No. 21-926

# In The
# Supreme Court of the United States

COOPER TIRE & RUBBER CO., INC.,

*Petitioner,*

v.

TYRANCE MCCALL,

*Respondent.*

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

## BRIEF OF ATLANTIC LEGAL FOUNDATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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## INTEREST OF THE *AMICUS CURIAE* [1]

Established in 1977, the Atlantic Legal Foundation is a national, nonprofit, nonpartisan, public interest law firm whose mission is to advance the rule of law and civil justice by advocating for individual liberty, free enterprise, property rights, limited and efficient government, sound science in judicial and regulatory proceedings, and school choice. With the benefit of guidance from the distinguished legal scholars, corporate legal officers, private practitioners, business executives, and prominent scientists who serve on its Board of Directors and Advisory Council, the Foundation pursues its mission by participating as *amicus curiae* in carefully selected appeals before the Supreme Court, federal courts of appeals, and state supreme courts. *See* atlanticlegal.org.

* * *

Imposing limits on the ability of state and federal courts to assert personal jurisdiction over out-of-state defendants is fundamental to due process—what the Court famously described in *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945), as "fair play and substantial justice." Resolution of the question presented by this case—whether an out-of-state corporate defendant's registration to do business in a

[1] Petitioner's and Respondent's counsel of record were provided timely notice in accordance with Supreme Court Rule 37.2(a), and have consented to the filing of this brief. In accordance with Supreme Court Rule 37.6, *amicus curiae* Atlantic Legal Foundation certifies that no counsel for a party authored this brief in whole or part, and that no party or counsel other than the *amicus curiae* and its counsel made a monetary contribution intended to fund preparation or submission of this brief.

State should be deemed consent to that State's general jurisdiction—is critical to due process and civil justice. The Court needs to address this question and do explicitly what *International Shoe* and its progeny already have done implicitly: overrule *Pennsylvania Fire Insurance Co. of Philadelphia v. Gold Issue Mining and Milling Co.,* 243 U.S. 93 (1917). Holding that *Pennsylvania Fire* no longer is good law is essential for preserving the force and effect of the Court's recent, finely tuned jurisprudence on the scope and application of both general and specific personal jurisdiction. *See*, *e.g.*, *Bristol-Myers Squibb Co. v. Super. Ct. of Calif.*, 137 S. Ct. 1773 (2017); *Daimler AG v. Bauman*, 571 U.S. 117 (2014); *Goodyear Dunlop Tires Ops., S.A. v. Brown*, 564 U.S. 915 (2011); *see also Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017 (2021).

In this brief the Atlantic Legal Foundation discusses why explicitly overruling *Philadelphia Fire* would be consistent with the Court's *stare decisis* principles, and also why allowing the Georgia Supreme Court's decision and *Pennsylvania Fire* to stand would trigger a new wave of forum shopping that undermines both due process and interstate federalism.

## SUMMARY OF ARGUMENT

This appeal calls upon the Court to decide whether *Pennsylvania Fire* is still good law. The Court held in that 105-year-old decision that due process is not violated by construing a corporation's registration to do business in a State as consent to the State's general jurisdiction. In its opinion below, the Georgia

Supreme Court reaffirmed its sweeping pre-*Goodyear*/*Daimler* holding that "Georgia courts may exercise general personal jurisdiction over any out-of-state corporation that is authorized to do or transact business in this state at the time a claim arises." App. 1a (quoting *Allstate Insurance Co. v. Klein*, 262 Ga. 599, 601 (1992)). The court acknowledged that this "general-jurisdiction holding is 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." *Id.* But the court asserted that its holding "does not violate federal due process under *Pennsylvania Fire* . . . a decision that the Supreme Court has not overruled." *Id.* Inviting this Court to revisit *Pennsylvania Fire*, the state supreme court submitted that "[u]nless and until the United States Supreme Court overrules *Pennsylvania Fire*, that federal due process precedent remains binding on this Court and lower federal courts." *Id.* 20a.

The petition for a writ of certiorari argues persuasively that subsequent decisions of this Court have abrogated *Pennsylvania Fire*. *See* Pet. at 3-5, 18-22. But the opinion below, as the only post-*Daimler* state supreme court decision holding that *Pennsylvania Fire* has not been superseded, *see id.* at 3, 12, 16, both deepens and reinvigorates the already mature split of authority on whether implied-consent-by-registration violates due process.

To dispel any doubt that *International Shoe* and its progeny effectively have overruled *Pennsylvania Fire*, and to set straight overreaching state (and federal) courts that still cling to *Pennsylvania Fire*, the Court should grant certiorari and explicitly overrule this pre-*International Shoe* relic. Doing so would be consistent with the Court's *stare decisis* principles: (i) *Pennsylvania Fire* is egregiously wrong; (ii) it continues to have significant adverse jurisprudential and real-world consequences; and (iii) any reliance interests in preserving it are *de minimis*.

Expressly overruling *Pennsylvania Fire* also would deter the new and expanded forum-shopping opportunities that the Georgia Supreme Court's opinion, if allowed to stand, is likely to induce. Relying exclusively on state registration to hale an out-of-state corporation into a plaintiff-friendly trial court in a State that is not the defendant's home, and that has no connection with the plaintiff's cause of action, is a forum shopper's dream, but deprives the defendant of due process and undermines interstate federalism. Ensuring due process, and by so doing, preserving interstate federalism, are the very reasons why this Court repeatedly has addressed and refined the criteria for personal jurisdiction. The Court needs to revisit this crucial subject once more—and in this closely watched case—to eliminate the gaping jurisdictional loophole that plaintiff-friendly States such as Georgia contend *Pennsylvania Fire* continues to offer plaintiffs in the absence of a Supreme Court decision that explicitly overrules that pre-*International Shoe* decision.

## ARGUMENT

### The Court Should Grant Review and Explicitly Overrule *Pennsylvania Fire*

#### A. Overruling *Pennsylvania Fire* comports with the Court's *stare decisis* principles

In *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020), Justice Kavanaugh wrote a separate opinion that consolidates the Court's "varied and somewhat elastic *stare decisis* factors into three broad considerations that . . . together provide a structured methodology and roadmap for determining whether to overrule an erroneous constitutional precedent." *Id.* at 1414, 1415 (Kavanaugh, J., concurring in part). *Pennsylvania Fire* satisfies each of these interrelated *stare decisis* criteria, and therefore, should be explicitly overruled.

1. "*First*, is the prior decision not just wrong, but grievously or egregiously wrong?" *Id.* at 1414. The answer is yes. *Pennsylvania Fire* is a case that has been "unmasked as egregiously wrong based on later legal . . . understandings or developments." *Id.*

More specifically, *Pennsylvania Fire*'s holding that a corporation can be sued in a State where it merely is licensed to do business, rather than "at home," for any and all claims arising anywhere, patently conflicts with the narrow limits on general personal jurisdiction established by *Goodyear* and *Daimler*.

The Court explained in *Daimler* that

> [s]ince *International Shoe*, "specific jurisdiction has become the centerpiece of modern jurisdiction theory, while general jurisdiction [has played] a reduced role."

571 U.S. at 128 (quoting *Goodyear*, 564 U.S. at 925).

> [W]e have declined to stretch general jurisdiction beyond limits traditionally recognized. As this Court has increasingly trained on the "relationship among the defendant, the forum, and the litigation," *i.e.*, specific jurisdiction, general jurisdiction has come to occupy a less dominant place in the contemporary scheme.

*Id.* at 132-33 (quoting *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977)).

*Pennsylvania Fire* is "not just wrong, but grievously or egregiously wrong," *Ramos*, 140 S. Ct. at 1414 (Kavanaugh, J., concurring in part) in light of this Court's repeated and emphatic diminution of all-purpose, general jurisdiction in favor of the due process requirements governing assertion of specific, case-linked jurisdiction. Allowing *Pennsylvania Fire* to stand despite the jurisdictional overreach embodied by the Georgia Supreme Court's post-*Daimler* opinion would restore and elevate States' assertions of borderless general jurisdiction to a predominant role that would eclipse, and essentially annul, this Court's modern precedents on both general and specific jurisdiction, going back to *International Shoe*—which this Court repeatedly has emphasized remains "the

canonical decision" regarding "[t]he Fourteenth Amendment's Due Process Clause limits [on] a state court's power to exercise jurisdiction over a defendant." *Ford*, 141 S. Ct. at 1024; *see also Daimler*, 571 U.S. at 16; *Shaffer* 433 U.S. at 212 ("[A]ll assertions of state-court jurisdiction must be evaluated according to the standards set forth in *International Shoe* and its progeny.").

The Court held in *Daimler*—in direct contradiction to *Pennsylvania Fire* and the cases that still adhere to it—that "the exercise of general jurisdiction in every State in which a corporation engages in a substantial, continuous and systematic course of business . . . is unacceptably grasping." 571 U.S. at 138 (internal quotation marks omitted); *see also BNSF Ry. Co. v. Terrell*, 137 S. Ct. 1549, 1554 (2017) ("Our precedent . . . explains that the Fourteenth Amendment's Due Process Clause does not permit a State to hale an out-of-state corporation before its courts when the corporation is not 'at home' in the State and the episode-in-suit occurred elsewhere.").

Instead, as the Court again emphasized in *Ford*, "[g]eneral jurisdiction . . . extends to 'any and all claims' brought against a defendant [and] may concern conduct and events anywhere in the world," but "[o]nly a select 'set of affiliations with a forum' will expose a defendant to such sweeping jurisdiction." 141 S. Ct. at 1024 (quoting *Daimler*, 571 U.S. at 137). More specifically, "[a] court may assert general jurisdiction over foreign (sister-state or foreign-country) corporations to hear any and all claims against them when their affiliations with the State are so

'continuous and systematic' as to render them essentially at home in the forum State." *Goodyear*, 564 U.S. at 919. "With respect to a corporation, the place of incorporation and principal place of business are paradig[m] bases . . . for general jurisdiction." *Daimler*, 571 U.S. at 137; see *also Goodyear*, 564 U.S. at 924 ("For an individual, the paradigm forum for the exercise of general jurisdiction is the individual's domicile; for a corporation, it is an equivalent place, one in which the corporation is fairly regarded as at home.").

A number of appellate courts have expressly recognized that *Pennsylvania Fire*'s expansive assertion of general jurisdiction over any out-of-state corporation that registers to conduct business in a State simply cannot coexist with the Court's modern, narrowly focused formulation of general jurisdiction. *See* Pet. at 10-15; *see*, *e.g.*, *Fidrych v. Marriott Int'l, Inc.*, 952 F.3d 124, 136 (4th Cir. 2020) ("[W]e find it difficult to reconcile the *Pennsylvania Fire* approach with the modern view of general jurisdiction expressed in the Supreme Court's recent cases. . . . [F]oreign corporations would likely be subject to general jurisdiction in every state where they operate -- a result directly at odds with the views expressed by the Court in *Daimler*."); *Brown v. Lockheed Martin Corp.*, 814 F.3d 619, 638 (2d Cir. 2016) ("*Pennsylvania Fire* is now simply too much at odds with the approach to general jurisdiction adopted in *Daimler*"); *Gen. Parts Co. v. Cepec*, 137 A.3d 123, 147 (Del. 2016) ("*Daimler*'s reasoning indicates that such a grasping assertion of

state authority is inconsistent with principles of due process, and impliedly, with interstate commerce.").

To be sure, *Goodyear* and *Daimler* do not specifically address the consent-by-registration theory on which *Pennsylvania Fire* is based. The Court has emphasized, however, that *International Shoe* is the touchstone for "all assertions of state-court jurisdiction," *Shaffer*, 433 U.S. at 212, and explained that *International Shoe* "cast . . . fictions aside," such as the "purely fictional" notion that an out-of-state corporation's "consent and presence" for assertion of personal jurisdiction can be based on appointment of an in-state agent as a condition for doing business. *Burnham v. Super. Ct. of Calif.*, 495 U.S. 604, 617-18 (1990). *See* Jeffrey L. Rensberger, *Consent to Jurisdiction Based on Registering to Do Business: A Limited Role for General Jurisdiction*, 58 San Diego L. Rev. 309, 360, 361 (2021) ("Much of the jurisdictional reasoning of *Pennsylvania Fire* . . . is unavoidably bound up with a now obsolete jurisdictional apparatus . . . based not so much on consent as on the fictive presence that the Court later abandoned in *Shoe*."); *see also* Pet. at 19-22 (discussing why *Pennsylvania Fire* is inconsistent with modern constitutional law).

The foregoing reasons are why *Pennsylvania Fire* is *egregiously* wrong for purposes of *stare decisis*.

2. "*Second*, has the prior decision caused significant negative jurisprudential or real-world consequences?" *Ramos*, 140 S. Ct. at 1415 (Kavanaugh, J., concurring in part). Again, the answer is yes. *Pennsylvania Fire* continues to adversely affect both personal jurisdiction

jurisprudence and the very real world of litigation against multistate and multinational corporations.

The certiorari petition describes in detail the widespread divisions among both state and federal courts that *Pennsylvania Fire* continues to engender. *See* Pet. at 8-17. Despite the Court's concerted and ongoing effort, beginning with *International Shoe*, to replace "nearly everything that had come before [with] a new test focused on traditional notions of fair play and substantial justice," *Ford*, 141 S. Ct. at 1038 (Gorsuch, J., concurring in the judgment), *Pennsylvania Fire* continues to cast a ghostly shadow on some courts. *See id.* at 1038 n.3 ("It is unclear what remains of the old 'consent theory' after *International* Shoe's criticism."). *International Shoe* and its progeny have inflicted a mortal blow on *Pennsylvania Fire*, but in view of the longstanding split of authority, now exacerbated by the Georgia Supreme Court's stunning post-*Daimler* opinion, this Court needs to bury *Pennsylvania Fire* once and for all.

Until the Court does so, *Pennsylvania Fire*'s all-encompassing jurisdictional grasp can have real-world consequences for any corporation that does business in any State which, like Georgia, believes that case still is binding precedent. *Pennsylvania Fire* was decided early in the last century. It preceded the explosive growth of a multitude of national and multinational corporations, such as consumer products companies, that are registered to conduct business in virtually every State. *See Ford*, 141 S. Ct. at 1036 (Gorsuch, J., concurring in the judgment) ("*International Shoe*'s emergence may be attributable to many influences, but

at least part of the story seems to involve the rise of corporations and international trade.").

Today, rather than promoting fair play and substantial justice, *Pennsylvania Fire's* virtually unbounded theory of general jurisdiction creates multiple opportunities for judicial gamesmanship against national and multinational corporations, for example, in product liability litigation. *See, e.g.*, Rensberger, *supra* at 332-46 (discussing concerns about registration-based general jurisdiction such as "invidious forum shopping," "capturing longer statutes of limitations," and "facilitating joinder of defendants"); Tanya J. Monsteir, *Registration Statutes, General Jurisdiction, and the Fallacy of Consent*, 36 Cardozo L. Rev. 1343, 1413 (2015) ("[R]egistration-based jurisdiction does not fit well into the landscape of general jurisdiction. It could eliminate the need for minimum contacts altogether; it results in universal and exorbitant jurisdiction; it is conceptually misaligned with doing business as a ground for jurisdiction; and it promotes forum shopping.").

Unless and until this Court intervenes and explicitly overrules *Pennsylvania Fire*, that case will continue to skew the judicial playing field against corporate defendants in States, such as Georgia, that assert general jurisdiction based on registration alone, or will deter companies from registering in such States and thereby deprive residents of products and services that they need. *See* Brian P. Watt & W. Alex Smith, *"At Home" In Georgia: The Hidden Danger of Registering to do Business in Georgia*, 36 Ga. St. U. L. Rev. 1, 2 (2019) ("The current state of Georgia law is

bad practice. It encourages forum shopping, and it cools interstate commerce by potentially deterring foreign corporations from registering to do business in Georgia."); *see also 2019 Lawsuit Climate Survey*, *Ranking the States, A Survey of the Fairness and Reasonableness of State Liability Systems* (U.S. Chamber Inst. for Legal Reform 2019) (ranking Georgia as No. 41 in a survey of how U.S. businesses view the fairness of each State's liability system).[2]

In short, "[t]he time has come for the Supreme Court to address the last remaining gulf in the area of jurisdiction: registration as a basis for general jurisdiction over corporations." Monsteir, *supra* at 1414.

3. "*Third*, would overruling the prior decision unduly upset reliance interests?" *Ramos*, 140 S. Ct. at 1415 (Kavanaugh, J., concurring in part). The answer is no. Any reliance interests based on *Pennsylvania Fire* are necessarily minimal. In light of *International Shoe* and its progeny, including but not limited to *Goodyear* and *Daimler*, no litigant can "reasonably rel[y]" on *Pennsylvania Fire* or have "legitimate expectations" that the Court will not explicitly overrule a case that already should be viewed as a dead letter. *Id.* Indeed, legitimate expectations will be upset only if the Court *declines* to grant certiorari and overrule *Pennsylvania Fire*, thereby creating confusion and uncertainty among the countless corporations that rely on the definitive personal jurisdiction principles

[2] Available at https://tinyurl.com/2p9cd9j7.

and criteria which the Court has established or refined in recent years.

The foregoing "three considerations correspond to the Court's historical practice and encompass the individual factors that the Court has applied over the years as part of the *stare decisis* calculus." *Id.* Although they "set a high (but not insurmountable) bar for overruling a precedent," *id.*, they are a hurdle that the overruling of *Pennsylvania Fire* easily surmounts.

### B. Allowing the Georgia Supreme Court's decision to stand would offend due process by promoting forum shopping

If allowed to stand, the Georgia Supreme Court's decision will reopen courthouse doors that forum-shopping plaintiffs until now correctly assumed—or should have assumed—were bolted shut by this Court's *Daimler* and *Goodyear* opinions. Indeed, because "[f]ederal courts ordinarily follow state law in determining the bounds of their jurisdiction over persons," *Daimler*, 571 U.S. at 125, declining to review this appeal would encourage both state *and* federal courts in additional States, to the delight of the plaintiffs' class-action and mass-action bar, to rely on state corporate registration laws for the purpose of circumventing the Court's recent jurisprudence on both general and specific personal jurisdiction. *See generally* Christopher A. Whytock, *The Evolving Forum Shopping System*, 96 Cornell L. Rev. 481, 484 (2011) ("[O]ther things being equal, the higher a plaintiff's expectation that a particular court will make a favorable court-access decision, the more likely she is to file a lawsuit in that court.").

It is not surprising that the Georgia Supreme Court has continued to foster that State's notoriety as a haven for forum shoppers. In fact, due in part to its decision in this case, the Georgia Supreme Court has descended to the No. 3 spot on the American Tort Reform Foundation's 2021-2022 "Judicial Hellholes" list:

> The significant deterioration of the Georgia civil justice system that took place in 2021 has propelled the "Peach State" to its highest-ever ranking on the Judicial Hellholes® list. The Georgia Supreme Court has developed a propensity to expand liability whenever given a chance and other courts around the state have followed its lead.

*Judicial Hellholes* (Am. Tort Reform Found. 2021-2022).[3]

For the civil justice system to be fair, the due process-based principles governing exercise of personal jurisdiction over corporate defendants in individual, mass-action, and class-action suits should be the same in every State, rather than varying with the proclivities of each State's high court. The latter facilitates forum shopping, which is spectacularly unfair to nonresident corporate defendants that, merely by registering to do business, and regardless of the absence of case-linked contacts, can be haled into the courts of any State that is a *Pennsylvania Fire* disciple and whose statutory or common law, or

[3] Available at https://tinyurl.com/2umyt37u.

judicial procedures or practices, plaintiffs and their counsel view as favorable.

Sometimes described as "litigation tourism," forum shopping "is the practice of filing a lawsuit in a location believed to provide a litigation advantage to the plaintiff regardless of the forum's affiliation with the parties or claims." Philip S. Goldberg, et al., *The U.S. Supreme Court's Paradigm Shift To End Litigation Tourism*, 14 Duke J. of Const. Law & Pub. Policy 51, 52 (2019); *see also* Friedrich K. Juenger, *Forum Shopping, Domestic and International*, 63 Tulane L. Rev. 553 (1989) ("As a rule, counsel, judges, and academicians employ the term 'forum shopping' to reproach a litigant who, in their opinion, unfairly exploits jurisdictional or venue rules to affect the outcome of a lawsuit."); Rensberger, *supra* at 333-35 (discussing "illegitimate" or "invidious" forum shopping). This Court has endeavored to deter forum shopping at least since *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938), where the Court held that federal courts sitting in diversity cases are bound by federal procedural rules, but must apply state substantive law. *See Hanna v. Plumer*, 380 U.S. 460, 468 (1965) ("discouragement of forum-shopping" is one of the *Erie* rule's aims).

There can be little doubt, however, that any State which, based on *Pennsylvania Fire*, asserts general jurisdiction over every multistate and multinational corporation that registers to conduct business in that State, will become a magnet for forum shoppers. Any corporation that is haled into a State's courts under these circumstances has been deprived of the very

type of due process that this Court has sought to foster and preserve through its modern personal jurisdiction precedents.

Forum-shopping opportunities also can undermine a State's judiciary, especially in States such as Georgia where state trial and appellate court judges must stand for election. *See* Ballotpedia, Georgia judicial elections, https://tinyurl.com/2p8un2a7. As one legal scholar has explained "forum selling" is a troubling corollary to forum shopping. "Loose jurisdictional rules that allow plaintiffs to choose among many potential courts give judges an incentive to be pro-plaintiff in order to attract litigation." Daniel Klerman, *Rethinking Personal Jurisdiction*, 6 J. of Legal Analysis 245, 247 (2014). "Without constitutional constraints on assertions of jurisdiction, some courts are likely to be biased in favor of plaintiffs in order to attract litigation and thus benefit themselves or their communities." Daniel Klerman & Greg Reilly, *Forum Selling*, 89 S. Cal. L. Rev. 241, 243 (2016).

Forum selling "leads to inefficient distortions of substantive law, procedure, and trial management practices." *Id.* at 246. For example, some state-court judges may want to be perceived by the public as decidedly pro-plaintiff, especially in high-profile cases, not only to enhance their own reputations and careers, but also to impose their own ideological views. *See generally* Todd J. Zywicki, *Public Choice and Tort Reform* 11 (George Mason Univ. School of Law, Law and Economics, Working Paper No. 00-36, 2000) ("In

major part judges are attracted to the bench because of the power that it gives them to impose their ideological worldview on the public [such as] redistribution of wealth from out-of-state corporations to in-state plaintiffs and redistribution to individuals in poorer communities.").[4] "Since impartial judging is a key Due Process concern, forum selling helps explain why restrictions on state assertions of personal jurisdiction are properly addressed by the Due Process Clause." Klerman & Reilly, *supra* at 243; *see also id.* at 246 (forum selling "can be cured by constricting jurisdictional choice").

### C. The Georgia Supreme Court's decision also undermines interstate federalism

Allowing States like Georgia to continue welcoming forum-shopping plaintiffs (and their opportunistic attorneys) by subjecting all registered corporations to their general personal jurisdiction undermines interstate federalism. "Interstate federalism refers to the relationship between the states within our federal system, their status as coequal sovereigns, and the limits on state power that derive from that status." A. Benjamin Spencer, *Jurisdiction to Adjudicate: A Revised Analysis*, 73 U. Chi. L. Rev. 616, 624, 637 (2006). The fifty states are "coequal sovereigns," *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980), and "'[t]he sovereignty of each State . . . implie[s] a limitation on the sovereignty of all its sister States.'" *Bristol-Myers Squibb*, 137 S. Ct. at 1780 (quoting *World-Wide Volkswagen*, 444 U.S. at

[4] Available at https://tinyurl.com/ymkzyvax.

293) (alterations in original). "The concept of minimum contacts . . . acts to ensure that the States, through their courts, do not reach out beyond the limits imposed on them by their status as co-equal sovereigns in a federal system." *World-Wide Volkswagen*, 444 U.S. at 291-92.

The "primary concern" in determining personal jurisdiction is "the burden on the defendant . . . and obviously requires a court to consider the practical problems resulting from litigating in the forum, but it also encompasses the more abstract matter of submitting to the coercive power of a State that may have little legitimate interest in the claims in question." *Id.* at 293; *see Goodyear*, 564 U.S. at 918 (assertion of personal jurisdiction "exposes defendants to the State's coercive power"). This is the situation here. Indeed, "[a]s [the Court] explained in *World-Wide Volkswagen*, '[e]ven if the defendant would suffer minimal or no inconvenience from being forced to litigate before the tribunals of another State; even if the forum State has a strong interest in applying its law to the controversy; even if the forum State is the most convenient location for litigation, the Due Process Clause, acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgment.'" *Bristol-Myers Squibb*, 137 S. Ct. at 1780-81 (quoting *World-Wide Volkswagen*, 444 U.S. at 294). In short, interstate federalism "bars one state from over-reaching and hearing claims that should be heard elsewhere." Goldberg et al., *supra* at 62; *see also* Spencer, *supra* at 624 ("state sovereign authority plays a vital role in

limiting the scope of a state's adjudicatory jurisdiction").

Declining to overrule *Pennsylvania Fire* explicitly would afford Georgia—and other States interested in hosting a virtually endless stream of multifarious suits against major corporations—a renewed basis for asserting, albeit incorrectly, that *Pennsylvania Fire* remains good law even in light of the Court's recent personal jurisdiction jurisprudence. The prospect of *Pennsylvania Fire*-adherent States competing against each other for individual, mass-action, or class-action plaintiffs in high-profile anti-corporate litigation by enacting expansive liability statutes, adopting one-sided procedural rules, and issuing pro-plaintiff trial-court and appellate rulings, would imperil interstate federalism. *See generally* 28 U.S.C. § 1711 note (Class Action Fairness Act §§ 2(a)(2), (3) & (4), Pub. L. No. 109–2, 119 Stat. 5 (2005)) (describing state-court class-action abuses, including state courts "acting in ways that demonstrate bias against out-of-State defendants"). Furthermore, pro-plaintiff judicial bias is fundamentally unfair not only to major corporations, but also to smaller companies that lack the resources to defend themselves even in meritless suits.

Adjudication or settlement of litigation where a State has asserted registration-based general jurisdiction over a multistate or multinational corporation no matter how disconnected the plaintiff's cause of action is from the forum State, can have nationwide repercussions. Allowing the forum State to flex its coercive power in such cases violates

interstate federalism's constitutional imperative as well as the Fourteenth Amendment's Due Process Clause. Rather than respecting its constitutional role as a co-equal sovereign, a jurisdictionally gluttonous State such as Georgia, as a practical matter, is "more equal" than other States when asserting personal jurisdiction over corporate defendants in litigation that not only could have been, but properly should have been, brought in a manner that is consistent this Court's modern personal jurisdiction principles.

## CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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