No. 21-___

IN THE

Supreme Court of the United States

COOPER TIRE & RUBBER CO.,

Petitioner,

v.

TYRANCE MCCALL,

Respondent.

On Petition For A Writ Of Certiorari To The Georgia Supreme Court

PETITION FOR A WRIT OF CERTIORARI

HASHIM M. MOOPPAN
JONES DAY
51 Louisiana Ave., NW
Washington, D.C. 20001

CHRISTOPHER S. ANULEWICZ
BALCH & BINGHAM LLP
30 Ivan Allen Jr. Blvd.
Suite 700
Atlanta, GA 30308

MEIR FEDER
Counsel of Record
JONES DAY
250 Vesey Street
New York, NY 10281
(212) 326-3939
mfeder@jonesday.com

MATTHEW J. RUBENSTEIN
JONES DAY
90 South 7th Street
Suite 4950
Minneapolis, MN 55402

Counsel for Petitioner

QUESTION PRESENTED

Whether the Due Process Clause of the Fourteenth Amendment permits a state to assert personal jurisdiction over an out-of-state corporation, for claims not arising from or related to any contacts between the corporation and the forum state, on the ground that the corporation's registration to do business in the state is deemed consent to general jurisdiction there.

PARTIES TO THE PROCEEDING

Petitioner Cooper Tire & Rubber Company was the defendant-appellant in the Georgia Supreme Court below. Respondent Tyrance McCall was the plaintiff-appellee in the Georgia Supreme Court below.

Pars Car Sales, Inc. and Karla Gould were both defendants in the underlying trial court proceedings but were not parties to the Georgia Supreme Court proceedings.

CORPORATE DISCLOSURE STATEMENT

The Goodyear Tire & Rubber Company is the corporate parent of Petitioner Cooper Tire & Rubber Company. No other public company owns more than 10% of the stock of Cooper Tire & Rubber Company.

STATEMENT OF RELATED PROCEEDINGS

State Court of Gwinnett County, State of Georgia:

- *Tyrance McCall v. Cooper Tire & Rubber Co., Pars Car Sales, Inc., & Karla Gould*, No. 18-C-02598-2 (motion to dismiss granted Dec. 21, 2018; reconsideration denied and order certified for interlocutory appeal Mar. 1, 2019; denial of reconsideration and certification for interlocutory appeal reissued Mar. 12, 2019)

Court of Appeals for the State of Georgia:

- *Tyrance McCall v. Cooper Tire & Rubber Co.*, No. A1910204 (case transferred to Georgia Supreme Court Apr. 16, 2019; case reinstated May 31, 2019; application for interlocutory appeal granted June 23, 2019)
- *Tyrance McCall v. Cooper Tire & Rubber Co.*, No. A20A0933 (grant of dismissal reversed June 1, 2020)

Supreme Court of Georgia:

McCall v. Cooper Tire & Rubber Co. et al., No. S19I1112 (case returned to Georgia Court of Appeals May 16, 2019)

Cooper Tire & Rubber Co. v. McCall, No. S20G1368 (Georgia Court of Appeals decision affirmed Sept. 21, 2021)

TABLE OF CONTENTS

TABLE OF CONTENTS
(continued)

Page

TABLE OF AUTHORITIES

Page(s)

CASES

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

CONSTITUTIONAL AND STATUTORY AUTHORITIES

OTHER AUTHORITIES

OPINIONS BELOW

The opinion of the Georgia Supreme Court (Pet. App. 1a-27a) is reported at 863 S.E.2d 81. The opinion of the Court of Appeals of Georgia (Pet. App. 28a-32a) is reported at 843 S.E.2d 925. The opinions of the State Court of Gwinnett County, Georgia granting Petitioner's motion to dismiss (Pet. App. 33a-35a) and denying reconsideration (Pet. App. 36a-37a) are unreported.

JURISDICTION

The Georgia Supreme Court entered its judgment on September 21, 2021. Jurisdiction in this Court exists under 28 U.S.C. § 1257(a). *See Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 485 (1975); *Shaffer v. Heitner*, 433 U.S. 186, 195 n.12 (1977). 28 U.S.C. § 2403(b) may apply to this case, and this petition has been served on the Attorney General of Georgia.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides in pertinent part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV, § 1, cl. 2. Georgia's registration statute, Ga. Code Ann. §§ 14-2-1501, 14-2-1505, 14-2-1507, and long-arm statute, Ga. Code

Ann. §§ 9-10-90, 9-10-91 are set out in the appendix (Pet. App. 62a-68a).

INTRODUCTION

This case squarely presents an important and recurring federal constitutional question that is in need of resolution by this Court: Whether the Due Process Clause of the Fourteenth Amendment permits a state to assert personal jurisdiction over an out-of-state corporation, for claims not arising from or related to any contacts between the corporation and the forum state, on the ground that the corporation's registration to do business in the state is deemed consent to general jurisdiction there.

In this case, the Georgia Supreme Court asserted jurisdiction over Petitioner, a Delaware corporation headquartered in Ohio, in a suit by Respondent, a Florida plaintiff, for injuries in a Florida motor vehicle accident that allegedly resulted from the failure of a tire Petitioner designed in Ohio, manufactured in Arkansas, and allegedly injected into the stream of commerce. It is uncontested that Petitioner is not subject to personal jurisdiction in Georgia under the ordinary specific and general jurisdiction standards of *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), and *Daimler AG v. Bauman*, 571 U.S. 117 (2014). The court below nonetheless upheld the assertion of jurisdiction, reasoning that Petitioner's registration to transact business in Georgia is statutorily deemed consent to general jurisdiction there. The court expressly recognized that subjecting Petitioner to general jurisdiction in a state where it is not "at home" was in "tension" with this Court's recent cases emphasizing

the constitutional limits on general jurisdiction, but held that it was bound by a century-old decision of this Court that, under pre-*International Shoe* doctrine, permitted corporate registration to be treated as consent to general jurisdiction. *See Pa. Fire Ins. Co. of Phila. v. Gold Issue Mining & Milling Co.*, 243 U.S. 93 (1917). This Court's resolution of the question presented is urgently necessary for several reasons.

First, the issue is widely recurring and has divided state high courts and federal circuit courts. At least eight such courts, and the majority of all courts to address the issue, have held that basing general jurisdiction on deemed consent via registration statutes does not comport with due process. Additional such courts have construed state statutes narrowly to avoid that constitutional difficulty. But five state high courts and federal circuit courts hold that consent to general jurisdiction via registration is consistent with due process—though the decision below is the first to do so after the articulation of the limits on general jurisdiction in *Daimler* and *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011). And yet other courts have noted that the law remains unclear and the lower courts divided.

Second, decisions like the one below would effectively nullify many of the limits on personal jurisdiction identified in this Court's recent cases. It would produce precisely the result *Daimler* criticized as "unacceptably grasping," by "approv[ing] the exercise of general jurisdiction in every State in which a corporation engages in a substantial,

continuous, and systematic course of business." 571 U.S. at 138 (internal quotation marks omitted). And it would likewise permit states to end-run the specific-jurisdiction limits of cases like *Bristol-Myers Squibb Co. v. Superior Court of California*, 137 S. Ct. 1773 (2017), by asserting unlimited jurisdiction over all corporations registered to do business in the state.

Third, for courts believing—as the Georgia Supreme Court did—that *Pennsylvania Fire* has not already been abrogated by this Court's subsequent jurisprudence, there is no substitute for this Court's intervention. The court below believed its hands were tied unless and until this Court formally overrules *Pennsylvania Fire*, because of this Court's instruction that, even where a decision of this Court appears clearly contrary to subsequent authority, the lower courts must "leav[e] to this Court the prerogative of overruling its own decisions." *Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 484 (1989).

Fourth, pre-*International Shoe* precedent cannot support treating corporate registration as consent to general jurisdiction. "[A]ll assertions of state-court jurisdiction must be evaluated according to the standards set forth in *International Shoe* and its progeny," *Shaffer v. Heitner*, 433 U.S. 186, 212 (1977), and *International Shoe* "cast . . . aside" the "purely fictional" consent-based reasoning of prior cases, *Burnham v. Superior Court of Cal.*, 495 U.S. 604, 618 (1990) (plurality op.). Under those standards, *Pennsylvania Fire* is fundamentally inconsistent with the Court's recent general jurisdiction cases. Moreover, even apart from those cases, *Pennsylvania Fire* rested on two long-since-

repudiated notions: that states have unlimited authority to exclude out-of-state corporations from doing business within their jurisdictions; and that this greater power to exclude them includes the lesser power to condition their presence on compelled consent to personal jurisdiction. *See* 243 U.S. at 95-96; *Hess v. Pawloski*, 274 U.S. 352, 355-57 (1927). Under modern constitutional law, the Commerce Clause ordinarily does *not* permit states to exclude out-of-state corporations, and regardless, conditioning a corporation's entry on its consent to be sued on claims wholly unrelated to its in-state activity would plainly be an unconstitutional condition.

Finally, this case is a clean vehicle for addressing the question presented. The Georgia Supreme Court squarely decided the issue on which the lower courts are split, recognized that its decision was "in tension" with this Court's cases, and made clear that there were no available alternative grounds that would pose any potential obstacle to deciding the issue in controversy. This case also well exemplifies the forum-shopping opportunities and discrimination against out-of-state corporations that the *Pennsylvania Fire* rule creates. The Court thus should take this prime opportunity to clarify that *Pennsylvania Fire* is no longer the law.

STATEMENT OF THE CASE

As the Georgia Supreme Court noted, the relevant "underlying facts and procedural history of this case" are "undisputed." Pet. App. 2a. Respondent Tyrance McCall, a Florida resident, was a passenger in a car that was involved in a single-car accident in Florida

in 2016. *Id.* McCall brought product liability and negligence claims in Georgia state court against the driver of the car, the used car dealership that sold the car to the driver, and Petitioner Cooper Tire & Rubber Company (Cooper). *Id.* The complaint alleged, inter alia, that the Florida accident resulted from the failure of a tire that Cooper manufactured in Arkansas in 2012 and "placed into the stream of commerce." Pet. App. 42a.

Cooper, a Delaware corporation with its principal place of business in Ohio, moved to dismiss for lack of personal jurisdiction. Pet. App. 2a.[1] After jurisdictional discovery, the trial court granted the motion, holding that (1) Cooper "showed that it is not at home in Georgia, for the purposes of general personal jurisdiction," and (2) "no nexus exists between [Cooper's] activities in Georgia and Plaintiff's claims against it, for the purposes of specific jurisdiction." Pet. App. 33a. McCall sought rehearing, arguing that Georgia law made Cooper's compliance with the state's registration statute for foreign corporations equivalent to consent to general jurisdiction in Georgia. The trial court rejected this argument, explaining that state laws that violate the federal Constitution are void, and that it "s[aw] no reason to modify or abrogate its order dismissing Cooper for lack of personal jurisdiction." Pet. App. 36a-37a. The trial court did, however, permit McCall to take an interlocutory appeal.

The Georgia Court of Appeals reversed. The court acknowledged Cooper's argument that treating

---

[1] The other two defendants—both Georgia domiciliaries—did not contest personal jurisdiction.

corporate registration as consent to general jurisdiction "violates the Due Process Clause and the Commerce Clause of the United States Constitution," but deemed itself bound to uphold personal jurisdiction by the Georgia Supreme Court's decision in *Allstate Insurance Co. v. Klein*, 422 S.E.2d 863 (1992). Pet. App. 31a n.1. The court explained that, under *Klein*, "a foreign corporation 'authorized to do or transact business in this state at the time a claim arises'" was subject to general personal jurisdiction without regard to minimum contacts. Pet. App. 30a (quoting *Klein*, 422 S.E.2d at 865).

The Georgia Supreme Court granted discretionary review "to reconsider" *Klein*, Pet. App. 1a, and affirmed. It recognized that *Klein* was "in tension with" this Court's recent general jurisdiction cases, but concluded that *Klein* remains good law under this Court's century-old decision in *Pennsylvania Fire*. *Id.*

As the court explained, *Pennsylvania Fire* held that it is constitutional for states to require out-of-state corporations to consent to general jurisdiction as a condition of doing business in a state, so long as "a state statute notifies an out-of-state corporation that by registering . . . [it] has consented to general personal jurisdiction there." Pet. App. 6a (citing *Pa. Fire*, 243 U.S. at 95-96). The court acknowledged that *Pennsylvania Fire* was decided under the regime of *Pennoyer v. Neff*, 95 U.S. 714 (1877), which has been supplanted by *International Shoe* and its progeny. Pet. App. 4a-8a. And it further recognized the "tension" arising from this Court's recent cases holding that a "corporation will ordinarily be subject to general jurisdiction in only one or two states—the state where it is incorporated and, if different, the

state where its principal place of business is located." Pet. App. 3a, 9a (citing "*Goodyear* and its progeny"); *see also Daimler*, 571 U.S. at 122 (general jurisdiction is proper only where a defendant is "essentially at home in the forum State" (internal quotation marks omitted)). But it reasoned that *Pennsylvania Fire* remains binding absent this Court's intervention: "Unless and until the United States Supreme Court overrules *Pennsylvania Fire*, that federal due process precedent remains binding on this Court and lower federal courts." Pet. App. 20a.

On that understanding, the court held, Cooper would be deemed to have consented to general personal jurisdiction in Georgia. Although the Georgia registration statute itself "does not expressly notify out-of-state corporations" that they will be deemed to have so consented, the decision in *Klein* notifies such corporations "that their corporate registration will be treated as consent." Pet. App. 19a-20a.

REASONS FOR GRANTING THE PETITION

I. THE DECISION BELOW REVIVES AN ENTRENCHED SPLIT BY CREATING A CONFLICT WITH EVERY OTHER POST-*DAIMLER* DECISION BY A STATE HIGH COURT OR FEDERAL CIRCUIT COURT.

The Georgia Supreme Court's decision in this case tees up a lower-court conflict of recognized importance, over whether due process permits states to treat compliance with corporate registration statutes as consent to general personal jurisdiction. Just last Term, Justice Gorsuch noted that "[s]ome courts read *International Shoe* and the cases that

follow as effectively foreclosing [this consent-by-registration theory of jurisdiction], while others insist it remains viable." *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1037 n.3 (2021) (Gorsuch, J., concurring in the judgment). Courts across the country have recognized the division of authority. *E.g.*, *Genuine Parts Co. v. Cepec*, 137 A.3d 123, 144-45 (Del. 2016) (while "some courts have maintained in *Daimler*'s wake that implied consent by virtue of simple registration to do business remains a constitutionally valid basis for general jurisdiction over a nonresident corporation," "the majority of federal courts that have considered the issue" disagree); *State ex rel. Norfolk S. Ry. Co. v. Dolan*, 512 S.W.3d 41, 52 (Mo. 2017) (recognizing "a split of authority as to whether a registration statute constitutionally can require consent to general jurisdiction in order to register to do business in a state"); *AM Tr. v. UBS AG*, 681 F. App'x 587, 588 (9th Cir. 2017) ("It is an open question whether, after *Daimler*, a state may require a corporation to consent to general personal jurisdiction as a condition of registering to do business in the state."). At the time of these opinions, only lower state courts and federal district courts had held, post-*Daimler*, that due process permits states to treat compliance with corporate registration statutes as consent to general personal jurisdiction. By contrast, post-*Daimler*, state high courts and federal appellate courts consistently had held either that due process prohibits, or that state statutes did not authorize, this jurisdictional theory. In becoming the first such court to uphold this jurisdictional theory post-*Daimler*, the Georgia Supreme Court has created a

pressing need for this Court to resolve this entrenched, but newly important, division of authority.

All told, eight state high courts or federal appellate courts—Alabama, California, Delaware, Montana, Nebraska, Ohio, Wisconsin, and the Sixth Circuit—hold that general jurisdiction based on deemed consent via corporate registration does not satisfy due process. In addition to the Georgia Supreme Court's decision below, four more such courts—the Kansas and Minnesota Supreme Courts, and the Eighth and Tenth Circuits—held, prior to *Daimler*, that due process is satisfied, in decisions that certain lower courts have continued to follow. This Court's guidance is needed.

1. Even before this Court's recent decisions confirming that general personal jurisdiction is limited to states where a corporation is "essentially at home," courts had divided over whether a state violates due process by exercising general jurisdiction over an out-of-state corporation based on the extraction of purported "consent" as the price of registering to do business. Some courts held such assertions of jurisdiction impermissible. For example, the Ohio Supreme Court held in 1976 that compliance with the state's registration statute "does not eliminate or abolish the due-process requirement that the necessary minimum contacts exist in order for Ohio courts to acquire in personam jurisdiction." *Wainscott v. St. Louis-San Francisco Ry. Co.*, 351 N.E.2d 466, 468 (Ohio 1976). The Sixth Circuit agreed, holding that "the mere designation of an agent in compliance with the service-of-process statute does not automatically eliminate the

requirement of minimum contacts to establish personal jurisdiction." *Pittock v. Otis Elevator Co.*, 8 F.3d 325, 329 (6th Cir. 1993); *cf. Wilson v. Humphreys (Cayman) Ltd.*, 916 F.2d 1239, 1245 (7th Cir. 1990) (construing a state registration statute not to constitute consent to general personal jurisdiction because to do otherwise "would render [the statute] constitutionally suspect").

By contrast, other circuits and state high courts concluded that *Pennsylvania Fire* and its progeny remained valid and held that consent to general jurisdiction by registration satisfied due process. *Rykoff-Sexton, Inc. v. Am. Appraisal Assocs., Inc.*, 469 N.W.2d 88, 89-91 (Minn. 1991); *Merriman v. Crompton Corp.*, 146 P.3d 162, 174-77 (Kan. 2006); *Sternberg v. O'Neil*, 550 A.2d 1105, 1110-12 (Del. 1988); *Klein*, 422 S.E.2d at 865 n.3; *Sharkey v. Wash. Nat'l Ins. Co.*, 373 N.W.2d 421, 425-26 (S.D. 1985); *Bane v. Netlink, Inc.*, 925 F.2d 637, 640-41 (3d Cir. 1991) (Pennsylvania registration statute); *Knowlton v. Allied Van Lines, Inc.*, 900 F.2d 1196, 1199-1200 (8th Cir. 1990) (Minnesota registration statute); *Budde v. Kentron Haw., Ltd.*, 565 F.2d 1145, 1147-49 (10th Cir. 1977) (Colorado registration statute); *cf. King v. Am. Fam. Mut. Ins. Co.*, 632 F.3d 570, 577-78 (9th Cir. 2011) (state law did not make registration tantamount to consent under Montana law, but if it did, due process would pose no barrier).

2. In the wake of this Court's recent clarification in *Goodyear* and *Daimler* that general jurisdiction exists only where a corporation is "at home," the validity of consent as a condition of corporate registration—which would effectively nullify the at-home limit of *Goodyear* and *Daimler*—has taken on

greater importance. And, until the decision below, every state supreme court to decide the issue post-*Daimler* held that basing general personal jurisdiction on "consent" extracted as the price of registering to do business is incompatible with due process.

For example, the Nebraska Supreme Court held that treating "registration to do business in Nebraska as implied consent to personal jurisdiction would exceed the due process limits prescribed in [*Goodyear*] and [*Daimler*]." *Lanham v. BNSF Ry. Co.*, 939 N.W.2d 363, 371 (Neb. 2020). As the court explained, every state in the union requires registration as a condition of doing business. *Id.* Accordingly, "consent by registration would permit a corporation to be subject to general jurisdiction in every state in which it does business," which would be "the same type of 'global reach' jurisdiction the U.S. Supreme Court expressly rejected as being inconsistent with due process." *Id.*

The Delaware Supreme Court reached the same conclusion, holding that "any use of the service of process provision for registered foreign corporations must involve an exercise of personal jurisdiction consistent with the Due Process Clause of the Fourteenth Amendment." *Cepec*, 137 A.3d at 127. In reaching this conclusion, that court abrogated its prior decision in *Sternberg*, explaining that the case's "more far-reaching interpretation of [the state registration statute] collides directly with the U.S. Supreme Court's holding in *Daimler*, and subjects [the statute] to invalidation." *Id.*

The high courts of Alabama, California, Montana, and Wisconsin are also in accord. *See Facebook, Inc. v. K.G.S.*, 294 So. 3d 122, 133 (Ala. 2019) (rejecting argument that "Facebook is subject to general jurisdiction in Alabama because it is registered to do business in Alabama" as "the Supreme Court made it abundantly clear that any precedent that supported the notion that the exercise of general jurisdiction could be based on a simple assertion that an out-of-state corporation does business in the forum state has become obsolete"); *Bristol-Myers Squibb Co. v. Superior Court*, 377 P.3d 874, 884 (Cal. 2016) ("[A] corporation's appointment of an agent for service of process, when required by state law, cannot compel its surrender to general jurisdiction for disputes unrelated to its California transactions."), *rev'd on other grounds*, 137 S. Ct. 1773; *DeLeon v. BNSF Ry. Co.*, 426 P.3d 1, 8 (Mont. 2018) ("[E]xtending general personal jurisdiction over all foreign corporations that registered to do business in Montana and subsequently conducted in-state business activities would extend our exercise of general personal jurisdiction beyond the narrow limits recently articulated by the Supreme Court."); *Segregated Acct. of Ambac Assurance Corp. v. Countrywide Home Loans, Inc.*, 898 N.W.2d 70, 80-82 (Wis. 2017) (declining to interpret state registration statute to constitute consent because "[t]reating general jurisdiction as a 'duty' of domestic corporations that extends to all registered foreign corporations by default would extend Wisconsin's exercise of general jurisdiction beyond the tapered limits recently described by the Supreme Court").

Still other courts have reached the same result by construing registration statutes to avoid federal due process concerns. For example, the Second Circuit held that registration pursuant to Connecticut's statute did not constitute consent to general personal jurisdiction in large part because, under a contrary result, "every corporation would be subject to general jurisdiction in every state in which it registered, and *Daimler*'s ruling would be robbed of meaning by a back-door thief." *Brown v. Lockheed-Martin Corp.*, 814 F.3d 619, 640 (2d Cir. 2016); *see also Waite v. All Acquisition Corp.*, 901 F.3d 1307, 1322 n.5 (11th Cir. 2018) (conclusion that Florida law does not treat registration as consent to general jurisdiction "is reinforced by our concerns that an overly broad interpretation . . . might be inconsistent with the Supreme Court's decision in *Daimler*, which cautioned against 'exorbitant exercises' of general jurisdiction"); *Aybar v. Aybar*, __ N.E.3d __, 2021 WL 4596367, at *6 (N.Y. Oct. 7, 2021) (treating "the evolution of Supreme Court case law" on general jurisdiction as key to assessing "the *effect*" of service of process under the state's registration statute as a matter of state law); *Figueroa v. BNSF Ry. Co.*, 390 P.3d 1019, 1022 (Or. 2017) (listing "due process limitations on exercising personal jurisdiction over foreign corporations" as supporting its construction of Oregon statute as not treating registration as consent to general personal jurisdiction); *Chavez v. Bridgestone Ams. Tire Operations, LLC*, __ P.3d __, 2021 WL 5294978 (N.M. Nov. 15, 2021) ("Considering the constitutional constraints involved, we conclude that it would be particularly inappropriate to infer a foreign corporation's consent to general personal

jurisdiction in the absence of clear statutory language expressing a requirement of this consent."). Even in Missouri—whose registration statute gave rise to *Pennsylvania Fire* itself—the state supreme court recently held that registration does not constitute consent to general jurisdiction, and that "[t]o the extent the holdings or dicta in prior cases suggest otherwise, they . . . should no longer be followed." *Dolan*, 512 S.W.3d at 52-53.

Despite this trend, pre-*Daimler* precedents treating compliance with registration statutes as valid consent to general personal jurisdiction have continued to be followed in some jurisdictions. *See, e.g.*, *Kearns v. N.Y. Cmty. Bank*, 400 P.3d 182, 2017 WL 1148418, at *5 (Kan. Ct. App. 2017) ("Consenting to jurisdiction in Kansas by applying to do business in the state does not violate the requirements of due process." (citing *Merriman*, *supra*)); *Freedom Transp., Inc. v. Navistar Int'l Corp.*, No. 18-cv-2602, 2019 WL 4689604, at *20 (D. Kan. Sept. 26, 2019) (following *Merriman* and *Budde*, *supra*, and holding that "absent authority holding that *Pennsylvania Fire* . . . ha[s] been overruled, this Court concludes that the Kansas registration statute comports with the Due Process Clause in requiring consent to general personal jurisdiction," even though "Navistar may be correct that consent by registration conflicts with the spirit of *Daimler*"); *Am. Dairy Queen Corp. v. W.B. Mason Co.*, No. 18-cv-693, 2019 WL 135699, at *4-6 (D. Minn. Jan. 8, 2019) (*Knowlton* and *Rykoff-Sexton*, *supra*, remain good law even though "persuasive arguments can be made that the holding of *Knowlton* is not reconcilable with the narrowing of the boundaries of due process that govern an analysis

of minimum contacts and general personal jurisdiction under *Goodyear* and *Daimler*"). To be sure, these cases were from lower courts, rather than state high courts or federal circuit courts.

In the decision below, the Georgia Supreme Court became the first state high court or federal circuit court to reach the same result post-*Daimler*, following prior Georgia precedent that general jurisdiction based on compliance with a registration statute comports with due process. Pet. App. 1a-2a (citing *Klein*, 422 S.E.2d at 863). The court recognized that this conclusion was "in tension with a recent line of United States Supreme Court cases addressing when state courts may exercise general personal jurisdiction over out-of-state corporations in a manner that accords with the due process requirements of the United States Constitution." Pet. App. 1a. But it held that under *Pennsylvania Fire* it was not free to hold that consent to general jurisdiction via registration violates due process. Pet. App. 20a.

3. In short, this well-recognized split is now clearly intractable without this Court's intervention. Until the Georgia Supreme Court's decision below, it remained possible that—notwithstanding the numerous courts adhering to pre-*Daimler* decisions approving consent to general jurisdiction via registration—eventually all state high courts and federal appellate courts would converge post-*Daimler* on the holding that due process prohibits this basis for jurisdiction. That is no longer possible, and the Georgia Supreme Court's reasoning—that *Pennsylvania Fire* compels its conclusion—only

increases the chances that other jurisdictions will follow Georgia.

While decisions in cases currently pending before the Pennsylvania Supreme Court in *Mallory v. Norfolk Southern Railway Co.*, No. 3 EAP 2021 (reviewing decision finding consent via registration unconstitutional) and before the Third Circuit in *Ruffing v. Wipro, Ltd.*, No. 21-2424 (same), may deepen this split, this Court's intervention is needed regardless of whether Georgia remains a post-*Daimler* outlier or whether other jurisdictions are persuaded to join it. The weight of authority recognizes that deemed consent pursuant to state registration statutes cannot, consistent with due process, support general personal jurisdiction. State high courts in Alabama, California, Delaware, Montana, Nebraska, Ohio, and Wisconsin have reached this conclusion, as has the Sixth Circuit. And federal due process limits have figured heavily in the interpretation of state statutes by numerous other courts, including the high courts of New Mexico, New York, and Oregon, as well as the Second and Eleventh Circuits. But the Georgia Supreme Court's decision below joins a significant, albeit pre-*Daimler*, minority camp including Kansas, Minnesota, and the Eighth and Tenth Circuits. Only this Court can bring the clarity and predictability that is critical in jurisdictional matters such as this one. *See Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010). Certiorari should be granted.

II. THE DECISION BELOW IS WRONG AND SHOULD BE REVERSED.

This Court's review is also necessary to correct the serious error committed below. Under the Georgia Supreme Court's decision, any plaintiff with a claim arising anywhere in the world can sue Cooper—or any other corporation registered in Georgia—in the Georgia courts without due process objection. Moreover, because every state requires foreign corporations to register to do business, every other state could, if the decision below were correct, assert similar jurisdiction, with respect to every corporation doing business in the state, over claims entirely unrelated to the state. Due process does not permit that result.

As this Court long ago explained, "all assertions of state-court jurisdiction must be evaluated according to the standards set forth in *International Shoe* and its progeny," and any prior decisions that do not satisfy those standards "are overruled." *Shaffer*, 433 U.S. at 212 & n.39. In particular, as *Burnham* recognized, personal jurisdiction can no longer be based on the "fictional" notion that a corporation consents to personal jurisdiction by "appoint[ing] an in-state agent upon whom process could be served as a condition of transacting business within [the state's] borders." 495 U.S. at 617-18 (plurality op.).

The decision below plainly cannot satisfy the standards of *International Shoe* and its progeny. Indeed, it is directly contrary to the careful limits on general jurisdiction over corporations delineated by *Goodyear* and *Daimler*. *Daimler* expressly rejected, as "unacceptably grasping," the proposition that due

process would permit "the exercise of general jurisdiction in every State in which a corporation engages in a substantial, continuous, and systematic course of business." 571 U.S. at 138 (internal quotation marks omitted). Yet that is precisely what the decision below would authorize, in any state that chooses to treat corporate registration as consent to general jurisdiction.

Likewise, in *Bristol-Myers Squibb*, this Court held that for specific jurisdiction, even a defendant's "extensive forum contacts" do not permit relaxation of the "requisite connection between the forum and the specific claims at issue." 137 S. Ct. at 1781. Under the decision below, however, even the far-from-extensive contacts that suffice to cause a corporation to register would be sufficient not merely to relax but to entirely bypass the need for any connection between the forum and the specific claims.[2]

Nor can *Pennsylvania Fire* support a contrary result. Even aside from this Court's express rejection, in *Shaffer* and *Burnham*, of such pre-*International Shoe* case law on personal jurisdiction, the foundations of *Pennsylvania Fire* have more generally been repudiated by modern constitutional law. As this Court explained, "the ground on which" *Pennsylvania Fire* rested was (1) "[t]he power of a state to exclude foreign corporations," and (2) the idea that this greater power to exclude them carried

---

[2] Indeed, the only reason the specific jurisdiction question even arose in *Bristol-Myers Squibb* was that the California Supreme Court had *rejected* the idea that compliance with a registration statute could constitutionally be deemed to be consent to general jurisdiction. *See* 377 P.3d at 884.

the "implication" of the lesser power to condition their presence on "consent" to waiving their personal jurisdiction rights. *See Hess*, 274 U.S. at 355-57 (citing *Pa. Fire*, 243 U.S. at 96). Neither premise remains sound.

As to the first premise, under this Court's modern Dormant Commerce Clause cases, a state is *not* free to exclude out-of-state corporations. A state ordinarily may not "discriminate[] against interstate commerce," and "'discrimination' simply means differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter." *Or. Waste Sys., Inc. v. Dep't of Env't Quality of Or.*, 511 U.S. 93, 99 (1994) (internal quotation marks omitted). State action that does discriminate in this way "is *per se* invalid, save in a narrow class of cases in which the [government] can demonstrate, under rigorous scrutiny, that it has no other means to advance a legitimate local interest." *C & A Carbone, Inc. v. Town of Clarkstown*, 511 U.S. 383, 392 (1994); *see Tenn. Wine & Spirits Retailers Ass'n v. Thomas*, 139 S. Ct. 2449, 2461 (2019) ("[I]f a state law discriminates against . . . nonresident economic actors, the law can be sustained only on a showing that it is narrowly tailored to advance a legitimate local purpose." (brackets and internal quotation marks omitted)). A state ban on foreign corporations (but not domestic corporations) transacting business within the state would be just such a discriminatory law and could not survive strict scrutiny.

Regardless, the second premise is also invalid. Even if states *could* constitutionally prohibit out-of-state corporations from transacting business within

their borders, that would not permit them to condition such corporations' right to do so on submission to otherwise-unconstitutional exercises of general personal jurisdiction over claims unrelated to the corporation's in-state activity. Under the unconstitutional conditions doctrine, "the government may not deny a benefit to a person because he exercises a constitutional right." *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 604 (2013) (internal quotation marks omitted). This principle prevents the government from "produc[ing] a result which it could not command directly" by using conditional benefits to "penalize[] and inhibit[]" the exercise of constitutional rights. *Perry v. Sindermann*, 408 U.S. 593, 597 (1972) (internal quotation marks omitted); *see Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.*, 570 U.S. 205, 214-15 (2013) (government programs that "leverage [benefits] to regulate [constitutional rights] outside the contours of the program itself" violate the unconstitutional conditions doctrine). This Court has applied the doctrine to a range of benefits (from tax exemptions to welfare benefits to public employment to land use permits) and a variety of constitutional rights (from free speech, to takings, to the right to travel, to double jeopardy protections). *See Perry*, 408 U.S. at 597; *Koontz*, 570 U.S. at 604; *Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825, 838 (1987); *Speiser v. Randall*, 357 U.S. 513, 518 (1958); *Green v. United States*, 355 U.S. 184, 193-94 (1957). Accordingly, even if a state could refuse a foreign corporation permission to transact business altogether, it could not condition such permission on the waiver of constitutional due process rights not to

be haled into court on claims that are *unrelated* to its contacts with the forum state—a condition that would flunk any formulation of the unconstitutional-conditions doctrine. *See, e.g.*, *Nollan*, 483 U.S. at 838 (finding a condition unconstitutional because it was not "reasonably related to the public need or burden" created by the activity conditionally permitted).

It is also worth noting that *Pennsylvania Fire* does not rest on any "firmly established principles of personal jurisdiction in American tradition" of the kind that have been held to justify the (otherwise-anomalous) exercise of general jurisdiction over individuals based solely on service in the forum state. *See Burnham*, 495 U.S. at 610 (plurality op.). At the time the Fourteenth Amendment was adopted, there was no tradition whatsoever of exercising jurisdiction over a corporation for out-of-state claims based on its registration to do, or transaction of, business in a state. *See* Philip B. Kurland, *The Supreme Court, the Due Process Clause, and the in Personam Jurisdiction of State Courts*, 25 U. Chi. L. Rev. 569, 577-86 (1958).

III. THIS CASE IS A SUITABLE VEHICLE FOR RESOLVING THIS IMPORTANT QUESTION.

This case presents a clean vehicle to determine whether a state can constitutionally treat corporate registration as consent to general personal jurisdiction. In the decision below, the Georgia Supreme Court confirmed that the relevant "underlying facts and procedural history of this case" are "undisputed." Pet. App. 2a. It confirmed that the federal constitutional issue was "adequately

preserved" and squarely presented, and then expressly resolved it. Pet. App. 3a n.1. That resolution was necessary because the trial court had found that no basis for specific personal jurisdiction existed, Pet. App. 33a, and McCall did not challenge that finding on appeal, instead arguing only a consent-based theory of general jurisdiction to the Georgia Supreme Court. Indeed, the Georgia Supreme Court further confirmed that, as a matter of state law, specific personal jurisdiction was unavailable. Pet. App. 21a. In other words, the record and decision below eliminate any potential alternative basis for affirmance. In combination, these factors ensure that this case will allow the Court to cleanly resolve the critical question presented.

There is a pressing need for the Court to do so. The issue has been fully ventilated in both state and federal courts. *See* Part I, *supra*. Moreover, the interaction of state and federal law reflected in those courts' decisions make it unusually important for this Court to take up the question without delay. Because the Georgia Supreme Court has now concluded (as have some lower courts) that *Pennsylvania Fire* must remain in force until this Court expressly overrules it, this is not a situation where courts are likely to converge on a single answer, or even feel free to do so, absent this Court's intervention. Indeed, some courts acknowledge that their decisions are out of step with this Court's recent cases, but feel constrained to follow *Pennsylvania Fire*, and that view may grow now that a state supreme court has adopted it. *See supra* at 7-8. Only this Court can resolve that tension. Moreover, some courts have narrowly

construed state law on this issue to avoid the evident federal constitutional concerns. *See supra* at 13-14. If this Court were to conclude, contrary to Cooper's position, that assertions of jurisdiction like Georgia's here are constitutionally permissible, it would permit those courts to interpret state law free from federal constitutional doubt.

This Court's review is also necessary because so long as Georgia and other jurisdictions continue to assert general jurisdiction over corporate registrants, the opportunities for "unacceptably grasping" assertions of personal jurisdiction will abound. *See Daimler*, 571 U.S. at 138. So too will opportunities for forum shopping. Indeed, the decision below permits any corporation registered to do business in Georgia—essentially, any large corporation, *see generally* Georgia Corporations Division, *Business Search*, https://ecorp.sos.ga.gov/BusinessSearch (last visited Dec. 16, 2021)—to be sued in Georgia on *any* claim arising *anywhere*, *anytime* the plaintiff concludes, for *any* reason, that Georgia would provide a more advantageous forum than those allowed by this Court's recent decisions.

The serious consequences of the Georgia Supreme Court's erroneous constitutional ruling provide yet another reason for this Court to step in.

CONCLUSION

The petition for a writ of certiorari should be granted.

December 20, 2021

Respectfully submitted,

HASHIM M. MOOPPAN
JONES DAY
51 Louisiana Ave., NW
Washington, D.C. 20001

CHRISTOPHER S. ANULEWICZ
BALCH & BINGHAM LLP
30 Ivan Allen Jr. Blvd.
Suite 700
Atlanta, GA 30308

MEIR FEDER
Counsel of Record
JONES DAY
250 Vesey Street
New York, NY 10281
(212) 326-3939
mfeder@jonesday.com

MATTHEW J. RUBENSTEIN
JONES DAY
90 South 7th Street
Suite 4950
Minneapolis, MN 55402

Counsel for Petitioner