

IN THE SUPREME COURT OF TENNESSEE

SAINT CLAUDE RENEL, et al.	)	No. W2023-01693-SC-R11-CV
	)	
Plaintiffs-Appellants,	)	ON APPEAL FROM SHELBY
	)	COUNTY CIRCUIT COURT
v.	)	
	)	Shelby County Circuit Court
DREXEL CHEMICAL	)	No. CT-1758-23
COMPANY,	)	
	)	
Defendant-Appellee.	)	

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***AMICUS CURIAE* BRIEF OF THE NATIONAL ASSOCIATION OF  
MANUFACTURERS IN SUPPORT OF DEFENDANT-APPELLEE**

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**TABLE OF CONTENTS**

	<b>Page</b>
TABLE OF AUTHORITIES .....	3
INTEREST OF <i>AMICUS CURIAE</i> .....	6
INTRODUCTION AND SUMMARY OF THE ARGUMENT.....	7
ARGUMENT .....	10
I. THE COURT SHOULD ENDORSE A STRONG PRESUMPTION AGAINST EXTRATERRITORIALITY FOR CLAIMS ARISING IN OTHER COUNTRIES .....	10
A. A Strong Presumption Aligns with this Court’s History of Recognizing Sovereignty of Other Jurisdictions.....	10
B. A Strong Presumption Gives the General Assembly Clear Direction and Control Over Its Laws .....	13
C. A Strong Presumption Promotes the State’s Economy .....	16
II. THE COURT SHOULD DEFER TO STATUTORY TEXTS AND REJECT EXPANSIVE, AMBIGUOUS ALTERNATIVES .....	18
A. Plaintiffs’ Approach Ignores Tennessee Law, Is Too Expansive, and Would Create Confusion .....	19
B. The State’s Approach Allows Its Exception to Swallow the Rule Against Extraterritoriality .....	20
C. The New Federal Approach Has Been Broadly Critiqued as Ambiguous and Unworkable.....	22
III. THE COURT SHOULD AFFIRM THE RULING BELOW TO AVOID HARMING THE STATE’S ECONOMY.....	24
CERTIFICATE OF COMPLIANCE .....	27
CERTIFICATE OF SERVICE.....	End

**TABLE OF AUTHORITIES**

<b><u>CASES</u></b>	<b>PAGE</b>
<i>Abitron Austria GmbH v. Hetronic Int’l, Inc.</i> , 600 U.S. 412 (2023) .....	20
<i>Bristol-Myers Squibb Co., v. Super. Ct. of Cal.</i> , 137 S. Ct. 1773 (2017) .....	22
<i>Carter v. Carter</i> , 191 S.W.2d 451 (Tenn. Ct. App. 1944) .....	11
<i>Daimler AG v. Bauman</i> , 571 U.S. 117 (2014) .....	22
<i>EEOC v. Arabian American Oil Co.</i> , 499 U.S. 244 (1991) .....	22
<i>Finley v. United States</i> , 490 U.S. 545 (1989) .....	14
<i>Ford Motor Co. v. Monana Eighth Jud. Dist. Ct.</i> , 592 U.S. 351 (2021) .....	16
<i>Freeman Indus., LLC v. Eastman Chem. Co.</i> , 172 S.W. 3d 512 (Tenn. 2005) .....	19
<i>Halliburton v. Elder</i> , 4 Tenn. App. 452 (1927) .....	11
<i>Hertz Corp. v. Friend</i> , 559 U.S. 77 (2010) .....	16
<i>Hutchison v. Tenn. Farmers Mut. Ins. Co.</i> , 652 S.W.2d 904 (Tenn. Ct. App. 1983) .....	11

<i>Illinois Cent. R. Co. v. Davis</i> , 58 S.W. 296 (Tenn. 1900) .....	11
<i>J. McIntyre Mach., Ltd. v. Nicastro</i> , 564 U.S. 873 (2011) .....	22
<i>Kaufman v. State</i> , 225 S.W.2d 75 (Tenn. 1949) .....	12
<i>Kirkland v. Calhoun</i> , 248 S.W. 302 (Tenn. 1923) .....	11, 12
<i>Lien v. Couch</i> , 993 S.W.2d 53 (Tenn. Ct. App. 1998) .....	11, 12
<i>Morrison v. Nat’l Australia Bank</i> , 561 U.S. 247 (2010) .....	23
<i>RJR Nabisco, Inc. v. European Cmty.</i> , 579 U.S. 325 (2016) .....	8, 13, 23
<i>Seals v. H &amp; F, Inc.</i> , 301 S.W. 3d 237 (Tenn. 2010) .....	14
<i>Sherwood v. Microsoft Corp.</i> , No. M2000-01850-COA-R9-CV, 2003 WL 21780975 (Tenn. Ct. App. July 31, 2003) .....	11
<i>Snyder v. Yates</i> , 79 S.W. 796 (Tenn. 1904) .....	11
<i>Van Tuyl v. Carpenter</i> , 188 S.W. 234 (Tenn. 1916) .....	11
<i>W. U. Tel. Co. v. Mellan</i> , 45 S.W. 443 (1898) .....	11
<i>Whitman v. American Trucking Ass’ns</i> , 531 U.S. 451 (2001) .....	20

**STATUTES AND REGULATIONS**

Tenn. Code Ann. § 39-11-103 .....15, 21  
Tenn. Code Ann. § 50-6-115 .....15

**OTHER AUTHORITIES**

Anthony J. Colangelo, *The Frankenstein’s Monster of Extraterritoriality Law*, 110 Am. J. Int’l L. Unbound 51 (2016) .....23  
Frank H. Easterbrook & Daniel R. Fischel, *Limited Liability and the Corporation*, 52 U. Chi. L. Rev. 89 (1985) .....24  
Philip P. Frickey, *Interpretive Rule Changes*, 38 Loy. L.A. L. Rev. 1971 (2005).....14  
Maggie Gardner, *RJR Nabisco and the Runaway Canon*, 102 Va. L. Rev. Online 134 (2016) .....23  
Larry Kramer, *Vestiges of Beale: Extraterritorial Application of American Law*, 1991 Sup. Ct. Rev. 179 (1991) ..... 22-23  
Nat’l Ass’n of Mfrs., *Tenn. Mfr’ing Data*, at <https://nam.org/mfgdata/regions/tennessee/> .....25  
Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 428 (2012) .....12  
*Tennessee Exports and Foreign Investment*, Office Of The United States Trade Representative, at <https://ustr.gov/map/state-benefits/tn> .....17, 24  
William S. Dodge, *The New Presumption Against Extraterritoriality*, 133 Harv. L. Rev. 1582 (2020) .....13, 18, 23

INTEREST OF *AMICUS CURIAE*<sup>1</sup>

*Amicus* is the National Association of Manufacturers (NAM). The NAM and its members are concerned that if the Court of Appeals’ ruling is overturned, it would lead to widespread extraterritorial application of Tennessee law to incidents occurring in other countries, regardless of the local country’s laws governing those incidents, merely because they have some connection to Tennessee manufacturers. The NAM files this brief to explain the adverse impact such a result would have on local manufacturing in Tennessee and the uncertainty it would cause for courts and parties as to which laws apply when Tennessee manufacturers engage in economic activity in countries throughout the world.

The NAM is the largest manufacturing association in the United States, representing small and large manufacturers in all fifty states and in every industrial sector. Manufacturing employs nearly 13 million people, contributes \$2.9 trillion to the economy annually, has the largest economic impact of any major sector, and accounts for over half of all private-sector research and development in the nation, fostering the innovation that is vital for this economic ecosystem to thrive. The NAM is the voice of the manufacturing community and leading advocate for a

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<sup>1</sup> No counsel for any party authored this brief in whole or in part, and no person or entity other than *amicus*, their members, or their counsel made a monetary contribution intended to fund the brief’s preparation or submission.

policy agenda that helps manufacturers compete in the global economy and create jobs across the United States.

### **INTRODUCTION AND SUMMARY OF THE ARGUMENT**

This case presents an issue of critical importance to manufacturers and other businesses in Tennessee that engage in commerce around the globe, namely which law must they abide by when doing business in other countries? To this point, the answer has been clear: the law of the foreign country applies unless an applicable Tennessee statute expressly provides that it is to be applied extraterritorially, with certain, defined and limited exceptions. This presumption against extraterritoriality makes sense. First, each sovereign country is permitted to control the laws within its own borders. They determine the product, employment, environmental and other laws that are to be applied to those who live and do business there. Second, it gives the Tennessee General Assembly full control over which statutes are to have extraterritorial effect. And third, this framework avoids needless confusion—not just for manufacturers and others when engaging in the international marketplace, but also for Tennessee courts and potential plaintiffs, should they consider filing a claim under Tennessee law for matters arising in other countries.

Here, the acts giving rise to this litigation involve Plaintiffs' use of pesticides in the Dominican Republic. Plaintiffs are Dominican and Haitian farmworkers who allege injuries from using Defendant's herbicides in the Dominican Republic at the direction of Dominican

farmers. They have made no allegations that Defendant violated Dominican law in selling herbicides there. Rather, they seek to sue Defendant in Tennessee under Tennessee law—here, the Tennessee Product Liability Act (TPLA). However, as the court of appeals observed, the TPLA does not expressly state that it is to be applied to product-based injuries in foreign countries. Accordingly, if Plaintiffs are due compensation for the injuries they allege, they must bring a lawsuit in the Dominican Republic under that country’s laws. As both the trial court and Court of Appeals held, Tennessee laws do not reach this case. However, they disagreed on the analytical approach for determining the international extraterritoriality of Tennessee statutes.

This Court is now tasked with articulating a uniform canon for the state’s presumption against extraterritoriality in cases that arise in other countries. There are several options before the Court. On one end of the spectrum, Plaintiffs argue for a reversal of the presumption against extraterritoriality so State statutes would apply internationally *absent* a clear, textual signal that the General Assembly wished to *limit* the statute’s reach. *See* Pl. Br. at 25. This argument, though, conflicts with the decisions of this Court, as well as U.S. Supreme Court jurisprudence, longstanding canons of statutory construction, and the basic notion that the General Assembly legislates with Tennessee’s concerns in mind. *Cf. RJR Nabisco, Inc. v. European Cmty.*, 579 U.S. 325, 336 (2016). It also

would open the State’s courthouses to people anywhere in the world solely because they allege harm from a Tennessee person or entity.

The best option is the framework advanced by the Court of Appeals, namely, a Tennessee statute does not apply internationally unless it contains a “clear affirmative indication” that the General Assembly intended for the statute to apply extraterritorially in other countries. Op. at 12. This clear, bright-line approach gives manufacturers and other businesses notice when they need to adhere to Tennessee statutes, provides the General Assembly clear instructions for how to impose its statutes extraterritorially, and delivers to the courts a straightforward means for imposing the legislature’s intent on when statutes are to apply. Adding other factors—whether under the federal two-part test which also looks at the “focus” of the statute or the three-part test proposed in the State’s *amicus* brief (which posits that state law should reach all cases where at least one element of the cause of action arguably occurred in Tennessee)—only adds confusion and subjectivity, while burdening state courts with claims that have little to no connection to the State.

For these reasons, *amicus* respectfully requests that the Court adopt the Court of Appeals’ analytical framework for a strong presumption against extraterritoriality for international civil cases. This approach maximizes the policy benefits of the extraterritoriality doctrine, creates a fair environment for in-state manufacturing, and, as a result, promotes foreign trade and investment in Tennessee. It also allows

Tennessee businesses to structure their operations in accordance with local laws and removes unpredictability that hinders competitiveness.

## ARGUMENT

### **I. THE COURT SHOULD ENDORSE A STRONG PRESUMPTION AGAINST EXTRATERRITORIALITY FOR CLAIMS ARISING IN OTHER COUNTRIES.**

The Court should use this case to articulate a strong presumption against extraterritoriality of Tennessee statutes in the international context for civil claims. As Defendant explains, there may be considerations for extraterritoriality for cases within the United States or for criminal matters that do not apply here, so there is no need for the Court to address them now. Accordingly, this *amicus* brief addresses only the framework for extraterritorial applications of Tennessee civil liability statutes in foreign countries.

#### **A. A Strong Presumption Aligns with this Court’s History of Recognizing Sovereignty of Other Jurisdictions.**

A strong presumption against extraterritoriality of Tennessee civil liability statutes in the international context is fully consistent with more than a century of this Court’s jurisprudence. In the ruling below, the Court of Appeals cited eleven cases where the state’s courts—including this Court—have recognized the principle against extraterritoriality of

Tennessee statutes.<sup>2</sup> Whether read separately or together, these cases establish that Tennessee has remained faithful to the maxim *statuta suo*

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<sup>2</sup> See, e.g., *Kirkland v. Calhoun*, 248 S.W. 302, 304 (Tenn. 1923) (“A local statute has no extraterritorial force, and can be exercised only upon persons and property within the jurisdiction of the state where such statute is enacted.”) (quotation omitted); *Van Tuyl v. Carpenter*, 188 S.W. 234, 237 (Tenn. 1916) (“foreign laws can have no extraterritorial efficacy, save in those instances which are governed by the ‘full faith and credit’ clause of our federal Constitution”); *Snyder v. Yates*, 79 S.W. 796 (Tenn. 1904) (“The statute laws of a state have of themselves no extraterritorial force, and whatever effect they have in foreign states they have by virtue of the laws of such state, or under the doctrine of the comity of states.”); *Illinois Cent. R. Co. v. Davis*, 58 S.W. 296, 298 (Tenn. 1900) (“It is true the statute has no extraterritorial effect[.]”); *W. U. Tel. Co. v. Mellan*, 45 S.W. 443, 444 (1898) (explaining that certain statutes “were not intended to have any extraterritorial effect”); *Sherwood v. Microsoft Corp.*, No. M2000-01850-COA-R9-CV, 2003 WL 21780975, at \*21 n.28 (Tenn. Ct. App. July 31, 2003) (“A state’s power to regulate interstate commerce is still limited in some situations; for example, by the limitations on the extraterritorial powers of state government.”); *Lien v. Couch*, 993 S.W.2d 53, 57 (Tenn. Ct. App. 1998) (“Tennessee cannot demand that its laws be given extraterritorial effect.”); *Hutchison v. Tenn. Farmers Mut. Ins. Co.*, 652 S.W.2d 904, 906 (Tenn. Ct. App. 1983) (explaining that a certain Tennessee statute had “no extra territorial effect”); *Carter v. Carter*, 191 S.W.2d 451, 480-81 (Tenn. Ct. App. 1944) (“It is elementary that legislation can have no extraterritorial effect. It is binding only within the limits of the sovereignty enacting it. It is not to be presumed that by use of language without limitation the legislature intends to confer authority upon persons not within its jurisdiction, although by appropriate language it may authorize designated officials of another state to do specified acts and make those acts effectual within its own sovereignty.”); *Halliburton v. Elder*, 4 Tenn. App. 452, 457 (1927) (Footnote continued on next page)

*clauduntur territorio, nec ultra territorium disponunt*— “statutes are confined to their own territory and have no extraterritorial effect.” Op. at 5 (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 428, 268-69 (2012)).

This Court has generally viewed extraterritoriality as a matter of local sovereignty, comity, and legislative prerogative. *See, e.g., Kirkland v. Calhoun*, 248 S.W. 302, 304 (Tenn. 1923) (invoking “the state’s sovereignty over lands within its borders” in denying “extraterritorial force” of foreign statute). In *Kaufman v. State*, the Court stated it would not enforce Tennessee’s Constitution extraterritorially out of reluctance to interfere with another sovereign’s exercise of its own authority to confer rights in its constitution. *See* 225 S.W.2d 75, 76 (Tenn. 1949) (foreign citizens cannot “claim immunity from illegal search of their property” under Tennessee law). In *Lien v. Couch*, the Court held that it would not “demand [TN] laws be given extraterritorial effect,” trusting instead the other sovereign’s courts to establish laws for protecting its citizens. 993 S.W.2d 53, 57 (Tenn. Ct. App. 1998). As a result, in most cases, this rule against extraterritoriality has been applied with little analysis—highlighting how uncontroversial the rule has become. *See, e.g., Illinois Cent. R. Co. v. Davis*, 58 S.W. 296, 298 (Tenn. 1900)

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(recognizing “the general rule that the statutes of a State have no extraterritorial effect”); *cf. Kaufman v. State*, 225 S.W.2d 75, 76 (Tenn. 1949) (“Our Constitution has no extraterritorial effect.”).

(Tennessee statute requiring railroads to ring bells within a mile of town did not apply in Kentucky because it “has no extraterritorial effect”).

The Court’s concern against interfering in the laws of other jurisdictions is particularly important in the international context and well-grounded in the historical rationale for this doctrine. The general presumption against applying federal and state statutes extraterritorially to claims arising in foreign countries “grew out of the separate presumption” that U.S.-based laws do not “intend to violate international law.” William S. Dodge, *The New Presumption Against Extraterritoriality*, 133 Harv. L. Rev. 1582, 1589-90 (2020). Neither federal nor state statutes should unwittingly dictate which economic activity is acceptable or allowable in foreign countries. Adherence to this maxim reduces conflicts between Tennessee’s laws and those of other countries, minimizes the potential friction such conflicts generate, and promotes harmonious relationships with foreign jurisdictions. *See RJR Nabisco*, 579 U.S. at 335 (the presumption against extraterritoriality helps “avoid the international discord that can result when U.S. law is applied to conduct in foreign countries.”). The Court should not impose the TPLA, or any Tennessee statute, absent legislative direction to economic activity in the Dominican Republic or other countries.

**B. A Strong Presumption Gives the General Assembly Clear Direction and Control Over Its Laws.**

A strong, bright-line rule against extraterritoriality also provides the appropriate clarity to the General Assembly, charging it with

drafting clear instructions when it intends its laws to have extraterritorial effect. If a statute is to have such an effect, it should be part of the overt and deliberate legislative process. It should not be bootstrapped on retroactively through amorphous, subjective rules of statutory interpretation as part of a court’s attempt to divine legislative intent. State courts can safely “presume that the General Assembly [is] aware of its prior enactments and kn[ows] the state of the law”—including relevant judicial canons like the presumption against extraterritoriality—“at the time it passe[s] legislation.” *Seals v. H & F, Inc.*, 301 S.W. 3d 237, 242 (Tenn. 2010).

As the U.S. Supreme Court has explained, “[w]hat is of paramount importance is that [the legislature is] able to legislate against a background of clear interpretive rules, so that it may know the effect of the language it adopts.” *Finley v. United States*, 490 U.S. 545, 556 (1989). “[E]ven the most competent legislature can only accommodate an interpretive regime that is transparent and entrenched at the time the legislature acts.” Philip P. Frickey, *Interpretive Rule Changes*, 38 Loy. L.A. L. Rev. 1971, 1982 (2005). A strong presumption against extraterritoriality benefits the General Assembly and reminds it that to impose a burden on Tennessee citizens and businesses abroad, it must set forth this requirement in the statute itself. The General Assembly has operated under this process throughout its lengthy history.

For example, the General Assembly intended aspects of the Tennessee’s Workers Compensation Law to apply extraterritorially. *See* Tenn. Code Ann. § 50-6-115 (2024). Accordingly, it included language in the statute that explicitly authorizes “extraterritorial application of [this] chapter” and set forth clear and specific rules for determining when the Workers Compensation Law applies extraterritorially. *Id.* Here, the General Assembly made a clear public policy determination that aspects of this law should apply outside of the state, decided which circumstances justified deviating from the presumption against extraterritoriality, and allowed Tennessee employers to operate accordingly.

Similarly, the criminal jurisdiction statute discussed in the State’s brief also expressly authorizes limited extraterritorial jurisdiction over criminal cases. *See* Tenn. Code Ann. § 39-11-103 (2024); State’s Br. at 23 (arguing that § 39-11-103 “explicitly contemplate[s] prosecutions involving conduct partially outside the State”). Specifically, the statute states that extraterritoriality is permitted “[when] an offense is commenced outside of this state and consummated in this state” as well as “[when] the commission of an offense commenced within this state is consummated outside of its boundaries,” but not otherwise. Tenn. Code Ann. § 39-11-103(b)-(c). Again, these statements reflect the General Assembly’s historical understanding that its pronouncements do not presumptively (or even usually) apply extraterritorially.

The Court should not disturb the General Assembly’s longstanding understanding of its own powers, which has guided that body’s actions for more than century. The TPLA is one of many laws that foreign plaintiffs could seek to apply to Tennessee employers and citizens. Adopting a new framework that is inconsistent with that longstanding understanding would unnecessarily complicate the General Assembly’s work, potentially forcing it to go through entire bodies of statutes to amend which laws it did *not intend* to have extraterritorial effect.

**C. A Strong Presumption Promotes the State’s Economy.**

The State’s history of recognizing a strong presumption against extraterritoriality also provides Tennessee manufacturers and other employers with clear direction as to how to comply with the laws in the jurisdictions in which they operate. As the U.S. Supreme Court has explained, manufacturers and other entities are entitled to structure their affairs “to lessen or avoid exposure” to liability. *Ford Motor Co. v. Monana Eighth Jud. Dist. Ct.*, 592 U.S. 351, 360 (2021). For this right to be meaningful, businesses must be able to know which laws will apply in which jurisdictions so that they can abide by their obligations and avoid conflicting legal regimes. *See generally Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010) (predictable laws are “valuable” to “business and investment decisions”). This clarity is important for facilitating economic activity in the State, supporting the ability of Tennessee companies to

trade in foreign markets, and creating a generally hospitable business environment for Tennessee employers and employees.

This clarity is particularly important in the international marketplace, where each country has its own statutory, regulatory and liability regimes for a wide variety of products and services. Certain products, services and other types of economic activity may be lawful and encouraged in some countries but, for one reason or another, may be unlawful in Tennessee. The opposite is also true. Tennessee may find value in certain economic activities that are more restricted elsewhere. Overlaying wide swaths of Tennessee law on top of the law of these other jurisdictions would create massive confusion, may interfere with the ability of Tennessee’s 7,081 exporters<sup>3</sup> to comply with local laws and customs, and harm the ability of Tennessee companies to compete with those who are operating only under local law.

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With these goals in mind, *amicus* respectfully urges the Court to adopt a strong, bright-line presumption against the extraterritorial application of State liability statutes to cases arising in foreign countries. The Court of Appeals’ framework—under which the presumption applies *unless* a statute contains a “clear affirmative statement” that it applies extraterritorially—is the best option for achieving these goals. Op. at 10-

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<sup>3</sup> *Tennessee Exports and Foreign Investment*, Office Of The United States Trade Representative, at <https://ustr.gov/map/state-benefits/tn>.

11. Its commitment to textualism and refusal to apply statutes to foreign claims without express authorization from the General Assembly aligns with this Court’s jurisprudence. Its “clear affirmative statement” requirement conforms to the legislature’s existing practice of including affirmative language on extraterritoriality when it wishes statutes to apply beyond Tennessee’s borders. And, its simplicity makes it easy for businesses, courts, and potential plaintiffs to understand when Tennessee law applies, thereby reducing compliance costs and legal risk while helping Tennessee courts preserve limited judicial resources.

## **II. THE COURT SHOULD DEFER TO STATUTORY TEXTS AND REJECT EXPANSIVE, AMBIGUOUS ALTERNATIVES.**

The alternative approaches for applying Tennessee statutes to international cases—including those offered by Plaintiffs and the State, along with recent adjustments to the federal approach—neither align with Tennessee’s jurisprudence nor provide the clarity the General Assembly, State courts, litigants, and businesses need. As a general matter, when courts are allowed to divert from the text of a statute and *interpret* legislative intent—including based on idiosyncratic facts of a case as Plaintiffs suggest in their brief—courts will be more likely to issue divergent and unpredictable rulings. Some courts may even impose their “own normative preferences rather than those” of the legislature. Dodge, 133 Harv. L. Rev. at 1632. These concerns grow in concert with how flexible and loose the presumption against extraterritoriality becomes.

**A. Plaintiffs' Approach Ignores Tennessee Law, Is Too Expansive, and Would Create Confusion.**

Plaintiffs suggest a novel approach to extraterritoriality that has not been adopted, either federally or in other states. In short, they would invert the presumption against applying Tennessee civil liability statutes to cases arising in foreign countries by allowing the state's courts to determine extraterritoriality on a case-by-case basis depending on "the facts of a particular case"—unless a statute provides explicit directions otherwise. Pl. Br. at 26. This subjective, retroactive approach to lawmaking would provide few, if any, objective guidelines for businesses, courts and the legislature to follow. Moreover, it likely would result in the extraterritorial application of state law in nearly any case where a manufacturer or other business operates in both Tennessee and a foreign country, given that plaintiffs could undoubtedly allege that some fact relevant to their cases took place in this State.

The Court should reject this framework. In large part, it is based on Plaintiffs false assertion that "Tennessee does not have a presumption against extraterritoriality." *Id.* at 11. Plaintiffs set aside the long list of state cases discussed above based on *Freeman Indus., LLC v. Eastman Chem. Co.*, which, even Plaintiffs acknowledge, "does not mention extraterritoriality." *Id.* at 10, 26 (discussing 172 S.W. 3d 512 (Tenn. 2005)). Accordingly, nothing in *Freeman* suggests the State abandoned its concern for state-sovereignty and comity with foreign jurisdictions, let alone that the court intended to *invert* a principle it had employed for

more than a century, *sub silentio*, in an opinion that does not even contain the word “extraterritorial.” For this reason, the Court of Appeals “decline[d] to interpret the Court’s silence” in this way. Op. at 10 n.7. As Justice Scalia famously wrote in *Whitman v. American Trucking Ass’ns*, legal regimes are not altered by “hid[ing] elephants in mouseholes.” 531 U.S. 451, 468 (2001). Further, because *Freeman* did not involve foreign countries, it has no applicability to the limited question presented here.

In addition, Plaintiffs’ brief demonstrates how convoluted their extraterritoriality inquiry would be for the state’s courts. Starting on page 20 of their brief, Plaintiffs seek to conduct an extraterritoriality analysis on seven different factors they assert could be applied in a risk-utility test for product liability cases. *See* Pl. Br. at 20-23. This approach seems to abandon any attempt to identify the legislature’s *intent* for when its statutes are to apply to cases in foreign countries. To the extent that legislative intent would remain a focus for the courts, the inquiry Plaintiffs offer, as Justice Gorsuch quipped, would devolve into “a legislative séance.” Tr. of Oral Arg. at 56, *Abitron Austria GmbH v. Hetronic Int’l, Inc.*, 600 U.S. 412 (2023) (No. 21-1043)). This approach, therefore, undermines the clarity the presumption is meant to provide.

**B. The State’s Approach Allows Its Exception to Swallow the Rule Against Extraterritoriality.**

The approach the State suggests in its *amicus* brief is only slightly more restrictive than the Plaintiffs’ proposal and seems largely driven by the State’s desire to pursue criminal activity that crosses state lines and

injures people in Tennessee—not civil claims brought against Tennessee manufacturers and other businesses for injuries in foreign countries. Specifically, its proposal would allow extraterritorial application of Tennessee statutes whenever any element of a crime or cause of action is alleged to have occurred in Tennessee. This exception would swallow the rule for manufacturers and other entities based in this State, meaning the benefits of any presumption would be lost for them. Thus, in these cases, the State’s proposal contradicts its own assertions that borders have consequences and state law “does not rule the world.” State’s Br. at 13, 15.

The State advocates for this broad applicability of state statutes so its ability to enforce criminal laws would be unimpeded. *See* State’s Br. at 22-24. However, those concerns are not in parallel to the civil claims at bar. As a general matter, criminal and civil laws are not similarly situated with respect to extraterritoriality. As indicated, the criminal code already confers certain extraterritorial jurisdiction on Tennessee prosecutors, particularly when they seek to prevent or punish in-state harms by out-of-states criminals, and no party disputes the textual basis of the State’s criminal jurisdiction. Tenn. Code Ann. § 39-11-103.

In addition, the State’s argument that territorial sovereignty has fallen “by the wayside” as the economy has become more interconnected is false. State’s Br. at 14. That argument cites, among other things, to U.S. Supreme Court personal jurisdiction cases where just the opposite

is true. Given that many economic activities may cross jurisdictional lines in the modern economy, the U.S. Supreme Court has systematically *imposed limits* on personal jurisdiction. *See Daimler AG v. Bauman*, 571 U.S. 117 (2014). It has explained that these restrictions are needed to reflect “territorial limitations on the power of the respective states.” *Bristol-Myers Squibb Co., v. Super. Ct. of Cal.*, 137 S. Ct. 1773, 1780 (2017). When a state leverages minor aspects of a claim to exercise personal jurisdiction over a party or matter without having a true interest in the litigation, it “prevent[s] sister States” with a much more vested interest in the matter from exercising their authority. *Ford Motor Co.*, 141 S. Ct. at 1025 (cleaned up). Asserting jurisdiction in an inappropriate case “would upset the federal balance.” *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 884 (2011) (plurality). The State’s approach in this case, therefore, violates the longstanding respect for local sovereignty that is at the core of the Court’s jurisprudence against extraterritoriality.

**C. The New Federal Approach Has Been Broadly Critiqued as Ambiguous and Unworkable.**

The Court should also affirm the Court of Appeals’ rejection of the new federal two-part test for extraterritoriality. For many years, the U.S. Supreme Court adhered to a presumption against extraterritoriality comparable to the one the Court of Appeals articulated for Tennessee in this case. *See EEOC v. Arabian American Oil Co. (Aramco)*, 499 U.S. 244 (1991). In *Aramco*, the U.S. Supreme Court set forth a clear rule that for

a statute to be imposed on claims arising abroad; Congress “need[ed] to make a clear statement that a statute applies overseas.” *Id.* at 258; Larry Kramer, *Vestiges of Beale: Extraterritorial Application of American Law*, 1991 Sup. Ct. Rev. 179 (1991) (“*Aramco* establishes a strong preference that can be overcome only by unequivocal language.”).

It has been only in the past fifteen years that the U.S. Supreme Court has experimented with new flexibility, “allowing courts to reach interpretations that had previously been possible only by ignoring the presumption.” *Dodge*, 133 Harv. L. Rev. at 1603. Under this new approach, if the statute is silent, courts can seek to divine congressional intent by trying to determine the “focus of congressional concern” and whether that focus included activities outside the United States—regardless of the location of any specific conduct or the injury alleged. *See Morrison v. Nat’l Australia Bank*, 561 U.S. 247 (2010); *RJR Nabisco, Inc. v. European Cmty*, 579 U.S. 325, 336-337 (2016).

This vague “focus of concern” approach has been widely criticized as creating needless ambiguity and uncertainty as to when federal statutes will be applied extraterritorially. *See, e.g.*, Maggie Gardner, *RJR Nabisco and the Runaway Canon*, 102 Va. L. Rev. Online 134 (2016); Anthony J. Colangelo, *The Frankenstein’s Monster of Extraterritoriality Law*, 110 Am. J. Int’l L. Unbound 51 (2016). The State joins these criticisms in its brief, calling this approach “malleable,” “unworkable” and dependent on “judicial guesswork.” State’s Br. at 25-28. In addition,

even if viable at the federal level, this canon is inappropriate for states given the impact it could have on federal regimes with respect to foreign countries and the President's international relations authority.

### III. THE COURT SHOULD AFFIRM THE RULING BELOW TO AVOID HARMING THE STATE'S ECONOMY.

Finally, the bright-line rule articulated by the Court of Appeals provides the only option for ensuring that Tennessee courts are not turned into jurisdictions of choice for plaintiffs around the world seeking to sue Tennessee manufacturers and other in-state employers. Such an outcome would harm Tennessee's interests in ways inconsistent with the General Assembly's goal, which often is to advocate *for* local interests.

As discussed above, it is a foundational principle of American corporate law that business entities are entitled to organize and structure their affairs to lessen or avoid legal risk and potential liability exposure. *See* Frank H. Easterbrook & Daniel R. Fischel, *Limited Liability and the Corporation*, 52 U. Chi. L. Rev. 89, 89 (1985) ("Limited liability is a fundamental principle of corporate law"). This principle reflects a broader policy judgment that encouraging investment and economic activity depends on predictable limitations on liability. Applying a broad application of extraterritoriality, particularly one that is greater than applies in other states, will harm the Tennessee economy.

Tennessee is the sixteenth largest international exporter among the 50 States. *See Tennessee Exports and Foreign Investment*, Office Of The United States Trade Representative, at <https://ustr.gov/map/state->

benefits/tn. In 2024, Tennessee manufacturers exported \$36.4 billion in goods—which supported 113,000 jobs in the State—and international investment in Tennessee supported another 213,000 jobs in the same period. *Id.* Overall, according to *amicus’s* reports, manufacturing accounts for nearly 12 percent of the State’s economy and includes more than 6,000 manufacturers and 360,000 employees. *See* Nat’l Ass’n of Mfrs., Tenn. Mfr’ing Data, at <https://nam.org/mfgdata/regions/tennessee/> (last visited Mar. 26, 2026). The top export destinations include Canada (\$7.9 billion), Mexico (\$6.6 billion); China (\$3 billion); the Netherlands (\$2.8 billion), and Japan (\$1.9 billion). *See id.*

As explained above, this thriving export sector chose Tennessee due, in part, to its fair and stable legal climate, which includes the State’s longstanding presumption against the extraterritorial application of State law to foreign claims. If the State moves away from this doctrine and increases legal risks for manufacturers operating in this State, it would likely reduce investment here as manufactures may opt to (re)locate in states that do not impose these liability risks on their businesses. The Court should avoid these consequences by maintaining a strong presumption against extraterritoriality in its ruling in this case.

### CONCLUSION

For these reasons, the Court should adopt the same extraterritoriality framework as the Court of Appeals and affirm the dismissal of the Complaint.

Respectfully submitted,

*/s/ Frederick S. Rudesheim*

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Dated: March 27, 2026

**CERTIFICATE OF COMPLIANCE**

I certify that the foregoing complies with the requirements set forth in Section 3, Rule 3.02 of Tennessee Supreme Court Rule 46. Excluding the Certificate of Compliance and Certificate of Service, the foregoing contains 4,780 words.

*/s/ Frederick S. Rudesheim*

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Frederick S. Rudesheim

**CERTIFICATE OF SERVICE**

I hereby certify that, on March 27, 2026, a true and correct copy of the foregoing document was served through the Court’s e-filing system and/or through regular U.S. mail upon the following:

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