonparty who is or may be liable to it for all or part of the claim against it."[38] Rule 19(a)(1)(B) articulates the standard for mandatory joinder of parties, requiring parties be joined if they are subject to service of process, would not destroy subject-matter jurisdiction, and if:
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> > [That party] claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may: (i) . . . impair or impede the person's ability to protect the interest; or (ii) leave an existing party subject to a substantial risk of incurring . . . inconsistent obligations because of the interest.[39]
>
> Rule 20(a) permits parties to join as plaintiffs if (1) their right to relief, whether joint, several, or alternative, arises "out of the same transaction, occurrence, or series of transactions or occurrences"[40] and if (2) "any question of law or fact common to all plaintiffs will arise in the action."[41]
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> Regarding claimants, Rule 23(a)(2) articulates the rules for class-action lawsuits, stating that the named

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37. *See* Effron, *supra* note 20, at 764 (cataloging the joinder rules into four categories: claims, parties, claimants, and actions). Professor Robin Effron further discusses the shared commonality language throughout the joinder rules, separating them into three groups: "transaction or occurrence rules," "common question of law or fact rules," and "interest rules." *Id.* app. at 819–21 (emphases omitted).

38. FED. R. CIV. P. 14(a)(1). While there is no specific language on relatedness or commonality in this subsection of Rule 14 as there is in subsections (a)(2) and (a)(3), it is not needed here because the joinder of a nonparty under this rule is only permitted to the extent that nonparty "may be liable . . . for all or part of the claim" that has already been made against an original defending party in the suit. *Id.*

39. *Id.* at 19(a)(1)(B); *see* Republic of the Philippines v. Pimentel, 553 U.S. 851, 862 (2008) (stating that "nonjoinder even of a required person does not always result in dismissal").

40. FED. R. CIV. P. 20(a)(1)(A); *see, e.g.*, United States v. Mississippi, 380 U.S. 128, 142–43 (1965) (permitting joinder of county registrars under Rule 20(a)).

41. FED. R. CIV. P. 20(a)(1)(B).

> class members may sue as "representative parties on behalf of all members only if" they meet a series of requirements, including the existence of "questions of law or fact common to the class."[42] Justice Scalia's clarification in *Wal-Mart Stores, Inc. v. Dukes*, noting that the rule requires more than just minor common questions and mandates a showing of "common answer[s]," shows that to suffice under Rule 23, the question in common must be a question of law or fact that is relevant and significant to the given litigation.[43]
>
> Finally, regarding intervenors, Rule 24 permits a party to intervene if she "has a claim or defense that shares with the main action a common question of law or fact,"[44] and requires courts to allow intervention for anyone who "claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest."[45]

One other rule relevant to party joinder is its mirror image: Rule 21 on misjoinder. Rule 21 does not fit within a category above; it is more of a joinder negative than a joinder rule. But it deserves an explanation to illustrate joinder's connections with personal jurisdiction. Rule 21 instructs that a "[m]isjoinder of parties is not a ground for dismissing an action."[46] Rather, courts may at any time during the suit, "on just terms, add or drop a party" either in response to a motion or at their own discretion.[47]

2. Explaining Article's Joinder Scope

I will now briefly discuss why I chose certain boundaries for this Article. First, I analyze and discuss only the FRCP concerning joinder and personal jurisdiction, despite the existence of additional statutes

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42. *Id.* at 23(a).
43. *See* Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 352 (2011); Effron, *supra* note 20, at 797–98.
44. FED. R. CIV. P. 24(b)(1)(B).
45. *Id.* at 24(a)(2).
46. FED. R. CIV. P. 21.
47. *See id.*

and state law rules pertaining to these doctrines.[48] Indeed, the FRCP themselves were drawn from existing state and federal procedural rules in equity.[49] Maintaining a focus on the FRCP's unified set of rules helps illustrate the relatedness analogy to show how this concept is woven throughout both party joinder and specific personal jurisdiction.

Second, regarding the special joinder procedure for class actions under CAFA and FRCP 23, I refer to this type of joinder only to the extent that its overall relatedness principles analogize with other non-class joinder rules. This is done to demonstrate the relatedness connection that exists throughout joinder (including joinder of plaintiffs into classes) without getting into the weeds of how recent personal jurisdiction cases, and specifically *Bristol-Myers Squibb*, has affected class actions.[50] The purpose of this Article is to show that the connection between specific personal jurisdiction and party joinder has always existed and did not originate with *Bristol-Myers Squibb*. *Bristol-Myers Squibb* was a mass-joinder case, not a class action, and as many courts and scholars alike have reasoned in its wake, the joinder of class action plaintiffs is distinguishable from the plaintiff-by-plaintiff joinder in mass-actions—the differences between the two could make a difference in how the demands of specific personal

48. These include, but are not limited to, federal joinder statutes. 28 U.S.C. § 1335 (codifying interpleader); *id.* § 1367 (giving district courts power to exercise supplemental jurisdiction); *id.* § 1407 (establishing multidistrict litigation). These also include state procedural rules on joinder. *See, e.g.*, CAL. CIV. PROC. CODE Title 3 Chs. 5–8 (West 2021); N.Y. C.P.L.R. §§ 1001–1026 (MCKINNEY 2021); TEX. R. CIV. P. 39–41. See also state long-arm statutes permitting personal jurisdiction over nonresident defendants, for example, CAL. CIV. PROC. CODE § 410.10 (West 2021), N.Y. C.P.L.R. § 302 (MCKINNEY 2021), TEX. CIV. PRAC. & REM. § 17.042 (West 2021).

49. *See* Stephen N. Subrin, *How Equity Conquered Common Law: The Federal Rules of Civil Procedure in Historical Perspective*, 135 U. PA. L. REV. 909, 922 (1987). For a thorough description of the rulemaking process, see Stephen B. Burbank, *The Rules Enabling Act of 1934*, 130 U. PA. L. REV. 1015, 1069–95 (1982).

50. Other scholars have covered these class action nuances extensively and have specifically discussed specific personal jurisdiction's effect on class action cases in the wake of *Bristol-Myers Squibb*. Spencer, *supra* note 10, at 32–34; Wilf-Townsend, *supra* note 10, at 212–14, 215–20, 226; Grant McLeod, Note, *In a Class of Its Own:* Bristol-Myers Squibb*'s Worrisome Application to Class Actions*, 53 AKRON L. REV. 721, 744–52, 755–65 (2019); Justin A. Stone, Note, *Totally Class-Less?: Examining* Bristol-Myer*'s Applicability to Class Actions*, 87 FORDHAM L. REV. 807, 819–26 (2018); *see* Bradt & Rave, *supra* note 7, at 1256 (conjecturing that after *Bristol-Myers Squibb* "multistate or nationwide class actions based on state tort law are likely off the table in almost any state or federal court that does not have general jurisdiction over the defendant.").

jurisdiction must be satisfied in each context.[51]

Third, I have limited this background and the analysis that follows to the joinder of parties, not claims. This Article identifies a specific link between joinder and personal jurisdiction that was crucial to the decision in *Bristol-Myers Squibb* but that, as I argue, has always existed. This link connects the joinder of plaintiffs to a suit with the defendant's requisite forum contacts to establish specific personal jurisdiction. This necessitates the showing of a similar relatedness requirement in both the party joinder and the defendant-specific-jurisdiction contexts. Accordingly, regarding joinder, I focus only on the rules and background relevant to the joinder of plaintiffs as parties.

B. Specific Personal Jurisdiction

The doctrine of personal jurisdiction has a convoluted history, to say the least. The Supreme Court's interest in the doctrine has ebbed and flowed drastically over the years.[52] But before launching into the caselaw development, this Section begins by analyzing the primary FRCP governing personal jurisdiction: FRCP 4.

FRCP 4(k)(1)(A) states that personal jurisdiction can be established "over a defendant: (A) who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located," which allows a federal court to piggyback onto the authority of the state in which it sits.[53] Rule 4(k)(1)(B) goes on to reference two joinder rules: FRCP 14 (regarding the joinder of third parties and claims by or against those third parties) and FRCP 19 (regarding mandatory joinder of parties), and states that personal jurisdiction may be established over any defendant "joined under Rule 14 or 19" so long as she "is served within a judicial district of the United States and not more than 100 miles from where the summons was issued."[54]

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51. McLeod, *supra* note 50, at 744–55; Wilf-Townsend, *supra* note 10, at 212–25 (compiling and analyzing post-*Bristol-Myers Squibb* class action cases).

52. Robertson & Rhodes, *supra* note 11, at 775 (noting the twenty-five year gap between the 1980s personal jurisdiction cases and the 2011 cases, during which "the Supreme Court declined to hear any personal jurisdiction cases." (citing Henry S. Noyes, *The Persistent Problem of Purposeful Availment*, 45 CONN. L. REV. 41, 43 (2012))).

53. FED. R. CIV. P. 4(k)(1)(A); *see* Jonathan Remy Nash, *National Personal Jurisdiction*, 68 EMORY L.J. 509, 512 (2019).

54. FED. R. CIV. P. 4(k)(1)(B). Rules 4(k)(1)(C) and (2)(A)–(B) also confer personal jurisdiction where "authorized by a federal statute" and other specified circumstances regarding claims arising under federal law. As these subsections of Rule 4(k) bears

The doctrine of personal jurisdiction dates back even further than the FRCP's 1937 enaction—back to the famous (or infamous) 1878 *Pennoyer v. Neff* decision.[55] This case grounded personal jurisdiction squarely within the Due Process Clauses of the Fifth and Fourteenth Amendments.[56] The *Pennoyer* formulation worked well for the next half-century or so because civil suits of that era dealt almost exclusively with individuals or partnerships.[57] *Pennoyer*'s jurisdictional touchstones of citizenship, consent, and physical presence worked well with real people and limited partnerships as parties because their presence could be easily ascertained.[58] But when businesses began moving toward inanimate corporate structures and away from localized partnerships, the Court needed a new test to establish "presence."[59] Enter *International Shoe Co. v. Washington*.[60]

In this 1954 case, the Court introduced a new test tailored to corporations, which subjects a nonresident corporation defendant to personal jurisdiction in the forum state if that defendant had established sufficient "minimum contacts" with the state.[61] Further, the exercise of jurisdiction over the defendant must not offend "traditional notions of fair play and substantial justice."[62] Speaking specifically to fairness concerns, the Court justified the exercise of jurisdiction when a nonresident defendant "exercises the privilege of

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little relevance on the analysis linking personal jurisdiction to joinder, this Article will not go into the details of those portions of the rule here.

55. Pennoyer v. Neff, 95 U.S. 714, 720 (1878) ("The authority of every tribunal is necessarily restricted by the territorial limits of the State in which it is established.").

56. The *Pennoyer* Court stated the following:

> Since the adoption of the Fourteenth Amendment to the Federal Constitution, the validity of such judgments may be directly questioned, and their enforcement in the State resisted, on the ground that proceedings in a court of justice to determine the personal rights and obligations of parties over whom that court has no jurisdiction do not constitute due process of law.

Id. at 733. *But see* Burnham v. Super. Ct., 495 U.S. 604, 609 (1990) (plurality opinion) (noting that the American notion of personal jurisdiction is a "common-law principle" that predates the Fourteenth Amendment).

57. *See* Douglas D. McFarland, *Drop the* Shoe*: A Law of Personal Jurisdiction*, 68 MO. L. REV. 753, 755 (2003).

58. *See id.* ("A court could rather easily determine when a natural person was served within state boundaries, but faced difficulties when dealing with a fictional person without a corporeal body.").

59. *See id.*

60. *See generally* 326 U.S. 310 (1942).

61. *Id.* at 316.

62. *Id.* (quoting Milliken v. Meyer, 311 U.S. 457, 463 (1940)).

conducting activities within a state" and thereby "enjoys the benefits and protection of the laws of that state."[63]

International Shoe laid the foundation of categorizing personal jurisdiction into two distinct categories: general and specific. Federal courts with general jurisdiction can exercise jurisdiction over any claim against a party, regardless of whether that party's connections to the forum state relate to the lawsuit. Specific jurisdiction, by contrast, allows a court to exercise jurisdiction over a defendant only if the lawsuit is related to that defendant's forum contacts.[64] The Court in *International Shoe*, however, did not specify which type of jurisdiction the facts of that case supported, suggesting both that Washington could exercise general jurisdiction over the company because of its "systematic and continuous" activities in the state and because the lawsuit "arose out of those very activities."[65] The "general" and "specific" terminology came to light decades later when Professors von Mehren and Trautman coined the terms in a law review article.[66]

"Since *International Shoe*, 'specific jurisdiction has become the centerpiece of modern jurisdiction theory, while general jurisdiction [has played] a reduced role.'"[67] Subsequent Supreme Court cases addressing specific jurisdiction have altered the phrasing of *International Shoe*'s minimum contacts test. For example, the Court phrased the test as asking whether the defendant has "purposefully avail[ed] itself of the privilege of conducting activities within the forum State,"[68] or whether it is "foreseeabl[e]" such that a defendant "should reasonably anticipate being haled into court" in the forum.[69] But one requirement stands out as vital to establish specific

63. *Id.* at 319.

64. *See id.* at 317–19; *see also* Burger King Corp. v. Rudzewicz, 471 U.S. 462, 471–72 (1985); Helicopteros Nacionales v. Hall, 466 U.S. 408, 414 nn.8–9 (1984).

65. *Int'l Shoe*, 326 U.S. at 320.

66. Arthur T. von Mehren & Donald T. Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 HARV. L. REV. 1121, 1136 (1966).

67. Daimler AG v. Bauman, 571 U.S. 117, 128 (2014) (quoting Goodyear v. Brown, 564 U.S. 915, 925 (2011)); *see* Patrick J. Borchers, *The Problem with General Jurisdiction*, 2001 U. CHI. LEGAL F. 119, 129 (2001) ("Specific jurisdiction's boundaries are clearer than general jurisdiction's because the Supreme Court has decided more specific jurisdiction cases in recent years."); Robin J. Effron, *Letting the Perfect Become the Enemy of the Good: The Relatedness Problem in Personal Jurisdiction*, 16 LEWIS & CLARK L. REV. 867, 874 (2012) (noting that "the premise of specific jurisdiction grounded much of the Court's jurisprudence").

68. Hanson v. Denckla, 357 U.S. 235, 253 (1958).

69. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980); *see Burger King Corp.*, 471 U.S. at 474.

jurisdiction: the connection between the plaintiff's suit and the defendant's minimum contacts with the forum state. "In judging minimum contacts, a court properly focuses on 'the relationship among the defendant, the forum, and the litigation.'"[70] As the Court has long emphasized, the reason for this relatedness requirement is beyond a mere "guarantee of immunity from inconvenient or distant litigation"; rather, it is derived from the "territorial limitations on the power of the respective States."[71]

The relatedness mandate that the plaintiff's suit must arise out of or relate to the defendant's "minimum contacts" with the forum state is the key that has always connected specific personal jurisdiction and joinder,[72] and this connection carried the day in *Bristol-Myers Squibb Co. v. Superior Court.* In *Bristol-Myers Squibb*, 678 individual plaintiffs joined their complaints against Bristol-Myers Squibb in California state court; only 86 of those plaintiffs were from California while the other 592 resided in thirty-three other states.[73] The plaintiffs' claims all centered around one of Bristol-Myers Squibb's pharmaceuticals: Plavix, a prescription drug that thins the blood and inhibits blood clotting, which Plaintiffs claimed had damaged their health.[74] All of the plaintiffs' claims were based in California law and included allegations of "products liability, negligent misrepresentation, and misleading advertising."[75] Importantly for jurisdictional purposes, "[t]he nonresident plaintiffs did not allege that they obtained Plavix through California physicians or from any other California source; nor did they claim that they were injured by Plavix or were treated for their injuries in California."[76]

Because of the way that the plaintiffs had structured their claims, removal to federal court was not an option.[77] Bristol-Myers Squibb

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70. Keeton v. Hustler Mag., Inc., 465 U.S. 770, 775 (1984) (quoting Shaffer v. Heitner, 433 U.S. 186, 204 (1977)).

71. *Hanson*, 357 U.S. at 251 (1958) ("However minimal the burden of defending in a foreign tribunal, a defendant may not be called upon to do so unless he has had the 'minimal contacts' with that State that are a prerequisite to its exercise of power over him.").

72. *See generally* Effron, *supra* note 67, at 872–76.

73. Bristol-Myers Squibb v. Super. Ct., 137 S. Ct. 1773, 1778 (2017).

74. *Id.*

75. *Id.*

76. *Id.*

77. Plaintiffs prevented removal based on diversity jurisdiction by joining the California-based distributor, McKesson, as a second defendant, and avoided CAFA because they were not filing as a class action. Each complaint pre-joinder involved fewer than one-hundred plaintiffs, such that they could not be removed under CAFA's provision for removal of "mass actions." 28 U.S.C. § 1332(d)(11)(B)(i); Bradt & Rave,

was forced to use another arrow in its quiver: a motion to quash the claims of the non-California residents based on a lack of personal jurisdiction.[78] General jurisdiction, they argued, could not exist here after the Court's unanimous decision in *Goodyear Dunlop Tires Operations, S. A. v. Brown* because Bristol-Myers Squibb was not "at home" in California, as it was incorporated in Delaware and headquartered in New York.[79] Bristol-Myers Squibb argued that because the nonresident plaintiffs' injury claims occurred in their home states outside California, specific jurisdiction could not be exercised without a connection between their claims and the forum state.[80] The case made its way to the California Supreme Court, which applied a "sliding scale approach to specific jurisdiction" to allow the nonresidents' claims based on Bristol-Myers Squibb's "extensive contacts" with California, despite the fact that those claims themselves were not connected to Bristol-Myers Squibb's California contacts.[81] Three justices of the California Supreme Court dissented, accusing the majority of concluding that the "mere similarity" of the nonresidents' claims—who neither purchased nor ingested Bristol-Myers Squibb's drug Plavix in California—to the California residents' claims—who had purchased and ingested Plavix in California—was enough for California to exercise specific jurisdiction over Bristol-Myers Squibb for all of the claims combined.[82]

The United States Supreme Court reversed the judgment of the California Supreme Court based on the insufficient "connection between the nonresident plaintiffs' claims and the forum."[83] The California Supreme Court's "sliding scale approach" was "difficult to square" with the Court's personal jurisdiction precedent because it allowed courts to find specific jurisdiction without linking the

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supra note 7, at 1274. Indeed, the federal district court rejected an early attempt by Bristol-Myers Squibb to remove. *In re* Plavix Prod. Liab. & Mktg. Litig., 3:13-cv-2418-FLW-TJB, 2014 WL 4544089, at *1 (D.N.J. Sept. 12, 2014).

78. *Bristol-Myers Squibb*, 137 S. Ct. at 1778.

79. *Id.* at 1780–81; *see* Goodyear Dunlop Tires Operations v. Brown, 564 U.S. 915, 924 (2011) (holding that general jurisdiction could only be allowed in an "individual's domicile," which for a corporation meant only where it "is fairly regarded as at home").

80. *Bristol-Myers Squibb*, 137 S. Ct. at 1778.

81. *Id.*

82. *Id.* at 1779 (quoting Bristol-Myers Squibb Co. v. Super. Ct., 377 P.3d 874, 898 (2016) (Werdegar, J., dissenting)).

83. *Id.* at 1782; *see id.* at 1781 (stating that the court cannot exercise specific personal jurisdiction over a defendant without "a connection between the forum and the specific claims at issue").

nonresidents' claims to the forum state.[84] "The mere fact that *other* plaintiffs were prescribed, obtained, and ingested Plavix in California—and allegedly sustained the same injuries as did the nonresidents—does not allow the State to assert specific jurisdiction over the nonresidents' claims."[85] "[W]ithout identifying any adequate link between the State and the nonresidents' claims," California courts could not exercise specific jurisdiction over Bristol-Myers Squibb, an out-of-state defendant.[86] This reinforced a fundamental threshold relatedness requirement, discussed more completely in Part II, *supra*, that must be shown for joined plaintiffs to sue defendants in courts outside their home state: a requirement that each plaintiff's lawsuit must share a connection with the defendant's contacts with the forum state.[87]

Because the Court found dispositive that there was *no* connection between the plaintiffs' claims and the defendant's contacts, *Bristol-Myers Squibb* left open the question of "exactly how 'related' the plaintiffs' claims must be to the defendant's contacts with the forum state."[88] The Court recently offered additional clarity on this issue in the *Ford* case, decided March 25, 2021.[89] Scholars have already published articles that discuss the details and implications of this case,[90] but for the purposes of this Article, it suffices to say that *Ford*'s holding reaffirmed the longstanding specific jurisdiction requirement that the defendant's forum contacts must give rise to *or* "relate to" the claims at issue.[91] In summation, within the last year, a unanimous Court reaffirmed that this threshold level of relatedness is necessary to establish personal jurisdiction over a nonresident defendant.[92]

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84. *Id.* at 1781.

85. *Id.*

86. *Id.* at 1776.

87. *Id.* at 1781 ("What is needed—and what is missing here—is a connection between the forum and the specific claims at issue."); 4A CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 1069.7 (4th ed. 2015) (hereinafter "WRIGHT & MILLER") (clarifying that specific personal jurisdiction is a claim-by-claim inquiry).

88. *See* Bradt & Rave, *supra* note 7, at 1280; Hoffheimer, *supra* note 8, at 525, 535.

89. *See generally* Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct., 141 S. Ct. 1017 (2021).

90. *See generally* Scott Dodson, *Personal Jurisdiction, Comparativism, and* Ford, 51 STETSON L. REV. 187 (2022); Christine P. Bartholomew & Anya Bernstein, *Ford's Underlying Controversy*, 99 WASH. U. L. REV. (forthcoming 2022); Rhodes, *The Roberts Court's Jurisdictional Revolution within* Ford's *Frame*, 51 STETSON L. REV. 157 (2022).

91. *Ford*, 141 S. Ct. at 1026.

92. A quick note regarding my decision to limit this Article to an analysis of specific personal jurisdiction: much ink has been spilled on the Roberts Court's

II. RELATEDNESS LINKING SPECIFIC PERSONAL JURISDICTION AND PARTY JOINDER

Many scholars claim that recent Supreme Court personal jurisdiction cases have added new restrictions to the doctrine.[93] But *clarifying* an existing doctrine does not necessarily amount to inventing a new doctrine. The Court in *Bristol-Myers Squibb*, for instance, "claim[ed] to make no new law."[94] Indeed, as a matter of specific personal jurisdiction, this Article agrees with the Court's claim.[95] The fact that this case highlighted a connection between joinder and specific personal jurisdiction does not mean that the connection itself was new.

Indeed, these two doctrines have always been connected. Section A begins by exploring four examples of traditional interactions that have occurred between personal jurisdiction and joinder, each of which existed long before the Court's decision in *Bristol-Myers Squibb*. These traditional interactions include: (1) the doctrine of pendent personal jurisdiction, used by courts to hear claims related to the original claims but which, if adjudicated independently, would not permit personal jurisdiction; (2) the joinder FRCP and cases that have previously tied joinder to jurisdictional issues; (3) the relevance of the distinction between subject-matter and personal jurisdiction in a joinder analysis; and (4) the application of party joinder in courts with general personal jurisdiction.

Next, Section B presents another longstanding connection that, though always present in the background, was brought to the

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development of general jurisdiction brought on by *Goodyear* and *Daimler* as well as the interplay between general and specific jurisdiction in this "new equilibrium in jurisdictional doctrine." Robertson & Rhodes, *supra* note 11, at 776; *see also, e.g.*, *id.* at 780–83; Bradt & Rave, *supra* note 7, at 1271–74; Dodson, *supra* note 83, at 708–11; Hoffheimer, *supra* note 8, at 530. Because general jurisdiction does not mandate a relatedness threshold for personal jurisdiction—seeing as a court with general jurisdiction over a defendant may adjudicate *related as well as unrelated* claims—a general jurisdiction discussion does not add anything to the relatedness link between specific personal jurisdiction and joinder. Seeing as general jurisdiction is more of a distraction than anything, this Article limits its scope to the doctrine of specific jurisdiction as it relates to joinder.

93. *See, e.g.*, Bradt & Rave, *supra* note 7, at 1256; Dodson, *supra* note 7, at 32; Hoffheimer, *supra* note 8, at 501; Rhodes & Robertson, *supra* note 8, at 213–14, 216–27.

94. Bradt & Rave, *supra* note 7, at 1255 (citing Bristol-Myers Squibb Co. v. Super. Ct., 137 S. Ct. 1781, 1783–84 (2017)).

95. Bristol-Myers Squibb Co. v. Super. Ct., 137 S. Ct. 1773, 1783 (2017) (describing its holding as a "straightforward application . . . of settled principles of personal jurisdiction").

forefront by the Court in *Bristol-Myers Squibb*. As explained below, joinder and specific personal jurisdiction have been inextricably linked from the beginning by their mutual requirement to make a relatedness showing for the court to adjudicate the suit. First, Section B discusses relatedness in the joinder context and shows how party joinder federal rules and caselaw mandate a showing of a sufficient connection between claims and parties before permitting aggregation. Next, Section B explains how specific personal jurisdiction cases have always required a showing that plaintiffs' claims are sufficiently related to the defendant's forum contacts.

The Court's conclusion in *Bristol-Myers Squibb* was a natural outcome of this shared relatedness requirement. Each plaintiff's lawsuit must share a connection with the defendant's forum contacts because just as each plaintiff must demonstrate that their claims are related to aggregate into one suit, they must also show that their claims are sufficiently related to the defendant's forum contacts to adjudicate that suit in that particular forum.

A. Existing Connections Between Joinder & Jurisdiction

No matter the claim or controversy at issue, it is axiomatic that courts must have lawful jurisdiction to hear any case.[96] "[A] judgment without jurisdiction is void, and property or liberty taken under a void judgment is taken without due process of law."[97] Parties seeking to join their claims together cannot circumvent this baseline

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96. "It is a principle of general application in Anglo-American jurisprudence that one is not bound by a judgment in personam in a litigation in which he is not designated as a party or to which he has not been made a party by service of process." Hansberry v. Lee, 311 U.S. 32, 40, 41–42 (1940) (discussing the personal jurisdiction requirement in the context of whether absent class members can be bound by a decree in a representative class suit). Similarly, in *Hoffman-La Roche, Inc.*, Justice Scalia, dissenting, noted:

> I have no doubt that courts possess certain powers over the § 216(b) joinder process, most prominently the power to satisfy themselves that the employees who purportedly become parties are *in fact* similarly situated to the representative, and have *in fact* given valid consents to the litigation. That is simply part of the courts' ever-present duty to inquire into their jurisdiction over claims brought before them.

Hoffmann-La Roche, Inc. v. Sperling, 493 U.S. 165, 176–77 (1989) (Scalia, J., dissenting).

97. Stephen E. Sachs, Pennoyer *Was Right*, 95 TEX. L. REV. 1249, 1298 (2017) (citation omitted).

jurisdictional requirement because all cases are subject to the due process mandate of the Fifth and Fourteenth Amendments. Professor Stephen E. Sachs explains:

> Jurisdiction is what makes the process *lawful*, what gives the court legal power to take away property or liberty. A judgment without jurisdiction is void, a piece of "waste paper." And taking away someone's property or liberty based on a piece of waste paper is, if *anything* is, a deprivation without due process of law.[98]

Joinder issues, like all others, are considered in the context of whether a court has sufficient jurisdiction over the claim.99 Courts need personal jurisdiction (or property-based jurisdiction) to hear any case. As it turns out, one area where the link between joinder and personal jurisdiction has been explored is in the pendent personal jurisdiction context.

1. Pendent Personal Jurisdiction

The concept of pendent personal jurisdiction exemplifies one way that joinder issues have intersected with personal jurisdiction. This

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98. *Id.*; Steel Co. v. Citizens for Better Env't, 523 U.S. 83, 94 (1998) ("Jurisdiction is power to declare the law." (internal quotations and citation omitted)).

99. Sprint Commc'ns. Co., L.P. v. APCC Servs., 554 U.S. 269, 312 (2008) (Roberts, J., dissenting) (discussing the importance of a court's lawful jurisdiction in the context of a Rule 20 permissive joinder case: "[W]e have repeatedly held that the existence of unaddressed jurisdictional defects has no precedential effect." (quoting Lewis v. Casey, 518 U.S. 343, 352, n.2 (1996))); Grupo Dataflux v. Atlas Glob. Grp., L.P., 541 U.S. 567, 573 (2004) (noting that Rule 21 gives both district and appellate courts "the authority to cure a jurisdictional defect by dismissing a dispensable nondiverse party"); Finley v. United States, 490 U.S. 545, 553 n.6 (1989) (noting that FRCP 14(a) and 20(a)— the rules on permissive joinder of additional claims and parties, respectively—do not "alter [the] reality" that the court lacks jurisdiction where a "private party" is joined "for purposes of a claim over which the District Court has no independent jurisdiction"), *superseded by* 28 U.S.C. § 1367 (authorizing supplemental jurisdiction); Martin v. Wilks, 490 U.S. 755, 765 (1989) ("Joinder as a party, rather than knowledge of a lawsuit and an opportunity to intervene, is the method by which potential parties are subjected to the jurisdiction of the court and bound by a judgment or decree."), *superseded by* 1 U.S.C. § 108; United Mine Workers v. Gibbs, 383 U.S. 715, 725–26 n.13 (1966) (considering the scope of a federal court's jurisdiction in determining whether state and federal claims may be joined in the same action); United States v. Æetna Cas. & Sur. Co., 338 U.S. 366, 382 (1949) (noting that joinder may be prevented by general jurisdictional issues, stating "there will be cases in which all parties cannot be joined because one or more are outside the jurisdiction"); *Hansberry*, 311 U.S. at 41–42.

court-created practice occurs when a court "has personal jurisdiction for one claim," which it uses to exercise "personal jurisdiction for another claim, when that other claim, if sued upon separately, would not support such jurisdiction."[100] The second claim thus "tag[s] along" with the first.[101] This traditionally occurs with "the joinder of a state-law claim by a party already presenting a federal question claim against the same defendant."[102] The test for when this is appropriate comes from the Supreme Court's decision in *United Mine Workers of America v. Gibbs*, where the Court required the state and federal claims joined this way to "derive from a common nucleus of operative fact."[103] Although this practice is "widely accepted as constitutional,"[104] no statute or rule "expressly authorizes the exercise of personal jurisdiction for the pendent claims."[105] A complete analysis of the legality of pendent personal jurisdiction is outside the scope of this Article, especially given the focus on the joinder of parties, not claims.[106]

Recent attempts to use pendent personal jurisdiction in the party-joinder context, however, warrants a brief discussion. In the wake of *Bristol-Myers Squibb*, some courts have used a party-based variation of pendent personal jurisdiction by adjudicating "claims of plaintiffs unrelated to the state they sit in because they have personal

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100. James S. Cochran, *Personal Jurisdiction and the Joinder of Claims in the Federal Courts*, 64 TEX. L. REV. 1463, 1464 (1986); *see* Rhodes & Robertson, *supra* note 8, at 243–44 (defining pendent personal jurisdiction); *see also* Dodson, *supra* note 7, at 29 (briefly hypothesizing the effect that *Bristol-Myers Squibb*'s focus on a connection between specific claims and the forum state will have on pendant personal jurisdiction); Hoffheimer, *supra* note 8, at 528–29 (summarizing the development of pendent personal jurisdiction and discussing *Bristol-Myers Squibb*'s effect on the doctrine).

101. Rhodes & Robertson, *supra* note 8, at 244.

102. Baylis v. Marriott Corp., 843 F.2d 658, 663–64 (2d Cir. 1988); *see* Rhodes & Robertson, *supra* note 8, at 244.

103. *United Mine Workers*, 383 U.S. at 725.

104. Dodson, *supra* note 7, at 22.

105. Robert C. Casad, *Personal Jurisdiction in Federal Question Cases*, 70 TEX. L. REV. 1589, 1607 (1992).

106. Others have discussed the legality of pendent personal jurisdiction at length, including the implications of *Bristol-Myers Squibb* on this doctrine. *Compare* Capozzi, *supra* note 9, at 240–61 (concluding that "[s]tate long-arm statutes are the only possible source of authority for a federal court's assertion of [pendent personal jurisdiction]"), *with* Rhodes & Robertson, *supra* note 8, at 243–52 (arguing that "the nearly unanimous view is that a court may lawfully exercise pendent personal jurisdiction to hear related state-law claims."); Linda Sandstrom Simard, *Exploring the Limits of Specific Personal Jurisdiction*, 62 OHIO ST. L.J. 1619, 1659 (2001) (using the reasoning of a 1938 Supreme Court case to provide authority for constitutionality of pendent personal jurisdiction).

jurisdiction over the defendant as to another plaintiff's similar claim."[107] But this practice was expressly barred by *Bristol-Myers Squibb*, and is thus only permissible to the extent *Bristol-Myers Squibb* is inapplicable.[108]

One possible justification for the continued exercise of pendent personal jurisdiction is that *Bristol-Myers Squibb*, a California case involving questions of state law, is inapplicable to federal courts.[109] While most courts agree that *Bristol-Myers Squibb* applies to federal court in diversity cases, courts are split on whether it applies in federal question cases.[110] There should not be any confusion on this issue because it is clear from the FRCP that *Bristol-Myers Squibb* should apply in all federal cases: FRCP 4(k) ties any determination of a court's personal jurisdiction, in both federal question and diversity cases, to state law by allowing federal courts to exercise personal jurisdiction to the extent permitted by the state in which that court sits.[111] If personal jurisdiction in federal court is tied to state law in single plaintiff cases, there is no reason why this concept would function differently in aggregated cases. This also demonstrates why differentiating between diversity and federal question cases on the question of personal jurisdiction authorized by FRCP 4(k) makes little sense and is a distinction without any justifying principle. In sum, FRCP 4(k) ties personal jurisdiction to state law as a default regardless of the basis of subject-matter jurisdiction or whether the

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107. Capozzi, *supra* note 9, at 232 (collecting cases).

108. *See id.* at 232; *e.g.*, Spratley v. FCA US LLC, 3:17-CV-0062, 2017 U.S. Dist. LEXIS 147492, at *21–22, (N.D.N.Y. Sept. 12, 2017) (discussing recent cases that have rejected similar pendent personal jurisdiction arguments).

109. *See* Bristol-Myers Squibb Co. v. Super. Ct., 137 S. Ct. 1773, 1783–84 (2017) (expressly leaving open the question whether the "Fifth Amendment imposes the same restrictions on the exercise of personal jurisdiction by a federal court").

110. *E.g.*, Sloan v. Gen. Motors LLC, 438 F. Supp. 3d 1017, 1019 (N.D. Cal. 2020) ("[N]early every court considering the issue has concluded pendent party jurisdiction cannot be exercised by a federal court sitting in diversity." (citation and internal quotation marks omitted)). *Compare* Sloan v. Gen. Motors LLC, 287 F. Supp. 3d 840, 858–59 (N.D. Cal. 2018) (holding that *Bristol-Myers Squibb* does not apply to federal question cases), *with In re* Packaged Seafood Prods. Antitrust Litig., 338 F. Supp. 3d 1118 (S.D. Cal. 2018) (finding *Bristol-Myers Squibb* inapplicable to federal question cases, but finding alternative sources of personal jurisdiction).

111. FED. R. CIV. P. 4(k)(1)(A); *see* Walden v. Fiore, 571 U.S. 277, 291 (2014) ("Federal courts ordinarily follow state law in determining the bounds of their jurisdiction over persons.") (quoting Daimler AG v. Bauman, 571 U.S. 117, 125 (2014) (internal quotation marks omitted)); WRIGHT & MILLER, *supra* note 87; Capozzi, *supra* note 9, at 259–60 ("Rule 4(k)(1)(A) designates state long-arm statutes as the primary source of authority for federal court assertions of personal jurisdiction."); Wilf-Townsend, *supra* note 10, at 223.

case involves a single plaintiff suing a single defendant or an aggregated claim. Therefore, *Bristol-Myers Squibb* should apply in both federal and state court.[112]

As explained in Part III, *supra*, courts have also distinguished *Bristol-Myers Squibb*, a mass-tort case, from class-action lawsuits, specifically in the jurisdictional requirements for unnamed class plaintiffs.[113] Without diving too deep into an area already sufficiently covered, I will briefly summarize the general consensus on this question. Courts tend to apply *Bristol-Myers Squibb* to all named plaintiffs in class actions without much fanfare.[114] The controversial issue that has arisen is whether *Bristol-Myers Squibb* applies to unnamed out-of-state class plaintiffs.[115] With respect to named class representatives, however, many of the district courts that have considered whether *Bristol-Myers Squibb* applies to out-of-state named plaintiffs in class actions have concluded that it does.[116] The Seventh Circuit has already weighed in on the question and agreed that *Bristol-Myers Squibb*'s requirement—that each plaintiff's claims

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112. Andrew D. Bradt, *The Long Arm of Multidistrict Litigation*, 59 WM. & MARY L. REV. 1165, 1191 (2018); Adam N. Steinman, *Access to Justice, Rationality, and Personal Jurisdiction*, 71 VAND. L. REV. 1401, 1414, 1433 (2018). *But see* Ins. Corp. of Ir. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 711–12 (1982) (Powell, J., concurring) (articulating a similar view of the Rules of Decision Act); Leslie M. Kelleher, *Amenability to Jurisdiction as a Substantive Right: The Invalidity of Rule 4(k) Under the Rules Enabling Act*, 75 IND. L.J. 1191, 1209–14 (2000).

113. *E.g.*, Fitzhenry-Russell v. Dr. Pepper Snapple Grp., Inc., No. 17-cv-00564, 2017 WL 4224723, at *4 (N.D. Cal. Sept. 22, 2017); *see Bristol-Myers Squibb*, 137 S. Ct. at 1789 n.4 (Sotomayor, J., dissenting) (noting that the Court leaves open "the question whether its opinion here would also apply to a class action in which a plaintiff injured in the forum State seeks to represent a nationwide class of plaintiffs"); *see also Bristol-Myers Squibb*, 137 S. Ct. at 1783 (expressly leaving "open the question whether the Fifth Amendment imposes the same restrictions on the exercise of personal jurisdiction by a federal court").

114. *E.g.*, Day v. Air Methods Corp., No. 17-183, 2017 U.S. Dist. LEXIS 174693, at *6 (E.D. Ky. Oct. 23, 2017); *see id.* at *6 n.1 (determining that *Bristol-Myers Squibb* only applies to named plaintiffs in a class action).

115 Anderson v. Logitech, Inc., No. 17-C-6104, 2018 WL 1184729, at *1 (N.D. Ill. Mar. 7, 2018) (collecting cases on both sides of the issue); Jones v. Depuy Synthes Prod., Inc., 330 F.R.D. 298, 311 (N.D. Ala. 2018) (same).

116. Mussat v. IQVIA, Inc., 953 F.3d 441, 445–47 (7th Cir. 2020) (concluding that the named distinction was key in applying *Bristol-Myers Squibb* to class actions); *see* Molock v. Whole Foods Mkt. Grp., Inc., 952 F.3d 293, 297 (D. D.C. 2020) (noting that "unnamed class members are treated as nonparties for other purposes, including jurisdictional ones"); Pilgrim v. Gen. Motors Co., 408 F. Supp. 3d 1160, 1167 (C.D. Cal. 2019) (clarifying that the question of *Bristol-Myers Squibb*'s applicability to unnamed out-of-state plaintiffs in class actions was not at issue, and holding that *Bristol-Myers Squibb*'s limitation on personal jurisdiction applies to named plaintiffs in class actions).

must be sufficiently related to the defendant's forum contacts to exercise specific jurisdiction—applies only to named plaintiffs in class actions, not the unnamed plaintiffs who are joined only on an opt-in basis.[117]

Therefore, because *Bristol-Myers Squibb* applies in all state courts and in almost all federal court cases, application of this pendent *party* personal jurisdiction is unquestionably impermissible.[118] At least in the pendent *claim* personal jurisdiction context, courts can point to the Supreme Court's and Congress's greater receptivity to claim joinder.[119] For instance, in *Gibbs*, the Court analyzed whether it could adjudicate pendent claims under a subject matter jurisdiction theory (prior to Congress's enactment of 28 U.S.C. § 1367, which expressly allowed this practice).[120] The Court held that courts could consider claims that do not themselves arise under federal law so long as they shared a "common nucleus of operative fact" with the other claims.[121] After the Court decided *Gibbs*, Congress passed 28 U.S.C. § 1367, which gave federal courts the authority to exercise "supplemental jurisdiction" over additional claims that are "so related to claims in the action within such original jurisdiction that they form part of the same case or controversy."[122] This indicated a congressional willingness to permit claim aggregation.[123] Still, these claim joinder issues were considered in the context of § 1367, together with §§ 1331 and 1332, which establish the bases for federal court subject-matter jurisdiction. The applicability of these indications of generous claim joinder to justify pendent personal jurisdiction is questionable, at best.[124]

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117. *Mussat*, 953 F.3d at 445–46.

118. Spencer, *supra* note 10, at 46 n.49 (quoting *Bristol-Myers Squibb*, 137 S. Ct. at 1781); see Travers v. FedEx Corp., 2022 U.S. Dist. LEXIS 23865, *9 ("We join these judges in declining to apply pendent party personal jurisdiction because well-settled constitutional principles command it.").

119. United Mine Workers v. Gibbs, 383 U.S. 715, 725 (1966).

120. *Id.* at 727.

121. *Id.* at 725.

122. 28 U.S.C. § 1367(a).

123. This section expressly includes "claims that involve the joinder or intervention of additional parties." However, these parties are only included to the extent that they would not destroy the court's original jurisdiction. *See id.*; *see also* Exxon Mobil Corp. v. Allapattah Servs., Inc., 545 U.S. 546, 566 (2005) (analyzing the meaning of § 1367 and differentiating between claims and parties in the context of subject-matter jurisdiction).

124. Capozzi, *supra* note 9, at 244; Dodson, *supra* note 7, at 39 n.231; *see* WRIGHT & MILLER, *supra* note 87 ("Neither the plain meaning of this statute, which shows it to be a subject matter jurisdiction provision, nor its legislative history supports the

Circumstantial support for pendent claim joinder in the subject-matter jurisdiction context does not necessarily support the same liberties for exercising pendent party-joinder personal jurisdiction.[125] The Court made this distinction between parties and claims clear in *Exxon Mobil Corp. v. Allapattah Services, Inc.*, which analyzed the scope of the congressional grant of supplemental jurisdiction to courts in § 1367.[126] The question was whether the diversity statute required that all plaintiffs independently satisfy the amount-in-controversy requirement.[127] The Court held that it did not,[128] finding that both § 1367's text and structure indicated that courts could join claims that did not meet the amount-in-controversy requirement with claims that did.[129] Importantly, the Court noted that although "a single nondiverse party can contaminate every other claim in the lawsuit," this "contamination does not occur with respect to jurisdictional defects that go only to the substantive importance of individual claims."[130]

Translating this principle to the pendent personal jurisdiction context, a joined party that destroys a court's personal jurisdiction may not destroy the court's jurisdiction to hear the entire case—like it would if the joined party lacked diversity, thereby nullifying the court's subject-matter jurisdiction—but it certainly bars the court from joining that party to the suit. This underscores the very purpose of personal jurisdiction: to limit courts' jurisdictional reach to only include parties within the lawful limits of the court's authority.

2. Federal Rules and Cases Tying Joinder to Jurisdiction

A close look at the FRCP reveals that no rule permits joinder of parties where it would destroy the court's jurisdiction over the underlying case. Rule 19—mandatory joinder of parties—specifically requires that necessary parties be joined only if their joinder "would not destroy subject-matter jurisdiction."[131] Rule 21—misjoinder and nonjoinder of parties—also expressly allows courts to "add or drop a

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conclusion that Congress intended Section 1367 to include personal jurisdiction."); *cf.* BNSF Ry. v. Tyrrell, 137 S. Ct. 1549, 1553 (2017) (concluding that similar language in FELA refers only to subject matter jurisdiction, and not to personal jurisdiction).

125. *See Exxon Mobil*, 545 U.S. at 566 (differentiating between claims and parties when permitting supplemental jurisdiction).

126. *Id.* at 549.

127. *Id.* at 558.

128. *Id.* at 559.

129. *Id.* at 566.

130. *Id.*

131. FED. R. CIV. P. 19.

party" and may do so both in response to a motion or on its own initiative.[132] Courts have used this provision to maintain jurisdiction over a case when a claim or a party has destroyed it.[133]

An example of a Supreme Court case that tied joinder to personal jurisdiction issues is *Phillips Petroleum Co. v. Shutts*.[134] Some have considered *Shutts* and queried whether *Bristol-Myers Squibb* bucked the Court's traditional practice of resolving personal jurisdiction issues in favor of joinder.[135] *Shutts* involved a class action where royalty owners from all fifty states sued a gas corporation in Kansas state court, and the corporation claimed that the court lacked personal jurisdiction over all absent, nonresident class plaintiffs who had not affirmatively consented to jurisdiction.[136] Put differently, the corporation-defendant argued that the Kansas courts lacked personal jurisdiction over the out-of-state, non-consenting plaintiffs themselves—not that the courts lacked personal jurisdiction over the corporation-defendant based on an insufficient link between plaintiffs' claims and the defendant's forum contacts.[137] The Court held that the Kansas courts could exercise personal jurisdiction over the absent, nonresident class plaintiffs and thus permitted joinder:

> Because States place fewer burdens upon absent class plaintiffs than they do upon absent defendants in nonclass suits, . . . a forum State may exercise jurisdiction over the claim of an absent class-action plaintiff, even though that plaintiff may not possess the minimum contacts with the forum which would support personal jurisdiction over a defendant.[138]

Shutts may have resolved the potential personal jurisdiction issue in that case in favor of joinder of nonresident plaintiffs, as Professor Scott Dodson argues,[139] but the Court's holding did not extend to

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132. *Id.* at 21.

133. Caterpillar, Inc. v. Lewis, 519 U.S. 61, 73 (1996); Newman-Green, Inc. v. Alfonzo-Larrain, 490 U.S. 826, 837 (1989).

134. Phillips Petrol. Co. v. Shutts, 472 U.S. 797, 799, 813–14 (1985).

135. Hoffheimer, *supra* note 8, at 530–31 (citing *Shutts*, 472 U.S. at 799, 813–14 (1985)); Dodson, *supra* note 7, at 19, 28, 31–32.

136. *Shutts*, 472 U.S. at 806.

137. *Id.*

138. *Id.* at 811. Although *Shutts* is a class action case, I use it here to the extent its principles carry over to the non-class joinder of parties.

139. Dodson, *supra* note 7, at 19.

nonresident *defendants*.[140] The court emphasized that "[t]he burdens placed by a State upon an absent class-action plaintiff are not of the same order or magnitude as those it places upon an absent defendant" because plaintiffs, unlike defendants, are never "haled anywhere to defend themselves upon pain of a default judgment."[141] Dodson contends that the "recognition that aggregation of class claims might be necessary to make certain small-value claims viable for litigation" was "[c]ritical to the Court's reasoning."[142] Although preserving the benefits of aggregation was certainly a key consideration in *Shutts*, the Court's opinion still indicates that this interest was secondary to a more fundamental and determinative aspect of that case: the parties to be aggregated were *plaintiffs*, not *defendants*.

The Court relied on the distinction between plaintiffs and defendants throughout its opinion.[143] It explained that the purpose of *International Shoe*'s personal jurisdiction test, "of course, [was] to protect a defendant from the travail of defending in a distant forum, unless the defendant's contacts with the forum make it just to force him to defend there."[144] The Court also engaged in a lengthy discussion of the burdens of class-action litigation on defendants, stating expressly that "[t]he burdens placed by a State upon an absent class-action plaintiff are not of the same order or magnitude as those it places upon an absent defendant."[145] "An out-of-state defendant summoned by a plaintiff is faced with the full powers of the forum State to render judgment against it."[146] The Court then detailed all the potential burdens that are specific to the defendant: (1) it must "hire counsel and travel to the forum to defend itself . . . or suffer a default judgment"; (2) the defendant may "be forced to participate in extended and often costly discovery"; (3) it "will be forced to respond in damages or to comply with some other form of remedy imposed by the court should it lose the suit"; and finally, (4) "the defendant may

140. *Shutts*, 472 U.S. at 811 ("Nor, of course, does our discussion of personal jurisdiction address class actions where the jurisdiction is asserted against a defendant class.").

141. *Id.* at 808–09; *see* Carol Rice Andrews, *The Personal Jurisdiction Problem Overlooked in the National Debate About "Class Action Fairness,"* 58 SMU L. REV. 1313, 1374 (2005) ("*Shutts*, when viewed in context of the Court's other decisions regarding both jurisdiction and choice of law, argues for drawing the line on the side of greater protection for the defendant.").

142. Dodson, *supra* note 7, at 20.

143. *See Shutts*, 472 U.S. at 807.

144. *Id.*

145. *Id.* at 808.

146. *Id.*

also face liability for court costs and attorney's fees."[147] The Court concluded its discussion of the defendant's need for protection by stating "[t]hese burdens are substantial, and the minimum contacts requirement of the Due Process Clause prevents the forum State from unfairly imposing them upon the defendant."[148]

The Court then moved to an analysis of the plaintiff to explain why the "different posture" of class-action plaintiffs, as opposed to defendants, makes all the difference.[149] "In sharp contrast to the predicament of a defendant haled into an out-of-state forum, the plaintiffs in this suit were not haled anywhere to defend themselves upon pain of a default judgment."[150] The Court also explained how class-action plaintiffs are not subject to most of the burdens facing defendants primarily because they do not have an affirmative need to preserve and protect their own interests: "Unlike a defendant in a civil suit, a class-action plaintiff is not required to fend for himself. The court and named plaintiffs protect his interests. Indeed, the class-action defendant itself has a great interest in ensuring that the absent plaintiff's claims are properly before the forum."[151] Moreover, absent plaintiff class members "need not hire counsel or appear. They are almost never subject to counterclaims or cross-claims, or liability for fees or costs. Absent plaintiff class members are not subject to coercive or punitive remedies. Nor will an adverse judgment typically bind an absent plaintiff for any damages.[152]

Thus, because "[u]nlike a defendant in a normal civil suit, an absent class-action plaintiff is not required to do anything," these unnamed class plaintiffs "may sit back and allow the litigation to run its course, content in knowing that there are safeguards provided for [their] protection."[153] The Court recognized that unnamed class-action plaintiffs usually can go even further, noting that "[i]n most class actions an absent plaintiff is provided at least with an opportunity to 'opt out' of the class, and if he takes advantage of that opportunity he is removed from the litigation entirely."[154]

Ultimately, the *Shutts* Court arrived at its primary holding that "[b]ecause States place fewer burdens upon absent class plaintiffs than they do upon absent defendants in nonclass suits, the Due

147. *Id.*
148. *Id.*
149. *Id.*
150. *Id.* at 808–09.
151. *Id.* at 809 (citation omitted).
152. *Id.* at 810 (footnote omitted).
153. *Id.*
154. *Id.* at 810–11.

Process Clause need not and does not afford the former as much protection from state-court jurisdiction as it does the latter."[155] An analysis of the Court's opinion and reasoning demonstrates that it was the different posture of the defendant and unnamed class plaintiff that was the critical and primary concern in *Shutts*, not aggregation.

Shutts may have "accommodated" the potentially "competing interests of personal jurisdiction and aggregation" as Dodson asserts,[156] but *Shutts* worked out that way because, unlike in *Bristol-Myers Squibb*, *Shutts*'s issue concerned personal jurisdiction over *plaintiffs* themselves, as opposed to personal jurisdiction over *defendants* with respect to individual plaintiffs' claims. *Bristol-Myers Squibb* put a different question before the Court: whether a California state court could exercise specific personal jurisdiction over a nonresident defendant to consider claims brought by nonresident plaintiffs when those claims did not relate to or arise out of the defendant's California contacts.[157] Had *Shutts* been about personal jurisdiction over nonresident defendants, the result could have been closer to the outcome in *Bristol-Myers Squibb*. After all, the "Constitution commands restraint before discarding liberty in the name of expediency."[158]

Professor Michael H. Hoffheimer also claims that the *Shutts* Court "apparently assumed there was valid personal jurisdiction over the defendant" in that case.[159] But the Court's silence on this issue should not be taken as an assumption that the Court had valid personal jurisdiction over the defendant. The more natural assumption is that the Court simply did not address the issue because the parties waived it. A basic tenet of civil procedure is that parties can waive objections to personal jurisdiction, and courts need not affirmatively step in and alert parties to any such issues.[160] Accordingly, the Court's decision to not limit personal jurisdiction over the defendants in that case does not suggest a tacit approval of it. Rather, it suggests that the Court did not answer that question because it was not at issue in that case.

Professor Hoffheimer supports the conclusion he draws from *Shutts* by arguing that "[m]embers of the Court have not been reluctant to raise sua sponte questions about personal jurisdiction in

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155. *Id.* at 811.

156. Dodson, *supra* note 7, at 20.

157. *See generally* Bristol-Myers Squibb Co. v. Super. Ct., 137 S. Ct. 1773 (2017).

158. J. McIntyre Mach., Ltd. v. Nicastro, 564 U.S. 873, 887 (2011) (plurality opinion).

159. Hoffheimer, *supra* note 8, at 531 (citing *Shutts*, 472 U.S. 797 (1985)).

160. Ins. Corp. of Ir. v. Compagnie Des Bauxites de Guinee, 456 U.S. 694, 704 (1982) ("[T]he requirement of personal jurisdiction may be intentionally waived").

cases where the issue has been waived."[161] For this assertion, he cites a question that Justice Ginsburg posed about personal jurisdiction over one of the parties that had not challenged personal jurisdiction in *Goodyear Dunlop Tires Operations, S.A. v. Brown*.[162] But one question in oral argument does not amount to the Court raising and considering a personal jurisdiction question where the parties have waived it, especially where the Court later ignores this issue entirely in the opinion. Justice Ginsburg's opinion for a unanimous Court in *Goodyear* only analyzed the personal jurisdiction over the parties that had contested it, and permitted personal jurisdiction over the other party that had not—in spite of, perhaps, her own misgivings about jurisdiction.[163] One might construe Justice Ginsburg's question at the *Goodyear* oral argument as caution for counsel to carefully consider waiving personal jurisdiction issues in future cases, but the lack of discussion on personal jurisdiction in the opinion indicates that the Court was not going to raise the issue sua sponte because the parties had not included that particular personal jurisdiction question as an issue needing resolution. The defendant in *Bristol-Myers Squibb* took Justice Ginsberg's hint years later by contesting California's personal jurisdiction over nonresidents' claims against it. The fact that the Court agreed with the defendant in an eight-to-one decision does not, on its own, create a new connection between specific personal jurisdiction and party joinder. Rather, it indicates that this has always been the law, and that the Court was just waiting for the right case to present this issue squarely—a case that would allow the Court to codify this baseline principle.

3. Subject-Matter & Personal Jurisdiction Equally Applicable to Joinder

One might correctly observe that the party joinder rules discussed in the previous section specifically mention only subject-matter jurisdiction.[164] Perhaps because of the direct textual link that FRCP

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161. Hoffheimer, *supra* note 8, at 531 n.184.

162. *Id.* (citing Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915 (2011)).

163. *Goodyear Dunlop Tires Operations*, 564 U.S. at 921 (2011) ("In contrast to the parent company, Goodyear USA, which does not contest the North Carolina courts' personal jurisdiction over it, petitioners are not registered to do business in North Carolina.").

164. *Supra* Section II(A)(2); *see* FED. R. CIV. P. 19(a)(1)(B). Perhaps because of this direct link between joinder and subject-matter jurisdiction, courts more commonly

19 creates between joinder and subject-matter jurisdiction, courts more commonly analyze issues of subject-matter jurisdiction rather than personal jurisdiction when considering whether parties may be joined.[165] But the direct reference to subject-matter jurisdiction in FRCP 19 does not somehow discount the need to satisfy personal jurisdiction. A party that faces a personal jurisdiction challenge when attempting to join a suit cannot prevail by asserting a valid subject-matter jurisdiction defense. Thus, valid subject-matter jurisdiction cannot cure invalid personal jurisdiction.

Both subject-matter and personal jurisdiction are equally fundamental for courts to consider a case.[166] If either one is lacking, the court must not adjudicate.[167] FRCP 19 helpfully connects personal jurisdiction and joinder by barring joinders that create jurisdictional issues.[168] FRCP 21 also echoes this concept in that it allows courts to "add or drop a party" either in response to a motion or on its own initiative.[169] Courts can (and have) used this rule to maintain jurisdiction over a case when joining a claim or a party would otherwise destroy it.[170]

In the wake of *Bristol-Myers Squibb*, Professor Hoffheimer asserted that previously only "subject-matter jurisdiction, not

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discuss issues of subject-matter jurisdiction when considering whether parties may be joined. *E.g.*, Ruhrgas AG v. Marathon Oil Co., 526 U.S. 574, 583–84 (1999) (discussing a potential subject-matter jurisdiction issue with the joinder of one of the plaintiffs); Hamer v. N.Y. Ry. Co., 244 U.S. 266, 274–75 (1917) (holding that a necessary party to be joined to the action destroyed diversity jurisdiction). But subject-matter jurisdiction issues, even those involving joinder, are outside the scope of this paper, which focuses only on the intersection between specific personal jurisdiction and the joinder of parties.

165. *E.g.*, *Ruhrgas AG*, 526 U.S. at 583–84 (discussing a potential subject-matter jurisdiction issue with the joinder of one of the plaintiffs); *Hamer*, 244 U.S. at 274–75 (holding that a necessary party to be joined to the action destroyed diversity jurisdiction). Because subject-matter jurisdiction issues, even those involving joinder, are outside the scope of this paper, I merely identify a few examples of these cases without analysis.

166. *See Ruhrgas AG*, 526 U.S. at 584 (holding that distinctions between the two types of jurisdictions "do not mean that subject-matter jurisdiction is ever and always the more 'fundamental'").

167. *Id.* To be sure, this statement applies only so long as the court is facing a personal jurisdiction objection. While federal courts must dismiss for a lack of subject-matter jurisdiction even if none of the parties object, personal jurisdiction can be waived. Ins. Corp. of Ir. v. Compagnie Des Bauxites de Guinee, 456 U.S. 694, 704 (1982).

168. FED. R. CIV. P. 19(a)(3).

169. *Id.* at 21.

170. *See* Caterpillar, Inc. v. Lewis, 519 U.S. 61, 73 (1996); Newman-Green, Inc. v. Alfonzo-Larrain, 490 U.S. 826, 837 (1989).

personal jurisdiction, restricted the joinder of claims and parties in federal court."[171] Granted, this may have been traditionally the case in practice for the most part, but it does not follow that personal jurisdiction never had the capacity to restrict joinder in a similar way. Subject-matter jurisdiction only appeared to be the exclusive jurisdictional barrier to disaggregation because prior to *Bristol-Myers Squibb*, the Court had not considered a case where a defendant was challenging the Court's exercise of specific personal jurisdiction over the *defendant himself* based on the joinder of plaintiffs.

Recall that *Shutts* presented a different question: there the defendant corporation claimed that the court lacked personal jurisdiction over all absent *nonresident class plaintiffs* who had not affirmatively consented to jurisdiction.[172] In *Bristol-Myers Squibb*, by contrast, the defendant claimed that the California state court could not exercise personal jurisdiction over the defendant for the nonresident plaintiffs' claims because those claims did not share any link to the defendant's California contacts.[173] The Court is not in the business of answering questions that are not properly before it.[174] But this does not mean that when it does answer new questions presented, it is always creating new law. Often, like in *Bristol-Myers Squibb*, the Court just applies law as it was previously understood to a situation that had not previously reached the Court.

4. Party-Joinder Issues in Courts with General Personal Jurisdiction?

Personal jurisdiction is thus "an essential element of the jurisdiction" of all courts, "without which the court is 'powerless to proceed to an adjudication.'"[175] The Court has expressly noted the possibility that personal jurisdiction may be a barrier to joinder of some parties.[176] Courts have two specific-jurisdiction-based avenues

171. Hoffheimer, *supra* note 8, at 530.

172. *See* Phillips Petrol. Co. v. Shutts, 472 U.S. 797, 806 (1985).

173. *See* Bristol-Myers Squibb v. Super. Ct., 137 S. Ct. 1773, 1785 (2017).

174. *See* Printz v. United States, 521 U.S. 898, 935 (1997) (declining to speculate on questions concerning parties not before the Court).

175. Ruhrgas AG v. Marathon Oil Co., 526 U.S. 574, 584 (1999) (quoting Emps. Reinsurance Corp. v. Bryant, 299 U.S. 374, 382 (1937) (internal quotation marks omitted)).

176. *See* Ill. Brick Co. v. Illinois, 431 U.S. 720, 739–40 (1977) ("It is unlikely, of course, that all potential plaintiffs could or would be joined. Some . . . may be beyond the personal jurisdiction of the court."); *see also* Bailey v. Wyndham Vacation Ownership, Inc., No. 19-cv-05325-VC, 2019 WL 6836772, at *2 (N.D. Cal. Dec. 16,

for rejecting the joinder of plaintiffs: (1) plaintiffs seeking to be joined could be beyond the personal jurisdiction of the court themselves,[177] or (2) the defendant could be beyond the court's specific jurisdiction as to joined plaintiffs' claims if those claims are not sufficiently related to the defendant's forum contacts.[178] The first circumstance is unusual because with plaintiffs' ability to choose the forum in which to sue, defendants are typically the ones contesting a court's jurisdiction over them. *Bristol-Myers Squibb* is an example of the second instance, and it arose because specific jurisdiction over a defendant is, and has always been, a claim-by-claim inquiry.[179] Indeed, this is what sets specific jurisdiction apart from general jurisdiction.

If a court has general personal jurisdiction over a defendant, it "may hear *any* claim against that defendant, even if all the incidents underlying the claim occurred in a different State" or country.[180] A court with only specific personal jurisdiction over a defendant, however, cannot hear all claims against that defendant. "A corporation's 'continuous activity of some sorts within a state . . . is not enough to support the demand that the corporation be amenable to suits unrelated to that activity.'"[181] With respect to joinder of plaintiffs, this means that if a court has general jurisdiction over a defendant and can "hear any and all claims against" it, the joined plaintiffs will never face a personal jurisdiction problem in bringing claims against that defendant.[182] The whole premise of general personal jurisdiction is that plaintiffs can reside anywhere from Texas to Timbuktu and their claims can be about anything from an employment discrimination case that occurred in the forum or a products liability tort case that occurred in a foreign country, and those plaintiffs can bring those claims against a defendant "at home" in the forum state.[183] The only potential roadblocks to joinder in courts exercising general personal jurisdiction are issues with subject-

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2019) ("[T]he fact that a party might be indispensable for purposes of joinder does not enlarge the court's power to adjudicate claims outside its jurisdiction.").

177. *See Ill. Brick Co.*, 431 U.S. at 739–40.

178. *E.g.*, *Bristol-Myers Squibb*, 137 S. Ct. at 1782.

179. *See* WRIGHT & MILLER, *supra* note 87, at § 1069.7 ("[A] plaintiff also must secure personal jurisdiction over a defendant with respect to each claim she asserts.").

180. *Bristol-Myers Squibb*, 137 S. Ct. at 1780 (citing Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 919 (2011)).

181. *Goodyear*, 564 U.S. at 927 (quoting Int'l Shoe Co. v. Washington, 326 U.S. 310, 318 (1945)).

182. *Id.* at 919.

183. *See id.*

matter jurisdiction or case management.[184]

That being said, it makes sense to briefly acknowledge how even a consistent application of specific jurisdiction when considered in conjunction with any changes in general jurisdiction may have an adverse impact on plaintiffs' ability to join their claims. Within the general jurisdiction context, most scholars agree that the recent cases significantly narrowed the scope of the doctrine.[185] Supreme Court practitioner Meir Feder noted that before *Goodyear* "lower courts widely embraced the notion that any corporation 'doing business' in a state was subject to general jurisdiction there."[186] This meant that "national corporations with substantial operations in all fifty states (such as McDonalds or WalMart) would likely be subject to general personal jurisdiction in all fifty states."[187] Regardless of whether this is true as a practical matter, as a doctrinal matter, "doing business" in a state never should have been enough for a court to exercise general jurisdiction.

General jurisdiction should have always been understood to require plaintiffs to show that the defendant was "at home" in the forum state.[188] Doctrinally, this standard requires more than just a showing that a defendant is "doing business" in the forum, and the weaker standard often enforced in practice prior to *Bristol-Myers Squibb* should never have been permitted. This high threshold to

184. *See* FED. R. CIV. P. 19(a)(1)(B); *e.g.*, Am. Pipe & Constr. Co. v. Utah, 414 U.S. 538, 562 (1974) (Blackmun, J., concurring) ("Permissive intervenors may be barred, however, if the district judge, in his discretion, concludes that the intervention will 'unduly delay or prejudice the adjudication of the rights of the original parties.'" (quoting FED. R. CIV. P. 24(b))).

185. *See* Carol Andrews, *Another Look at General Personal Jurisdiction*, 47 WAKE FOREST L. REV. 999, 1081 (2012); William Grayson Lambert, *The Necessary Narrowing of General Personal Jurisdiction*, 100 MARQ. L. REV. 375, 375 (2016); *e.g.*, Robertson & Rhodes, *supra* note 11, at 780–83 (summarizing the holdings and effects of these cases); Rhodes & Robertson, *supra* note 8, at 213–14; Feder, *supra* note 11, at 678. Some even applaud this more restrictive interpretation of general jurisdiction as a necessary adjustment.

186. Feder, *supra* note 11, at 675.

187. Rhodes & Robertson, *supra* note 8, at 214.

188. *See* Int'l Shoe Co. v. Washington, 326 U.S. 310, 317 (1945) (explaining that "casual presence" of a corporation is "not enough to subject it to suit on causes of action unconnected with the activities there" and that it is too great of an inconvenience and burden to require a corporation to defend itself "away from its home"); Stein, *supra* note 11, at 538; Stein, *supra* note 11, at 724–26 (citing Helicopteros Nacionales v. Hall, 466 U.S. 408 (1984) and Shaffer v. Heitner, 433 U.S. 186, 204 (1977)) (noting that *Helicopteros*'s mandate that the defendant be sufficiently present in the forum could be rooted in both of the following historical rationales: (1) a jurisdictional protection against inconvenience or (2) a jurisdictional bar based on a lack of sovereign authority).

exercise general jurisdiction is rooted in *International Shoe*.[189] Professor Allan R. Stein analyzed *International Shoe* alongside *Goodyear* and suggested that the optimal "touchstone" for exercising general jurisdiction "should be whether the defendant would consider itself at home in the forum."[190] Mandating this high threshold showing would justify the amount of sweeping authority that general jurisdiction allows over defendants because it relies on a "premise that defendants have a unique relationship with their home; the relative singularity of that relationship is at the core of its justification."[191] The very reason general jurisdiction is permissible is because "we *are* comfortable with a citizen's home state asserting extraterritorial authority."[192]

The Supreme Court has also indicated that this is the standard by which general jurisdiction should be analyzed, and it did so well before the Roberts Court era. In its 1976 decision *Shaffer v. Heitner*, the Court held that the benefits the defendant received in that case through its extensive commercial relationships with the forum state did not suffice to establish general jurisdiction over that defendant.[193] The Court reinforced this idea again in 1984 in *Helicopteros Nacionales de Colombia, S.A. v. Hall*, where it held that because a foreign corporation defendant could not be deemed "present" in the forum state simply based on regular purchases undertaken within the forum, so the court could not exercise general jurisdiction.[194] These cases support a doctrinal understanding that a defendant's "home" should be a special and unique designation to allow courts to exercise general jurisdiction over the defendant for any claim by any party. Such a status should never have been assigned lightly to any business that merely does business in a state.

In sum, the doctrine of general jurisdiction remains unchanged

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189. *Int'l Shoe*, 326 U.S. at 317 (citing Hutchinson v. Chase & Gilbert, 45 F.2d 139, 141 (2d Cir. 1930)) (noting that considering the inconveniences to the defendant corporation of suing it "away from its home or principal place of business is relevant" to asserting personal jurisdiction in situations where the lawsuit's events are unrelated to the defendant's contacts with the forum); *see* Stein, *supra* note 11, at 535–36 (connecting the "at home" requirement to language from *International Shoe* and explaining that a corporation's convenience of litigating in the state of its "corporate home strongly suggests that a distinctive feature of being at home is that it is convenient to litigate there, even when the litigation is unconnected to the forum").

190. Stein, *supra* note 11, at 538.

191. *Id.*

192. *Id.*

193. *See* Shaffer v. Heitner, 433 U.S. 186, 216–17 (1976).

194. *See* Helicopteros Nacionales de Colom., S.A. v. Hall, 466 U.S. 408, 416–17 (1984).

according to the scope and its original intent, even if it has been permitted more broadly in practice. Thus, the answer to whether recent personal and general jurisdiction cases, taken together, have diminished plaintiffs' ability to aggregate their claims, is twofold: *No*, as a doctrinal matter, because neither general nor personal jurisdiction have undergone significant changes in that respect; but *Perhaps*, as a practical matter, because enough courts were permitting a watered-down version of general jurisdiction such that a return to the correct doctrine will affect both defendants' readiness to object to personal jurisdiction and courts' scrutiny of those objections.

B. Longstanding Relatedness Link

Joinder and personal jurisdiction doctrines alike have always mandated some showing of relatedness. This ever-present connection between the two doctrines indicates that they always should have been analyzed and considered together. If a defendant is objecting to the joinder of a plaintiff based on the lack of the plaintiff's claims' relatedness to the suit, this should ring a bell that perhaps that defendant should also question whether there are any personal jurisdiction issues based on the relationship between the joined-plaintiff's claims and the defendant's minimum contacts with the forum. *Bristol-Myers Squibb* rang this dinner bell loud and clear, ensuring that defendants are unlikely to miss this moving forward. But the similar relatedness concerns always existed. The Court's bellringing did not create those connections out of thin air; it just brought people to the dinner table.

1. Joinder's Relatedness Requirement

Beginning with a holistic analysis of the FRCP joinder rules, the relatedness theme is inescapable. "The question 'how common is common enough?' has driven a good deal of the judicial and academic discourse on class actions and mass tort litigation policy."[195] Each rule uses different linguistic variations to describe what degree of relatedness is required in each scenario, but the fact remains that for any party joinder to occur, the parties must meet some relatedness threshold, whether that be the same "transaction or occurrence,"[196] a "common question of law or fact,"[197] or "an interest relating to the

195. Effron, *supra* note 20, at 763 n.9.

196. FED. R. CIV. P. 20(a)(1)(A).

197. *Id.* at 24(b)(1)(B); *see id.* at 20(a)(2)(B), 23(a)(2) (to qualify as a class, "questions of law or fact common to the class" must exist).

property or transaction."[198] The decision to include this "requisite commonality" consistent throughout the party-joinder rules "hardly seems accidental."[199]

For example, FRCP 19(a)(1)(B) sets the standard for mandatory party joinder where parties to be joined are subject to service of process, would not destroy subject-matter jurisdiction, and where that party "claims an interest relating to the subject of the action."[200] This rule thus requires parties to show that they have "an interest relating" to the suit to qualify for mandatory joinder.[201] FRCP 14(a)(1) mandates an even stricter relatedness requirement for defending parties seeking to join a nonparty, in that these defendants must show that the nonparty "is or may be liable to it for all or part of the claim against it."[202] Demonstrating that the nonparty is liable for the very claim under which the defendant is being sued requires an extremely high relatedness showing.

FRCP 20(a)(1)(A) on permissive joinder allows parties to join as plaintiffs if their right to relief is joint or several and "aris[es] out of the same transaction, occurrence, or series of transactions or occurrences."[203] And FRCP 20(a)(1)(B) adds the requirement for the party-to-be-joined to demonstrate that "any question of law or fact common to all plaintiffs will arise in the action."[204] Accordingly, for a plaintiff to join permissively under FRCP 20, he must show that his right arises out of the same transaction or occurrence and that a common question unites his claim with the other plaintiffs' claims.[205] This exhibits a clear relatedness requirement between the plaintiffs' claims and the underlying suit to qualify for permissive party joinder.

The rules governing class actions are similar, allowing named class members to represent all other unnamed class members in the lawsuit if *and only if* they meet a series of requirements, including the existence of "questions of law or fact common to the class."[206] Without a showing of commonality, a plaintiff class cannot be certified and will

198. *Id.* 24(a)(2); *see id.* 19(a)(1)(B).

199. Effron, *supra* note 20, at 771.

200. FED. R. CIV. P. 19(a)(1)(B). The potential party's interest relating to the overall action is just one piece to mandating a joinder. The party-to-be must also demonstrate how his interest would be impaired or impeded or would be at a substantial risk of incurring inconsistent obligations in light of that interest.

201. *See id.*

202. *Id.* at 14(a)(1).

203. *Id.* at 20(a)(1)(A).

204. *Id.* at 20(a)(1)(B).

205. *Id.*

206. FED. R. CIV. P. 23(a)(2).

thus not be allowed to join.[207] This common question requirement, therefore, shows a clear dependency on a relatedness showing in the class context, and it is where the relatedness threshold seems to have had the greatest impact on joinder.

For instance, the Supreme Court examined the critical nature of commonality for party joinder in *Wal-Mart Stores, Inc. v. Dukes*.[208] While any carefully crafted complaint can raise a number of common questions, what matters is the capacity of a class action "to generate common *answers* apt to drive the resolution of the litigation."[209] In other words, a mere claim by employees of the same global company that they have suffered a generic Title VII injury "gives no cause to believe that all their claims can productively be litigated at once" and cannot qualify as a "common contention" sufficient to permit class certification.[210] *Dukes*, though a class-action case, exemplifies the importance of establishing sufficient relatedness to whatever degree required by the relevant party-joinder rule.

One example of a court barring the joinder of plaintiffs in a permissive-joinder case is *Walsh v. Ford Motor Co.*[211] There, the D.C. federal district court found that a "common question of law or fact" existed, but still barred joinder because "plaintiffs' respective claims [did] not all arise from the same transaction or occurrence, or series of transactions or occurrences."[212] This case involved a group of Ford-owning plaintiffs who sued the automaker in a collective action because they all "experienced the common problem of park-to-reverse phenomena."[213] The court relied on a Fourth Circuit decision in requiring the plaintiffs to show not merely similar problems, but also that those problems "resulted from a common defect."[214] This again highlights a longstanding requirement to prove a sufficient relatedness to the original suit before joining plaintiffs.

2. Personal Jurisdiction's Relatedness Requirement

Melding joinder with personal jurisdiction, the FRCP rule for

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207. *See id.*

208. *See* Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 349 (2011) (identifying "commonality" as the "crux" of the case).

209. *Id.* at 350 (quoting Richard A. Nagareda, *Class Certification in the Age of Aggregate Proof*, 84 N.Y.U. L. REV. 97, 132 (2009)).

210. *Id.*

211. *See* Walsh v. Ford Motor Co., 130 F.R.D. 514, 514 (D.D.C. 1990).

212. *Id.* at 515.

213. *Id.*

214. *See id.* (quoting *Saval v. BL Ltd.*, 710 F.2d 1027, 1031 (4th Cir. 1983)).

personal jurisdiction, Rule 4(k), specifically references joinder rules, underscoring a foundational connection between the two doctrines.[215] The FRCP expressly permit federal courts to exercise personal jurisdiction over third parties[216] and over any parties that were required to be joined,[217] so long as service requirements are met. A designated grant of personal jurisdiction in some joinder cases indicates by omission that joinders of parties under other circumstances may not satisfy the demands of specific personal jurisdiction.

Acknowledging this connection between the relatedness requirements in both party-joinder and specific personal jurisdiction does not mean that proving relatedness answers the same question in both contexts. On the contrary, parties must prove sufficient relatedness for different reasons for party joinder than for specific personal jurisdiction. Where relatedness in the joinder context seeks to ensure efficient, non-piecemeal resolution of claims and defenses, relatedness in the specific-jurisdiction context both protects individual rights of the defendant and limits state sovereign authority with respect to its sister sovereign states. But while the reasons for ascertaining relatedness may differ in the two areas, the overall relatedness requirement linking the two remains intact. Whether courts are considering a party-joinder request or an objection to personal jurisdiction, they must consider whether each joining plaintiff shares a sufficient connection with the original suit and, relatedly, with the defendant's forum contacts. The questions may be different, but the answers, if not the same, are undoubtedly related. In sum, while the relatedness considerations in these two contexts may not look like identical twins, or even like brothers, they are still close cousins sharing a discernable family resemblance.

Just as the joinder rules' overall focus on this relatedness requirement unites them, the personal jurisdiction doctrine maintains a clear focus on relatedness issues. The relatedness consideration in specific personal jurisdiction can be conceived as two dimensions, which includes "the relationship between the *defendant* and the forum state" and "the relationship between the *lawsuit* and the forum state."[218] But the relatedness connection between personal jurisdiction and joinder looks to a hybrid relationship: the relationship shared between each plaintiff's lawsuit and the defendant's forum contacts.

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215. FED. R. CIV. P. 4(k).
216. *See id.* at 14.
217. *See id.* at 19.
218. Effron, *supra* note 67, at 872.

The Court has focused on this connection between the plaintiff's suit and the defendant's forum contacts in specific personal jurisdiction cases since the dawn of *International Shoe*'s "minimum contacts" test. For example, in *International Shoe* itself, the Court considered whether the defendant's forum contacts "give rise to the liabilities sued on," finding the demands of personal jurisdiction were satisfied where the plaintiffs' claims "arose out of those very activities" and contacts with the forum.[219] Again, in *Burger King Corp. v. Rudzewicz*, the Court reiterated its focus on this critical relationship.[220] There the plaintiff, Burger King—a Florida restaurant conducting franchise operations out of its principal Miami office—sued a Michigan resident franchisee for breach of contract in diversity in federal district court in Florida.[221] The defendant franchisee claimed that he had no contacts with Florida and had never even visited, and thus that the court lacked personal jurisdiction because the suit could not have arisen out of his contacts with the forum.[222] The Supreme Court held that specific personal jurisdiction existed, despite the lack of the defendant franchisee's physical presence in Florida.[223] The Court found it particularly relevant that "the Miami headquarters and the Michigan franchisees carried on a continuous course of direct communications by mail and by telephone," and that Miami headquarters was clearly leading key negotiating decisions.[224] The primary consideration was whether the suit "results from alleged injuries that arise out of or relate to" the defendant franchisee's purposefully directed activities within the forum state.[225]

The Roberts Court merely reaffirmed the importance of this link between defendant's forum contacts and the plaintiffs' suit in *Bristol-Myers Squibb*.[226] But the connection itself has always existed. Indeed,

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219. Int'l Shoe Co. v. Washington, 326 U.S. 310, 317, 320 (1945).

220. *See* Burger King Corp. v. Rudzewicz, 471 U.S. 462, 462 (1985); *see also* Helicopteros Nacionales de Colom., S.A. v. Hall, 466 U.S. 408, 427 (1984) (Brennan, J., dissenting) ("[A] court's specific jurisdiction should be applicable whenever the cause of action arises out of *or* relates to the contacts between the defendant and the forum.").

221. *See Burger King*, 471 U.S. at 467–68.

222. *See id.* at 479.

223. *Id.* at 481.

224. *Id.*

225. *Id.* at 472 (quoting *Helicopteros*, 466 U.S. at 414).

226. Bristol-Myers Squibb v. Super. Ct., 137 S. Ct. 1773, 1781 (2017) ("What is needed—and what is missing here—is a connection between the forum and the specific claims at issue."); *see also* Walden v. Fiore, 571 U.S. 277, 291 (2014) (holding that

a specific personal jurisdiction analysis under the standard set in the Court's seminal decision in *International Shoe* would arrive at the same result as the Court did in *Bristol-Myers Squibb*. A side-by-side case comparison of the legal standard and facts at play in each helps to illustrate this consistency.

According to *International Shoe*, "in order to subject . . . . [Bristol-Myers Squibb] to a judgment *in personam*, if he be not present within the territory of the forum, he [must] have certain minimum contacts with it such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice."[227] Put differently, if a defendant lacks presence in the forum state—meaning he is not "at home" in the state—he cannot be subject to the state's general jurisdiction and can only be haled into court if he exhibits sufficient "minimum contacts."[228] To determine whether Bristol-Myers Squibb possessed sufficient minimum contacts with California to satisfy the due process demands of specific jurisdiction, *International Shoe* instructs that courts consider both the nature of Bristol-Myers Squibb's contacts in California *and* whether those contacts "also give rise to the liabilities sued on."[229] Bristol-Myers Squibb's $900 million in California Plavix sales may establish "extensive" overall contacts,[230] but those contacts did not "give rise to" the nonresident plaintiffs' claims because those claims were based entirely on Bristol-Myers Squibb's out-of-state activity.[231]

Therein lies the difference between *International Shoe* and

Nevada courts lacked specific jurisdiction over nonresident defendant even though the Nevada-resident plaintiffs suffered foreseeable harm there because the "relevant conduct occurred entirely in Georgia," and "the mere fact that [this] conduct affected plaintiffs with connections to the forum State d[id] not suffice to authorize jurisdiction").

227. Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) (citations and internal quotation marks omitted).

228. *Id.* While *International Shoe* did not use the terms "general" and "specific" to describe the types of personal jurisdiction, it set the foundation for the later adoption of those terms later. I apply the terms to the hypothetical for added clarity.

229. *Int'l Shoe*, 326 U.S. at 317. True, *International Shoe* left open the possibility that personal jurisdiction could exist in "instances in which the continuous corporate operations within a state were thought so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities." *Id.* at 318. But it also acknowledged prior cases holding that "continuous activity of some sorts within a state is not enough to support the demand that the corporation be amenable to suits unrelated to that activity." *Id.* The Court did not have to make the call in that case because the suit arose out of defendant's contacts with the forum.

230. *See Bristol-Myers Squibb*, 137 S. Ct. at 1781.

231. *See Int'l Shoe*, 326 U.S. at 319.

Bristol-Myers Squibb. In *International Shoe*, "[t]he obligation which is here sued upon arose out of those very activities" that the defendant carried out in the forum state.[232] Not so in *Bristol-Myers Squibb*, where the nonresident plaintiffs had purchased and ingested Plavix outside the forum state.[233] This analogy reveals that *Bristol-Myers Squibb* did in fact represent an application of "settled principles regarding specific jurisdiction."[234] The following chart provides a visual case comparison to help show the consistency.

Bristol-Myers Squibb	*International Shoe*
Plaintiffs' chosen forum state: California	Plaintiffs' chosen forum state: Washington
Defendant Bristol-Myers Squibb was incorporated in Delaware and headquartered in New York, and thus not "at home" in California.[235]	Defendant International Shoe Co. was incorporated in Delaware and maintaining a principal place of business in Missouri, and thus not "at home" in Washington.[236]
The eighty-six California resident plaintiffs indicated that they bought or ingested Bristol-Myers Squibb's Plavix within California, but the other 592 nonresident plaintiffs did not allege that they had either bought or ingested Plavix in California.[237]	Washington State issued a Notice of Assessment to hold International Shoe liable for contributions to the State's unemployment compensation fund based on International Shoe's eleven to thirteen in-state salesmen.[238]
As a general matter, Bristol-Myers Squibb exhibited extensive contacts with California, selling "almost 187 million Plavix pills in the State and [taking] in more than $900 million from those sales."[239]	As a general matter, International Shoe exhibited extensive contacts with Washington, with activities encompassing "a large volume of interstate business."[240]

232. *Id.*
233. *Bristol-Myers Squibb*, 137 S. Ct. at 1781.
234. *Id.*
235. *Id.* at 1777.
236. *Int'l Shoe*, 326 U.S. at 317.
237. *Bristol-Myers Squibb*, 137 S. Ct. at 1778.
238. *Int'l Shoe*, 326 U.S. at 312.
239. *Bristol-Myers Squibb*, 137 S. Ct. at 1778.
240. *Int'l Shoe*, 326 U.S. at 320.

Bristol-Myers Squibb developed Plavix and worked on its regulatory approval process in either New York or New Jersey, not in California.[241]	International Shoe maintained offices and manufacturing facilities "in several states, other than Washington."[242]
California courts did not have general jurisdiction because Bristol-Myers Squibb was not "at home" in California.[243]	The Court did not rely on a "general jurisdiction" theory because it found a sufficient connection between the claims and the Defendant's forum contacts.[244]
Supreme Court held that California courts could not exercise specific personal jurisdiction over the nonresident plaintiffs' claims because they were not related to Bristol-Myers Squibb's California contacts, given that those plaintiffs had purchased and taken Plavix out-of-state.[245]	Supreme Court held that Washington courts *could* exercise personal jurisdiction over the nonresident plaintiffs' claims because the lawsuit "arose out of [the] very activities" that International Shoe was conducting in Washington.[246]

Just as Bristol-Myers Squibb did not deviate from the traditional specific personal jurisdiction doctrine, it also did not alter the doctrine or terms for joining plaintiffs to a suit. In fact, no joinder rules were even mentioned, let alone analyzed or definitively decided. The only time the majority alludes to the prospect of parties "joining together in a consolidated action" is to reassure parties that they certainly may do that "in the States that have general jurisdiction over" the

241. *Bristol-Myers Squibb*, 137 S. Ct. at 1778.

242. *Int'l Shoe*, 326 U.S. at 313.

243. *Bristol-Myers Squibb*, 137 S. Ct. at 1781, 1783.

244. *Int'l Shoe*, 326 U.S. at 316, 320. Indeed, the "general" and "specific" jurisdictional terms were not ironed out until much later. Helicopteros Nacionales de Colom., S.A. v. Hall, 466 U.S. 408, 414 n.8–9 (1984) (officially adopting the "general" and "specific" personal jurisdiction categories (quoting Mehren & Trautman, *supra* note 66, at 1136–37)).

245. *Bristol-Myers Squibb*, 137 S. Ct. at 1781.

246. *Int'l Shoe*, 326 U.S. at 320. "Appellant having rendered itself amenable to suit upon obligations arising out of the activities of its salesmen in Washington, the state may maintain the present suit *in personam* to collect the tax laid upon the exercise of the privilege of employing appellant's salesmen within the state." *Id.* at 321.

defendant.[247] It may have drawn these two doctrines together in a new way. But contrary to Justice Sotomayor's claim that Bristol-Myers Squibb set a new standard that "the Constitution has [never] required before," the Court's reasoning in that opinion did not deviate from traditional personal jurisdiction concepts outlined in International Shoe and expanded upon in later cases.[248] If anything, Bristol-Myers Squibb represents an instance common to many cases that reach the Supreme Court: it presented a different question from what the Court had considered in prior cases, but that question came wrapped in a factual situation that was entirely predictable and from the precedent. Cases that are on all fours with prior Supreme Court cases are unlikely to be reviewed or reconsidered because the Court has already spoken. The fact that Bristol-Myers Squibb considered a new question about the interaction between plaintiff joinder and specific jurisdiction, however, does not mean that its holding represents a new rule. Instead, the Court was applying "settled principles of personal jurisdiction" to the case at hand.[249]

III. *BRISTOL-MYERS SQUIBB*'S PERCEIVED AND ACTUAL EFFECT ON PLAINTIFF JOINDER

Most scholars predicted that *Bristol-Myers Squibb*, together with other recent personal jurisdiction cases, would limit aggregation significantly.[250] This Section analyzes all party joinder cases discussing *Bristol-Myers Squibb* to see whether those predictions materialized. It then uses the same search terms to conduct a normative analysis of cases discussing these issues before and after *Bristol-Myers Squibb*. Finally, this Section concludes by hypothesizing the reason behind any discernable increase in plaintiff disaggregation resulting from specific personal jurisdiction issues.

A. Perceived Effect of Bristol-Myers Squibb *on Party Joinder*

Scholars were quick to label *Bristol-Myers Squibb* the next big step in the Roberts Court's revolution of personal jurisdiction starting

247. *Bristol-Myers Squibb*, 137 S. Ct. at 1783.

248. *Id.* at 1789 (Sotomayor, J., dissenting).

249. *Id.* at 1783 (majority opinion); *see id.* at 1781 (repeating the sentiment that the majority's decision was governed by "settled principles regarding specific jurisdiction").

250. *See supra* note 7 and accompanying text.

in 2011.[251] Several focused on the drastic effects the case had on aggregation rules and norms,[252] particularly in the class action context.[253] They argue "personal jurisdiction has changed from being relatively expansive and solicitous of aggregation to being more constrictive and indirectly hostile to aggregation."[254] They point out that plaintiffs "who have similar claims stemming from a defendant's nationwide course of conduct (like a nationally marketed defective product) and wish to sue together will now face a more limited set of options."[255] While I agree that plaintiffs attempting to join their cases in this way will have limited options, I disagree with the notion that *Bristol-Myers Squibb* made it so. As explained above, the doctrine underlying personal jurisdiction has remained consistent, and *Bristol-Myers Squibb* merely highlighted a preexisting relationship that specific jurisdiction shared with plaintiff joinder.

To the extent that *Bristol-Myers Squibb* has already and will continue to affect aggregation at large, these changes are not attributable to any doctrinal change in recent years because this has not occurred for either specific personal jurisdiction or plaintiff joinder. These doctrines, as promised in the *Bristol-Myers Squibb*

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251. Patrick J. Borchers, *Extending Federal Rule of Civil Procedure 4(k)(2): A Way to (Partially) Clean Up The Personal Jurisdiction Mess*, 67 AM. U.L. REV. 413, 415–16 (2018) (proposing an amendment to Rule 4(k) as a solution to the current personal jurisdiction "mess" that the Court has created with *Bristol-Myers Squibb* and other recent personal jurisdiction cases); A. Benjamin Spencer, *The Territorial Reach of Federal Courts*, 71 FLA. L. REV. 979, 991–92 (2019) (also proposing revisions to Rule 4(k) that would "take it out of the business of delimiting the jurisdictional reach of federal district courts, which would have the effect of leaving only the constitutional limits on personal jurisdiction") (emphasis omitted); Hoffheimer, *supra* note 8, at 548, 552 (labeling the Roberts Court's personal jurisdiction jurisprudence as a "stealth revolution" that is changing the status quo without acknowledging any departure from settled law).

252. Bradt, *supra* note 112, at 1220–21 (analyzing the effect of *Bristol-Myers Squibb* and other recent jurisdiction cases on Multi-District Litigation); Bradt & Rave, *supra* note 7, at 1256 (noting that *Bristol-Myers Squibb*'s "effects on complex cases will be substantial"); Capozzi, *supra* note 9, at 219–20 (analyzing the effect of *Bristol-Myers Squibb* on pendent personal jurisdiction); Dodson, *supra* note 7, at 4–5 ("[R]ecent decisions from the Supreme Court cabining the reach of courts' personal jurisdiction over defendants—including October Term 2016's bombshell *Bristol-Myers Squibb Co. v. Superior Court*—have imbued the doctrine with a powerful disaggregation effect by requiring a close connection between the forum state, each defendant, and each claim.").

253. *E.g.*, Spencer, *supra* note 10, at 32–34; Wilf-Townsend, *supra* note 10, at 212–25.

254. Dodson, *supra* note 7, at 15.

255. Bradt & Rave, *supra* note 7, at 1256.

opinion itself, have remained true to their core foundations.[256] Instead, any change that has occurred or will occur is driven by a change in practitioners' litigation strategy and, perhaps, by the courts' improved understanding of these doctrines.

There is an important difference between the Court changing longstanding rules and changing *norms*. To use an example, the difference is akin to a company changing its bylaws versus changing its workplace culture. The first is far more drastic in that it must go through several levels of review and approval (perhaps even a company-wide vote) before any changes are implemented. This is because these changes have a real effect on the employees' work lives, salaries, potential for advancement, etc.—things that people care about deeply. The second is far more fluid and can be done by adding a ping-pong table or implementing monthly happy hours. These more minor changes can have a big effect on people's workplace and overall satisfaction, but they do not need the intense scrutiny that a change in bylaws requires because they are more surface-level changes that do not have the same capacity to create life-altering effects.

This example illustrates why the difference between changing rules versus norms matters. While it matters at a company level, it matters even more in law. The Supreme Court is extra cautious when considering a change in doctrine. The doctrine of *stare decisis*, if taken lightly, "would seriously weaken the Court's capacity to exercise the judicial power and to function as the Supreme Court of a Nation dedicated to the rule of law."[257] The "Court's legitimacy depends on making legally principled decisions."[258] It is thus vital to correctly identify when the Court is making doctrinal changes as opposed to when it is applying settled doctrine.

Bristol-Myers Squibb did the latter. The case may have impacted party joinder by highlighting a way to dismiss some parties based on personal jurisdiction objections, but this impact is not the result of a change in the doctrines of either party-joinder or specific personal jurisdiction. Instead, this Article suggests that any practical change was brought about by a heightened awareness among courts and practitioners of potential personal jurisdiction objections that were always present. The key difference now is that defendants are much less likely to waive a personal jurisdiction challenge after *Bristol-Myers Squibb*.

256. *See Bristol-Myers Squibb*, 137 S. Ct. at 1781.
257. Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 865 (1992).
258. *Id.* at 866.

B. Actual Effect of Bristol-Myers Squibb *on Plaintiff Joinder*

To discern *Bristol-Myers Squibb*'s actual effect on cases involving the joinder of plaintiffs, I looked at two sets of cases. First, I surveyed all federal cases where courts analyzed whether *Bristol-Myers Squibb* could be used to disallow the joinder of plaintiffs.[259] Specifically, I looked for two outcomes: (1) courts barred joinder of some plaintiffs based on *Bristol-Myers Squibb*'s reasoning that each plaintiff's claims must relate to the defendant's forum contacts; and (2) courts applied *Bristol-Myers Squibb* and permitted joinder of all plaintiffs, finding that all established specific personal jurisdiction based on their claims' relatedness to the defendant's forum contacts. Second, I applied the same search to compare the number of cases discussing these doctrines in the same context prior to *Bristol-Myers Squibb* and made inferences based on those case numbers.

Before discussing results, some exclusions to the search must be acknowledged and explained. I included neither cases where courts cited *Bristol-Myers Squibb* to dismiss the entire suit for a lack of personal jurisdiction, nor cases involving only one plaintiff. Those cases merely apply the test for specific personal jurisdiction without any overlapping discussion of plaintiff-joinder issues, and this lack of any party-joinder analysis made such cases irrelevant for the purposes of this Article.

The search also excluded all class action cases. Other scholars have collected comprehensive surveys of class action cases in the wake of *Bristol-Myers Squibb*, and the federal courts of appeals have already begun weighing in on this question.[260] The class action joinder mechanism presents considerations that are distinct from regular party-joinder cases,[261] and for reasons discussed previously, projections of whether and how *Bristol-Myers Squibb* applies to class

259. "[T]he vast majority of district courts to have addressed the question have concluded that *Bristol-Myers* does govern actions in federal courts." Napoli-Bosse v. Gen. Motors LLC, 453 F. Supp. 3d 536, 541 (D. Conn. 2020). This Article focus on federal courts to allow for an analysis based on the unified body of party-joinder rules that FRCP provides.

260. *See* Mussat v. IQVIA, Inc., 953 F.3d 441, 445–46 (7th Cir. 2020) (concluding that as long as a court has specific jurisdiction over named plaintiffs in class actions, the court can exercise specific jurisdiction over the defendant as to nonresident, unnamed class members' claims—assuming other class action requirements are met); *see also* Molock v. Whole Foods Mkt. Grp., Inc., 952 F.3d 293, 297 (D.C. Cir. 2020).

261. *See* Dodson, *supra* note 7, at 19.

cases are thus outside the scope of this Article.[262]

Without further ado, onto the survey results. Of the 2,287[263] cases that have cited *Bristol-Myers Squibb*, I found 255 federal court cases that discuss personal jurisdiction in the context of "out of state" or "nonresident" plaintiffs. Of those, only fifty-two fit into one of the two plaintiff-joinder categories articulated above.[264] Roughly two-thirds of those cases (thirty-four total) represented cases in the first category: where courts applying *Bristol-Myers Squibb* found that they lacked personal jurisdiction over some plaintiffs based on the lack of a connection between their claims and the defendant's forum contacts, but they maintained personal jurisdiction over the remaining plaintiffs whose claims were connected to the defendant's contacts. The plaintiff-by-plaintiff analysis is hardly surprising given *Bristol-Myers Squibb*'s express holding on this issue. The eighteen remaining cases fit within the second category: where joinder of all plaintiffs was permitted because all of the joined-plaintiffs' claims were sufficiently connected to the defendant's forum contacts.

Only one commonality existed in all fifty-two cases: every case discussing whether plaintiff-joinder was barred in light of *Bristol-Myers Squibb* resulted from a defendant's objection to personal jurisdiction, usually in a FRCP 12(b)(6) motion to dismiss. The well-established concept that challenges to personal jurisdiction can be waived means that without an objection, this issue never sees the light of day.[265] To the extent that this case survey demonstrates an uptick in courts' rejections of plaintiff joinder based on personal jurisdiction issues, this conclusion relies entirely upon the fact that in every case where plaintiff joinder was under fire with regards to a

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262. For similar reasons, I excluded all statutory collective action cases, such as those brought under Fair Labor Standards Act (FLSA). *See, e.g.*, Camp v. Bimbo Bakeries USA, Inc., No. 18-cv-378-SM, 2020 U.S. Dist. LEXIS 60997, at *14, *19 (D.N.H. Apr. 7, 2020) (applying *Bristol-Myers Squibb* in an FLSA collective action but acknowledging that no circuit court of appeals has addressed the issue and citing cases to indicate the split in the district courts). *See generally* Daniel C. Lopez, Note, *Collective Confusion: FLSA Collective Actions, Rule 23 Class Actions, and the Rules Enabling Act*, 61 HASTINGS L.J. 275 (2009) (exploring the application of Rule 23 principles to collective actions). I also excluded all cases brought under federal statutes providing for nationwide personal jurisdiction in federal court, like the Racketeer Influenced and Corrupt Organizations Act. *See* Dodson, *supra* note 7, at 41 n.237 (compiling statutes where Congress has provided for nationwide personal jurisdiction).

263. This is the number of decisions citing *Bristol-Myers Squibb* as of March 17, 2022, the date this article was finalized for publication.

264. *See infra* Table 1.

265. *See* Ins. Corp. of Ir. v. Compagnie Des Bauxites de Guinee, 456 U.S. 694, 704 (1982).

potential personal jurisdiction issue, a defendant's objection lit the match.

Admittedly, there are a few possibilities for which this survey of post-*Bristol-Myers Squibb* cases could not account. Perhaps, for instance, after *Bristol-Myers Squibb* plaintiffs are using different strategies to aggregate to avoid its direct application.[266] Many of the cases analyzing whether *Bristol-Myers Squibb* applied to dismiss nonresident plaintiffs were filed before the Court decided that case.[267] One other occurrence that would not appear in this case survey but that might be at play in practice, is that defendants might not be raising personal jurisdiction objections on purpose. Perhaps they want to handle all adverse claims in one judgment, or maybe plaintiffs filed in a convenient forum for defendants. Whatever the reason, defendants may be choosing to waive personal jurisdiction challenges for unidentified practical concerns.

But even more interesting than the results from the survey of post-*Bristol-Myers Squibb* cases, is the number comparisons that the same search term revealed when applied to cases before and after *Bristol-Myers Squibb*. Applying the same search term that I used to survey post- *Bristol-Myers Squibb* cases,[268] I came up with a rudimentary estimate of how frequently federal courts discussed personal jurisdiction in the same context as "out-of-state" or "nonresident" plaintiffs to assess all potential combination analyses

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266. Bradt, *supra* note 112, at 1165, 1191.

267. Indeed, many of these were cases where defendants filed motions for reconsideration of prior motions to dismiss or sought subsequent removals based on *Bristol-Myers Squibb*'s "intervening change in law," but many courts rejected these arguments based on the Supreme Court's own observation in *Bristol-Myers Squibb* that it applied a "straightforward application . . . of settled principles." Bristol-Myers Squibb v. Super. Ct., 137 S. Ct. 1773, 1783 (2017). *E.g.*, Atlantica Holdings, Inc. v. Sovereign Wealth Fund Samruk-Kazyna JSC, 12-CV-8852 (JMF) 2018 U.S. Dist. LEXIS 25217, at *10 (S.D.N.Y. Feb 15, 2018) (quoting *Bristol-Myers Squibb*, 137 S. Ct. at 1783) (internal quotation marks omitted); *see* Doe v. Exxon Mobil Corp., Civil No. 01-cv-1357-RCL, 2019 U.S. Dist. LEXIS 92715, at *14 (D.C. Cir. June 3, 2019) ("[T]he Court will not reconsider its prior personal jurisdiction ruling as to EMOI, as *Bristol-Myers Squibb* was not an intervening change in controlling law."); Forrest v. Johnson & Johnson, No. 4:17-CV-01855-JAR, 2017 U.S. Dist. LEXIS 113023, at *8, 2017 (E.D. Mo. July 20, 2017). *But see* Douthit v. Janssen Research & Dev., LLC, No. 3:17-cv-00752-DRH, 2017 U.S. Dist. LEXIS 155353, at *15 (S.D. Ill. Sept. 22, 2017) ("When a 'different case resolve[s] a legal uncertainty concerning the existence of original federal jurisdiction.'" (quoting Wisconsin v. Amgen, Inc., 516 F.3d 530, 534 (7th Cir. 2008))).

268. *See infra* Table 1 for my Lexis+ Search Term. Absent one modification: I deleted "and '137 S. Ct. 1773'" from this second search because, obviously, having the *Bristol-Myers Squibb* citation included in the search would only show the post-*Bristol-Myers Squibb* results.

that could have occurred before and after *Bristol-Myers Squibb*.

This search yielded a result of 4,187federal court cases. Recall that there were only 255 federal court results for the survey of cases post-*Bristol-Myers Squibb* from the search that included the *Bristol-Myers Squibb* citation. Without the case citation as part of the search, 1,072 of the 4,187 total cases were decided between June 19, 2017—the day that *Bristol-Myers Squibb* was decided—and March 17, 2022—the date that the content of this article was finalized for publication. The other 3,115 results were decided before *Bristol-Myers Squibb*, sometime between January 1, 1885 (as far back as Lexis+ dates) and June 19, 2017. This means that the discussions of this nature that occurred before *Bristol-Myers Squibb* nearly tripled the discussions with the same search terms that occurred after *Bristol-Myers Squibb*.

Of course, the pre-*Bristol-Myers Squibb* period at 132 years is much longer than the four and a half years that have elapsed since *Bristol-Myers Squibb* was decided. To control for this, I ran another search to see how many cases turned up with these search terms that were decided between September 19, 2012 (four years and nine months before *Bristol-Myers Squibb*), and June 19, 2017. This search generated 893 results. This demonstrates only a slight increase in the number of federal cases in which courts have discussed personal jurisdiction in the same context as "out-of-state" or "nonresident" plaintiffs post-*Bristol-Myers Squibb*: with 893 results in the period before *Bristol-Myers Squibb* and 1,032 results in the period after it. Apparently, Justice Sotomayor's predictions regarding *Bristol-Myers Squibb*'s potential watershed effect or "parade of horribles" have not materialized.[269]

Granted, this search is far from perfect. Recall that in the post-*Bristol-Myers Squibb* case survey, only fifty-two of the total 255 cases from that search fit into the two categories outlined above and qualified as cases that actually used personal jurisdiction to determine whether to allow the joinder of nonresident plaintiffs. Also, there is a good chance that the terms I used that were so meaningful in *Bristol-Myers Squibb* did not carry the same meaning before.[270] At the very least, this case study indicates that courts nationwide have been discussing personal jurisdiction in the same context as "out-of-state" or "nonresident" plaintiffs—the key language that the Court used to disaggregate the plaintiffs in *Bristol-Myers Squibb*—long

269. *Bristol-Myers Squibb*, 137 S. Ct. at 1789 (Sotomayor, J., dissenting).

270. Although this might weigh in favor of showing that *Bristol-Myers Squibb* has not had a big impact on plaintiff aggregation; now courts are armed to use these jurisdictional terms to bar joinder, yet they are not using the terms any more frequently than before.

before this case existed. But somehow, these discussions slipped under the radar and went largely unnoticed until *Bristol-Myers Squibb* brought this issue to the forefront.

C. To the Extent Joinder Was Impacted, Why?

The survey of post-*Bristol-Myers Squibb* plaintiff-joinder cases revealed plenty of examples where plaintiffs who have joined their claims into one suit face personal jurisdiction challenges. Make no mistake, *Bristol-Myers Squibb* certainly has given district courts the rhetorical ammunition to scrutinize each plaintiff's claims and dismiss any that lack a sufficient connection to the defendant's forum contacts. But as explained in Section III.B, there does not seem to have been much effect on plaintiff-aggregation at all, at least in traditional, non-class cases. To the extent courts have displayed an uptick in the disjoinder of plaintiff aggregation based on personal jurisdiction issues, this change did not result from any doctrinal changes to either specific personal jurisdiction or joinder. Indeed, the change is not even primarily based on the overall general and specific jurisdictional landscape shaped by the Roberts Court's decisions in the area since 2011, though that may have played a part.[271]

Instead, I assert that the main cause underlying any decrease in plaintiff joinder was caused by practitioners and the overarching adjustment made to defend against lawsuits brought by multiple joined plaintiffs: defendants are no longer waiving personal jurisdiction challenges, especially in cases involving plaintiff joinder. In the years before *Bristol-Myers Squibb*, defendants, especially large corporate defendants, often assumed without contesting personal jurisdiction, even though in some instances they may have succeeded in disbanding joinder with a personal jurisdiction objection.[272] If these challenges to personal jurisdiction had happened with more regularity, perhaps the Court would have clarified the link between the two doctrines much earlier than 2017. But prior waiver of personal jurisdiction challenges likely contributed to the delay in the Court's review of this issue. Further, courts never would have addressed these challenges on their own initiative because personal jurisdiction, unlike subject-matter, is waivable.[273]

Bristol-Myers Squibb essentially ignited the fireworks that lit up

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271. *See supra* notes 8, 11, and accompanying text.

272. *See e.g.*, Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 921 (2011); Phillips Petrol. Co. v. Shutts, 472 U.S. 797, 813–14 (1985).

273. Ins. Corp. of Ir. v. Compagnie Des Bauxites de Guinee, 456 U.S. 694, 704 (1982).

a preexisting connection between specific personal jurisdiction and plaintiff joinder, and there is no going back to the cave now for defense lawyers. But the fact that *Bristol-Myers Squibb* alerted defendants not to waive a personal jurisdiction challenge in joinder cases does not mean that it created a new link between the two doctrines. As established above, this link connecting the two doctrines has always existed based on the shared relatedness requirement, which mandates that each plaintiff's lawsuit share a connection with the defendant's forum contacts.

CONCLUSION

Specific personal jurisdiction and party joinder shared a connection long before the Court's 2017 decision in *Bristol-Myers Squibb*. Plaintiffs cannot use joinder to circumvent personal jurisdictional requirements, and both party joinder and specific personal jurisdiction share a similar requirement to establish sufficient relatedness with components of the underlying suit, in order to be exercised successfully. The reasoning in *Bristol-Myers Squibb* was thus an embodiment of the preexisting concept that each plaintiff's suit must be related to the defendant's forum contacts. Perhaps *Bristol-Myers Squibb* was the case that rang the bell and drew everyone's attention to the link between the two doctrines, but that link was there all along. Moving forward, practitioners will likely continue to cite *Bristol-Myers Squibb* when objecting to personal jurisdiction in joinder cases because, as the saying goes, you can't unring the bell.

APPENDIX

Table 1: Post-*Bristol-Myers Squibb* cases applying *Bristol-Myers Squibb* to plaintiff-joinder cases in response to a defendant's objection that the court lacked specific personal jurisdiction over plaintiffs' claims.[274]

Jurisdiction	**Cases where courts applied *Bristol-Myers Squibb* to bar joinder of some plaintiffs, finding that not all of plaintiffs' claims related to the defendant's forum contacts**	**Cases where courts applied *Bristol-Myers Squibb* and permitted joinder of all plaintiffs, finding that all their claims shared a sufficient relationship with defendant's forum contacts**
First Circuit	Access Now, Inc. v. Otter Prods., LLC, 280 F. Supp. 3d 287, 290, 293, 295 (D. Mass. 2017)	
	Access Now, Inc. v. Sportswear, Inc., 298 F. Supp. 3d 296, 300 (D. Mass. 2018)	
Second Circuit	Alessi Equip., Inc. v. Am. Piledriving Equip., Inc., No. 18 CV 3976 (VB), 2019 WL 4412474, at *2–3 (S.D.N.Y. Sept. 16, 2019)	Retail Pipeline, LLC v. JDA Software Grp., Inc., No. 2:17-cv-00067, 2018 U.S. Dist. LEXIS 54682, at *31, *46 (D. Vt. Mar. 30, 2018)
	Napoli-Bosse v. Gen. Motors, LLC, 453 F. Supp. 3d 536, 539–40, 542 (D. Conn. 2020)	Funk v. Belneftekhim, No. 14-cv-0376 (BMC), 2017 WL 5592676, at *11–12 (E.D.N.Y. Nov. 20, 2017)

274. Search terms used on Lexis+ to locate these cases: "out of state" or "non-resident" or nonresident /10 plaintiffs /30 "personal jurisdiction" and "137 S. Ct. 1773" but not "class members"

		Billie v. Coverall N. Am., Inc., 444 F. Supp. 3d 332, 340, 342 (D. Conn. 2020)
		Car-Freshner Corp. v. Scented Promotions, LLC, No. 5:19-CV-1158 (GTS/ATB), 2021 U.S. Dist. LEXIS 51975, at *21, *24 (N.D.N.Y. Mar. 19, 2021)
Third Circuit	Hannah v. Johnson & Johnson, Inc., [Omnibus Opinion Docket Number Omitted], 2020 WL 3497010, at *20, *22, *25 (D.N.J. June 29, 2020)	
	D'Ambly v. Exoo, No. 20-12880, 2021 U.S. Dist. LEXIS 210315, at *16, *19 (D.N.J. Nov. 1, 2021)	
Fourth Circuit		Nat'l Fair Hous. All. v. Bank of Am., N.A., 401 F. Supp. 3d 619, 628–629, (D. Md. 2019)
Fifth Circuit	WorldVentures Holdings, LLC v. MaVie, No. 4:18CV393, 2018 WL 6523306, at *9–10 (E.D. Tex. Dec. 12, 2018)	Ocean Sky Int'l, LLC v. Limu Co., No. 18-0528, 2018 U.S. Dist. LEXIS 179055, at *17–18 (W.D. La. Oct. 1, 2018)
		Trosclair v. Int'l Lab'ys., Inc., No. 6:19-cv-00318, 2020 U.S. Dist. LEXIS 139973, at *7, *20, *22 (W.D. La. July 20, 2020)
Sixth Circuit	Kresch v. Miller, No. 18-10025, 2019 WL 3412901at *3–4, *12 (E.D. Mich. July 29, 2019)	

Seventh Circuit	Douthit v. Janssen Rsch. & Dev., LLC, No. 3:17-cv-00752-DRH, 2017 U.S. Dist. LEXIS 155353, at *2–3, *14 (S.D. Ill. Sept. 22, 2017)	Thomas v. Ford Motor Co., 289 F. Supp. 3d 941, 944, 948, (E.D. Wis. 2017)
	Bandy v. Janssen Rsch. & Dev., LLC, No. 17-cv-00753-DRH, 2017 U.S. Dist. LEXIS 155352, at *2–3, *14 (S.D. Ill. Sept. 22, 2017)	
	Braun v. Janssen Rsch. & Dev., LLC, No. 17-cv-00756-DRH, 2017 U.S. Dist. LEXIS 155355, at *2–3, *14 (S.D. Ill. Sept. 22, 2017)	
	Pirtle v. Janssen Rsch. & Dev., LLC, No. 3:17-cv-00755-DRH, 2017 U.S. Dist. LEXIS 155351, at *2–3, *14 (S.D. Ill. Sept. 22, 2017)	
	Woodall v. Janssen Rsch. & Dev., LLC, No. 3:1-cv-00754-DRH, 2017 U.S. Dist. LEXIS 155356, at *2, *11, *13 (S.D. Ill. Sept. 22, 2017)	
	DeMaria v. Nissan N. Am., Inc., No. 15 C 3321, 2016 WL 374145, at *8 (N.D. Ill. Feb. 1, 2016)	
	BeRousse v. Janssen Rsch. & Dev., LLC, No. 3:17-CV-00716-DRH, 2017 WL 4255075, at *1, *4–5 (S.D. Ill. Sept. 26, 2017)	

	Roland v. Janssen Rsch. & Dev., LLC, No. 3:17-cv-00757-DRH, 2017 U.S. Dist. LEXIS 155354, at *3, *11–12 (S.D. Ill. Sept. 22, 2017)	
	LDGP, LLC v. Cynosure, Inc., No. 15 C 50148, 2018 WL 439122, at *2–3 (N.D. Ill. Jan. 16, 2018)	
	Baity v. Johnson & Johnson, No. 3:20-CV-01367-NJR, 2021 U.S. Dist. LEXIS 71617, at *7–8, *14 (S.D. Ill. Apr. 14, 2021)	
Eighth Circuit	Turner v. Boehringer Ingelheim Pharms., Inc., No. 4:17-cv-01525-AGF, 2017 WL 3310696, at *1, *3 (E.D. Mo. Aug. 3, 2017)	Spain v. Janssen Pharms., Inc., No. 4:17-CV-1308 CAS, 2018 WL 1157095, at *3 (E.D. Mo. Mar. 5, 2018)
	Jordan v. Bayer Corp., No. 4:17-CV-865 (CEJ), 2017 WL 3006993, at *4 (E.D. Mo. July 14, 2017)	Allenspach-Boller v. United Cmty. Bank, No. 5:19-CV-06073-DGK, 2019 WL 5386491, at *7–8 (W.D. Mo. Oct. 21, 2019)
	Siegfried v. Boehringer Ingelheim Pharms., Inc., No. 4:16 CV 1942 CDP, 2017 WL 2778107, at *4–6 (E.D. Mo. June 27, 2017)	
	Covington v. Janssen Pharms., Inc., No. 4:17-CV-1588 SNLJ, 2017 WL 3433611, at *5 (E.D. Mo. Aug. 10, 2017)	
	Allen v. C.R. Bard, Inc., No. 4:17-CV-770-RWS, 2019 WL 5485023, at *1 (E.D. Mo. Oct. 22, 2019)	

	Dyson v. Bayer Corp., No. 4:17CV2584 SNLJ, 2018 WL 534375, at *4–5 (E.D. Mo. Jan. 24, 2018)	
	Jinright v. Johnson & Johnson, Inc., No. 4:17CV01849 ERW, 2017 WL 3731317, at *3, *5 (E.D. Mo. Aug. 30, 2017)	
	Moore v. Bayer Corp., No. 4:18 CV 262 CDP, 2018 WL 4144795, at *4–6 (E.D. Mo. Aug. 29, 2018)	
	Jordan v. Bayer Corp., No. 4:17–cv–00865–AGF, 2018 WL 837700, at *3–4 (E.D. Mo. Feb. 13, 2018)	
	Johnson v. Bayer Corp., No. 4:17–CV–02774–JAR, 2018 WL 999972, at *3–4 (E.D. Mo. Feb. 21, 2018)	
	Schaffer v. Bayer Corp., No. 4:17–CV–01973 JAR, 2018 WL 999980, at *3–4 (E.D. Mo. Feb. 21, 2018)	
	Hinton v. Bayer Corp., No. 4:16CV1679 HEA, 2018 U.S. Dist. LEXIS 133910, at *8, *10–11 (E.D. Mo. July 27, 2018)	
	Adams v. Dost, No. 4:20-cv-00874, 2021 U.S. Dist. LEXIS 238607, at *10–11, 13 (E.D. Mo. Dec. 14, 2021)	
Ninth Circuit	Bailey v. Wyndham Vacation Ownership, Inc., No. 19-cv-05325-VC, 2019 WL 6836772, at *1–2 (N.D. Cal. Dec. 16, 2019)	Greys Ave. Partners, L.L.C v. Theyers, 431 F. Supp. 3d 1121, 1130–32 (D. Haw. 2020)

	Melaleuca, Inc. v. Kot Nam Shan, No. 4:18-cv-00036-DCN, 2018 WL 1952523, at *10, *12 (D. Idaho Apr. 24, 2018)	Benabou v. Cheo, No. 2:19-cv-04619-R-SS, 2019 U.S. Dist. LEXIS 227923, at *6, *12, *14 (C.D. Cal. Nov. 8, 2019)
		Fercho v. U.S., No. CV 18-86-BLG-DLC-TJC, 2019 WL 5678152, at *7–8, *10–11 (D. Mont. Aug. 1, 2019)
		Berven v. LG Chem, Ltd., No. 1:18-CV-01542-DAD-EPG, 2019 WL 1746083, at *12–13 (E.D. Cal. Apr. 18, 2019)
		In re JUUL Labs, Inc., Mktg. Sales Prac. & Prods. Liab. Litig., No. 19-md-02913-WHO, 2021 U.S. Dist. LEXIS 137078, *241–43 (N.D. Cal. July 22, 2021)
Tenth Circuit		Tarver v. Ford Motor Co., No. CIV-16-548-D, 2017 WL 3527710, at *2–3 (W.D. Okla. Aug. 16, 2017)
		State Nat'l Ins. Co. v. Textron Aviation, Inc., No. 17-1077-JWB, 2018 WL 4111845, at *3–4 (D. Kan. Aug. 29, 2018)
Eleventh Circuit	Whatley v. Ohio Nat'l Life Ins. Co., No. 1:19-cv-40-ECM, 2019 WL 6173500, at *4–5 (M.D. Ala. Nov. 19, 2019)	Collett v. Olympus Med. Sys. Corp., 437 F. Supp. 3d 1272, 1282 (M.D. Ga. 2020)