No. 21-1168

In The
# Supreme Court of the United States

ROBERT MALLORY,

*Petitioner,*

v.

NORFOLK SOUTHERN RAILWAY CO.,

*Respondent.*

On Writ of Certiorari to the
Supreme Court of Pennsylvania

**BRIEF OF WASHINGTON LEGAL FOUNDATION AS *AMICUS CURIAE* SUPPORTING RESPONDENT**

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## QUESTION PRESENTED

Whether the Due Process Clause of the Fourteenth Amendment permits a State to assert general jurisdiction over foreign corporations that register to do business in the State.

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## INTEREST OF *AMICUS CURIAE*[*]

Washington Legal Foundation is a nonprofit, public-interest law firm and policy center with supporters nationwide. WLF promotes free enterprise, individual rights, limited government, and the rule of law. It often appears as *amicus* to support due-process limits on state courts' exercise of general jurisdiction over foreign defendants. *See, e.g.*, *Bristol-Myers Squibb Co. v. Superior Ct. of Cal., S.F. Cnty.*, 137 S. Ct. 1773 (2017); *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011).

WLF's Legal Studies Division also regularly publishes papers on whether consent-by-registration statutes violate due process. *See, e.g.*, Anand Agneshwar & Paige Sharpe, *The Case Against Coercion: Why State "Registration Jurisdiction" Statutes Do Not Comport With Due Process*, WLF LEGAL OPINION LETTER (Oct. 5, 2018); Debra J. McComas & Richard D. Anigian, *Another Court Rejects Business Registration As Ground For General Jurisdiction*, WLF COUNSEL'S ADVISORY (June 2, 2017). WLF believes that consent-by-registration statutes violate due process. The Court should affirm the Supreme Court of Pennsylvania's correct decision that a State may not exercise general jurisdiction over a corporation just because it registers to do business in that State.

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[*] No party's counsel authored any part of this brief. No person or entity, other than Washington Legal Foundation and its counsel, paid for the brief's preparation or submission. Both parties filed blanked consents.

## INTRODUCTION

The Court's case law on personal jurisdiction has evolved over the past century. During World War I, plaintiffs could easily avoid the limits the Fourteenth Amendment's Due Process Clause imposes on state courts' exercise of personal jurisdiction over foreign defendants. Today, the Court has closed those loopholes and limits the States' exercise of personal jurisdiction over defendants.

Under current law, only States where a corporation is incorporated or headquartered may exercise general jurisdiction over the company. But *Pennsylvania Fire Ins. Co. of Philadelphia v. Gold Issue Min. & Mill. Co.*, 243 U.S. 93 (1917) has given some States an excuse to exercise general jurisdiction over almost every company that has even a remote link to the States. These courts hold that every company that registers to do business in a State consents to general jurisdiction there.

That made no sense in 1868, when railroads allowed many corporations to conduct business nationwide. And it is even more illogical today, when any sole proprietor can facilitate sales throughout the world with the click of a mouse.

If this Court's cases have not already overruled its 1917 precedent, the Court should explicitly bar States from exercising general jurisdiction over a corporation based solely on the company's registering to do business in those States. A company incorporated and headquartered in Maine should not face suit in Hawaii state court over injuries to an Oregon resident occurring in Iowa just because that

company is registered to do business in Hawaii. Yet that injustice and others like it will be permitted if this Court reverses.

## STATEMENT

From 1998 to 2005, Robert Mallory worked for Norfolk Southern Railway Company in Virginia and Ohio. Pet. App. 12a. When he sued, Mallory was a resident of Virginia and Norfolk Southern was a Virginia corporation with its principal place of business in Virginia. *Id.*

Five years ago, Mallory sued Norfolk Southern in the Court of Common Pleas of Philadelphia County, Pennsylvania. Pet. App. 12a. He alleged that Norfolk Southern negligently permitted an unsafe work environment that exposed him to asbestos and other carcinogens. *Id.* According to Mallory, that exposure caused him to develop colon cancer. *See id.*

Norfolk Southern objected that it was not subject to general jurisdiction in Pennsylvania. Although 42 Pa. C.S. § 5301(a)(2) purported to permit the suit, Norfolk Southern argued that statute violates the Fourteenth Amendment's Due Process Clause.

The Court of Common Pleas sustained the objections. It held that Pennsylvania's consent-by-registration statute violates the Fourteenth Amendment's Due Process Clause. Pet. App. 64a-82a. On appeal, the Supreme Court of Pennsylvania affirmed that decision. *Id.* at 1a-57a. The Supreme Court of Georgia, however, held that *Pennsylvania Fire* is still good law. *See generally Cooper Tire &*

*Rubber Co. v. McCall*, 863 S.E.2d 81 (Ga. 2021). Having received cert petitions in both cases, the Court selected this vehicle to resolve the important split in authority.

## SUMMARY OF ARGUMENT

**I.** Mallory never argued in the Pennsylvania courts that the original meaning of the Fourteenth Amendment supports consent-by-registration jurisdiction. The first time Mallory made that argument was in the Petition. *See* Pet. 27-28. This Court should not consider arguments that a party raises for the first time in this Court.

**II.** This Court's modern personal-jurisdiction jurisprudence has overruled or abrogated *Pennsylvania Fire*. The Court considers several factors when deciding whether to overrule precedent. If the Court does not believe that it has already overruled *Pennsylvania Fire*, and weighs these stare decisis factors, it should conclude that all the factors support overruling that decision.

**A.** *Pennsylvania Fire* is unworkable in today's ecommerce environment. Just a few years ago, the Court overruled precedent because of the unworkability of an old rule in the ecommerce era. Other recent decisions have similarly overruled unworkable precedents. This Court should do the same here.

**B.** The Court's reasoning in *Pennsylvania Fire* was brief and superficial. That reasoning was also flawed. Neither registering to do business nor designating an agent for process in a State allows that

State to hale any company into court there for claims that have no relationship to that State. The lack of proper analysis bolsters the case for reconsidering *Pennsylvania Fire*.

**C.** Over the past few decades, the Court has properly interpreted the Fourteenth Amendment's Due Process Clause to hold that a State can exercise general jurisdiction over a company only if the company is at home there. And a company is at home in only two locations—its State of incorporation and the State where it is headquartered. Noticeably absent from the list of things that make a company at home is registering to do business. So other personal-jurisdiction cases and recent legal developments favor overruling *Pennsylvania Fire*.

The argument that recent decisions support *Pennsylvania Fire* because they allow companies to consent to general jurisdiction in a State misses the mark. It is like saying that one voluntarily signed a contract without mentioning that there was a gun to his head and he would be shot if he did not sign. Duress is not consent.

**D.** No reliance interests weigh against overruling *Pennsylvania Fire*. Consumers don't decide whether they will buy a product based on whether they can sue in a far-flung jurisdiction if something goes wrong. States also lack any reliance interests in having their courts assert jurisdiction over companies that are neither incorporated nor headquartered there for claims *unrelated* to their contacts there. Rather, States have a strong interest in deciding cases that are connected to those States and their citizens. Yet allowing Pennsylvania to

decide all those cases infringes on these other States' right to adjudicate those disputes. Because the stare decisis factors favor overruling *Pennsylvania Fire*, the Court should do so here.

## ARGUMENT

### I. MALLORY DID NOT PRESERVE HIS HISTORICAL ARGUMENTS.

This Court is "a court of final review and not first view and it does not ordinarily decide in the first instance issues not decided below." *City of Austin, Texas v. Reagan Nat'l Advert. of Austin, LLC*, 142 S. Ct. 1464, 1476 (2022) (cleaned up). This principle normally undergirds this Court's exercising its discretion to grant certiorari. Here, Mallory's arguments bear no resemblance to those he made before the Superior Court of Pennsylvania. (No merits briefs were filed in the Supreme Court of Pennsylvania because Mallory appealed to the wrong court. *See* 42 Pa. C.S. § 722(7).)

Mallory's merits brief spends seventeen pages (at 11-28) discussing the original meaning of the Fourteenth Amendment's Due Process Clause. He argues that consent-by-registration general jurisdiction honors that original meaning. For the reasons discussed in Norfolk Southern's brief and those of other *amici* supporting it, Mallory's argument is wrong. But the Court need not reach that issue because Mallory raised it for the first time in this Court.

True, this Court has "discretion to affirm on any ground supported by the law and the record that

will not expand the relief granted below." *Upper Skagit Indian Tribe v. Lundgren*, 138 S. Ct. 1649, 1654 (2018) (citing *Thigpen v. Roberts*, 468 U.S. 27, 30 (1984)). But Mallory asks this Court to *reverse* the Supreme Court of Pennsylvania's decision—not to affirm. With few exceptions not applicable here, this Court cannot reverse on a ground not raised below. *See Miller v. New Orleans Acid & Fertilizer Co.*, 211 U.S. 496, 505 (1909).

The Court often considers not raising arguments below as forfeiting the arguments. For example, in *State Farm Fire & Cas. Co. v. U.S. ex rel. Rigsby*, 137 S. Ct. 436 (2016), the petitioner failed to argue for lesser sanctions before the district court. Thus, this Court held that the issue was "not preserved." *Id.* at 445. The Court should do the same here with Mallory's arguments about the history of the Fourteenth Amendment's Due Process Clause.

Even when a party makes a new argument supporting affirmance, this Court "often decline[s] to take a 'first view' of questions" that are first briefed at the certiorari stage. *Lundgren*, 138 S. Ct. at 1654 (quoting *Cutter v. Wilkinson*, 544 U.S. 709, 718, n.7 (2005)). In *Lundgren*, the Court declined to consider arguments about sovereign immunity for immovable property in another sovereign's territory. *See id.*

Again, the eleven pages of argument in Mallory's brief below didn't discuss the original public meaning of the Due Process Clause. *See* Brief for Appellant at 11-21, *Mallory v. Norfolk S. Ry. Co.*, 241 A.3d 480 (table), 2020 WL 6375871 (Pa. Super. 2020) (No. 802 EDA 2018), 2018 WL 4564998. The only

grounds he offered for reversing the Court of Common Pleas was *Pennsylvania Fire*.

This Court should not engage with Mallory's newfound interest in the original public meaning of the Fourteenth Amendment. As the Court said in *Lundgren*, such important issues should not be considered for the first time in this Court. *See Lundgren*, 138 S. Ct. at 1654 (citing *Cutter*, 544 U.S. at 718 n.7). Yet that is what Mallory and his *amici* ask this Court to do. Rather than engage with the late argument, the Court should address whether *Pennsylvania Fire* is still good law. It is not. That alone warrants affirming the Pennsylvania Supreme Court's decision.

## II. STARE DECISIS FACTORS DO NOT SUPPORT KEEPING *PENNSYLVANIA FIRE*.

The Pennsylvania Supreme Court avoided Norfolk Southern's arguments that *Pennsylvania Fire* does not support Mallory's position because it correctly held that *Pennsylvania Fire* is no longer good law. But if the Court believes that *Pennsylvania Fire* still governs, there is no reason for the Court to keep the bad precedent just because of stare decisis. Otherwise, cases like *Nevada v. Hall*, 440 U.S. 410 (1979) would remain good law. *See Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2307 (2022) (Kavanaugh, J., concurring). The Court should look to what the Constitution demands—not what mistaken precedent requires. The Court's analysis could end there.

But even under this Court's stare decisis jurisprudence, it should overrule *Pennsylvania Fire*.

The Court considers several factors when deciding whether to overrule a case. These include the decision's "workability"; *Montejo v. Louisiana*, 556 U.S. 778, 792 (2009), the "quality of the decision's reasoning; its consistency with related decisions; legal developments since the decision; and reliance on the decision." *Franchise Tax Bd. of Cal. v. Hyatt*, 139 S. Ct. 1485, 1499 (2019) (citations omitted). These factors all support overruling *Pennsylvania Fire*.

### A. *Pennsylvania Fire* Is Unworkable In Today's Economy.

**1.** It comes as no surprise that ecommerce has transformed the way our economy operates. *See South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080, 2093 (2018). During World War I, it was unthinkable that a single salesman could sell hundreds or thousands of goods in every State with a few mouse clicks. It was just as fanciful to think that a businessman could visit New York, Texas, and California in a single day by using jet aircraft.

During the 1910s, most companies registered to do business in only one or two States. Those—like department stores—that registered to do business in more States had large presences in those jurisdictions. As most companies had no need to register in multiple States, the unworkability of the *Pennsylvania Fire* rule was not immediately apparent. Now, however, companies must register to do business in many States. *See* Tanya J. Monestier, *Registration Statutes, General Jurisdiction, and the Fallacy of Consent*, 36 Cardozo L. Rev. 1343, 1345 (2015). That is a problem.

The realities of today's economy show how the *Pennsylvania Fire* rule is no longer workable. To operate in the 21st century, many companies must register to do business in multiple jurisdictions. Under Mallory's flawed reasoning, this means that companies could be sued anywhere they do business in the United States for conduct unrelated to the forum. This is not a workable solution.

States have an interest in regulating companies that are incorporated and headquartered within their borders. These States similarly have a strong interest in regulating conduct by their residents within their borders. But under Mallory's proposed rule, a Vermont court could lose the ability to adjudicate a dispute between its resident and a company incorporated and headquartered there for an incident that occurred in Burlington. If that company is registered to do business in Texas, a Dallas court could exercise general jurisdiction over the claim. So it's no answer to say that Mallory's rule is "workable" because it is a bright-line rule. The workability inquiry is broader than that.

**2.** The gap between current realities and those of the 1910s gives rise to the same unworkability that led the Court to overrule precedent in *Wayfair*. In 1967, the Court was concerned with the practicalities of allowing States to collect sales taxes from those with no physical presence in the State. *See Nat'l Bellas Hess, Inc. v. Dep't of Revenue of State of Ill.*, 386 U.S. 753, 759 (1967). But over five decades later, technological advancement made these concerns moot. *See Wayfair*, 138 S. Ct. at 2093. The rule then became unworkable because so many online

purchases were going untaxed. Thus, the Court overruled the prior precedent.

The changing facts on the ground since *Pennsylvania Fire* are important in the workability analysis. The current situation shows the sweeping consequences of allowing consent-by-registration jurisdiction. So *Pennsylvania Fire* is now unworkable and the Court should not hesitate to reconsider it.

**3.** *Wayfair* is not the only recent case that overturned unworkable precedent. In a case restricting mandatory union dues, the Court said that the "line between chargeable and nonchargeable union expenditures" proved unworkable. *Janus v. Am. Fed'n of State, Cnty. & Mun. Emps., Council 31*, 138 S. Ct. 2448, 2481 (2018). It was also "not principled." *Id.* (cleaned up).

The same is true here. Although *Pennsylvania Fire* may provide a bright line for when a corporation is subject to general jurisdiction in a State, that does not mean that the standard is workable. If this Court reverses, corporations will be discouraged from registering to do business in jurisdictions like Pennsylvania or Georgia. Corporations should be able to register to do business without worrying that this will subject them to general jurisdiction.

Adopting Mallory's proposed rule would hurt our nation's economy. Rather than enjoy companies that benefit from economies of scale and pass along savings to consumers, each State may have to support its own supply chains. This increases dead-weight loss and consumer prices. The flood of cases exploring what "doing business" means in today's economy

would also lead to more dead-weight loss. Thus, this stare decisis factor supports overruling *Pennsylvania Fire*.

### B. *Pennsylvania Fire*'s Reasoning Is Short And Deeply Flawed.

In holding that consent by registration does not violate due process, the Court reasoned that a State could treat registering to do business and appointing an agent as equivalent obligations. *See Pennsylvania Fire*, 243 U.S. at 95 (citation omitted). But general jurisdiction does not flow naturally from these two regimes.

By designating an agent for service of process, a company makes it easier for in-state plaintiffs to sue the company for claims related to the company's forum contacts. In other words, it permits easier service of process for claims based on specific personal jurisdiction. As described in Norfolk Southern's brief, *Pennsylvania Fire*'s reasoning was limited to service of process.

States cannot require that companies registering to do business there face all suits in their courts. Yet that is what general jurisdiction allows. By registering, the company is alerting consumers and the government that it is doing business in the State and agreeing to pay all required taxes. This does not also mean that it is consenting to unlimited personal jurisdiction in that State.

That was the Court's entire due-process analysis in *Pennsylvania Fire*. So the Court touched no factor from its more recent personal-jurisdiction

cases, such as whether a company is at home in the forum State. Similarly, there was no analysis of whether consenting to general jurisdiction by registering to do business was an unconstitutional condition. The analysis is therefore deeply flawed and warrants reconsideration over 100 years later.

The deeply flawed reasoning in *Pennsylvania Fire* is similar to *Hall*'s reasoning. There, the Court held that States were not immune from suits in another State's courts. Three years ago, this Court explained that *Hall*'s reasoning was "ahistorical literalism." *Hyatt*, 139 S. Ct. at 1498 (quotation omitted). In *Hall*, the Court ignored the reality that the Constitution altered the relationship between the States so that they are not governed solely by international law principles. That is why in *Hyatt* the Court discarded *Hall*.

The reasoning in *Pennsylvania Fire* suffers from similar flaws. The few sentences of due-process analysis in *Pennsylvania Fire* do not address the more recent due-process concerns identified in this Court's decisions. So this factor weights in favor of overruling that decision.

### C. Other Decisions And Recent Legal Developments Commend Overruling *Pennsylvania Fire*.

The Court often considers whether an opinion fits with related decisions and recent legal developments. *See Ramos v. Louisiana*, 140 S. Ct. 1390, 1405 (2020). These factors are the biggest reason the Court should revisit *Pennsylvania Fire*. The Court's personal-jurisdiction decisions—

particularly those about general jurisdiction—conflict with *Pennsylvania Fire*'s holding.

This is why there is such an overwhelming consensus among state and federal courts that *Pennsylvania Fire* is no longer good law. The Supreme Court of Georgia currently stands alone among state high courts and federal appeals courts in refusing to see the truth. But this Court should not allow that error to spread nationwide by reversing here.

The Fourteenth Amendment's Due Process Clause limits the scope of state courts' personal jurisdiction. *See Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316-17 (1945). This seminal personal-jurisdiction case eliminated loopholes allowing States to exercise jurisdiction over foreign corporations.

Since then, the Court has articulated the Due Process Clause's limits on general jurisdiction. It has explained that "[a] court with general jurisdiction may hear *any* claim against that defendant, even if all the incidents underlying the claim occurred in a different State." *Bristol-Myers Squibb*, 137 S. Ct. at 1780 (emphasis in original; citation omitted). This is a great deal of power. When a court has general jurisdiction over a company, there is no territorial limit on what claims can be brought there. So if the Court were to reverse here, a suit by a West Virginian against a company incorporated and headquartered in North Dakota over an accident that happened in Idaho can be heard by an Ohio state court.

Courts with general jurisdiction can easily bankrupt companies because of poor procedural protections, bad state court judges, and ill-informed

juries. *See Reynolds & Reynolds Holdings, Inc. v. Data Supplies, Inc.*, 301 F. Supp. 2d 545, 551 (E.D. Va. 2004) ("a finding of general personal jurisdiction on the basis of [corporate] registration" is "conducive to forum shopping"); *see also, e.g.*, Alan O. Sykes, *Transnational Forum Shopping As A Trade and Investment Issue*, 37 J. Legal Stud. 339, 339 (2008) ("Forum shopping by tort plaintiffs is commonplace in the American legal system."); Douglas G. Smith, *Resolution of Mass Tort Claims in the Bankruptcy System*, 41 U.C. Davis L. Rev. 1613, 1621 (2008) ("[Mass tort] claims have gravitated toward certain jurisdictions that plaintiffs believe are more favorable. As a result, the bulk of the litigation has occurred in a handful of jurisdictions.").

That is why the Court's personal-jurisdiction precedents strictly limit which States may exercise general jurisdiction over a company. In *Goodyear*, the same type of tires involved in the accident "had reached North Carolina through the stream of commerce." 564 U.S. at 920 (cleaned up). The North Carolina courts held that this was enough for the State's courts to exercise general jurisdiction over Goodyear.

That is similar to what happened here. Norfolk Southern registered to do business in Pennsylvania. There was no other connection between Pennsylvania and the parties.

In *Goodyear*, the Court held that this limited connection "between the forum and the foreign corporation" was "an inadequate basis for the exercise of general jurisdiction." 564 U.S. at 920. After all, "[s]uch a connection does not establish the continuous

and systematic affiliation necessary to empower North Carolina courts to entertain claims unrelated to the foreign corporation's contacts with the State." *Id.* (cleaned up).

The Court then reiterated the straightforward test for when state courts may exercise general jurisdiction over a corporation. Such wide-ranging power is appropriate only where the corporation is "at home." *Goodyear*, 564 U.S. at 924 (citing Lea Brilmayer et al., *A General Look at General Jurisdiction*, 66 Tex. L. Rev. 721, 728 (1988)).

*Pennsylvania Fire* conflicts with *Goodyear*. Corporations often must register to do business (and appoint an agent for service of process) in a State without being at home in the State. Yet under *Pennsylvania Fire*, States can exercise general jurisdiction over foreign corporations not at home in those States. This is why many courts rejected consent-by-registration statutes after the Court's decision in *Goodyear*. It is impossible to see how these statutes are constitutional after *Goodyear*.

Three years after *Goodyear*, the Court revisited general jurisdiction. In *Daimler AG v. Bauman*, 571 U.S. 117 (2014), the Ninth Circuit had held that California could exercise general jurisdiction over Daimler using a rationale much like *Pennsylvania Fire*'s rationale; an agent in the State was enough to confer general jurisdiction over the corporation. *See id.* at 124 (citations omitted).

Unsurprisingly, the Court resoundingly rejected that view. The Court held that, apart from "exceptional case[s,]" States may exercise general

jurisdiction over a corporation only if it is incorporated or headquartered in the State. *See Daimler*, 571 U.S. at 139 n.19 (citation omitted).

This is a simple test that tracks the Due Process Clause's requirements. A company is at home where it is incorporated and where it is headquartered. So those States have the power to hear any claim against the company, even those with no other link to the State. Other States, however, are not the corporation's home. Rather, they are foreign jurisdictions that may exercise only specific jurisdiction over corporations based on their related forum contacts.

Norfolk Southern had no forum contacts tied to the exposure that allowed Pennsylvania to exercise specific jurisdiction. And as explained above, Norfolk Southern was neither incorporated nor headquartered in Pennsylvania. So under *Daimler*, that should be the end of the inquiry. Pennsylvania cannot exercise personal jurisdiction over Norfolk Southern without violating the Fourteenth Amendment's Due Process Clause.

This Court should also not reverse under the exceptional-case exception. Since *International Shoe*, the Court has not found a case so exceptional as to allow the exercise of general jurisdiction over a corporation that is neither headquartered nor incorporated there.

The exceptional-case exception does not apply here. The Court knew of consent-by-registration statutes when it decided both *Goodyear* and *Daimler*. *See* Oral Argument Tr. at 15-16, *Goodyear*, 564 U.S.

915 (No. 10-76) (Justice Ginsburg asking whether States can exercise general jurisdiction over "a corporation that's registered to do business in North Carolina"). So if consent by registration were one of the exceptional cases that permitted other States to exercise general jurisdiction over a corporation the Court would have said so. This is particularly true because Justice Ginsburg asked the question about consent-by-registration statutes at argument in *Goodyear* and wrote *Goodyear* and *Daimler*. The lack of any mention of consent-by-registration statutes in *Goodyear* or *Daimler* therefore shows that it is not an exception allowing Pennsylvania courts to exercise general jurisdiction over Norfolk Southern.

Justice Ginsburg's questioning counsel about consent-by-registration statutes at oral argument also shows how Professor Sachs's claim that consent-by-registration statutes track recent due-process decisions is off base. Professor Sachs correctly notes that *Daimler* and *Goodyear* "discussed only general jurisdiction appropriately exercised over a foreign corporation that has not consented to suit in the forum." Sachs Br. at 8 (cleaned up). But that is because the issue of what constituted consent to personal jurisdiction was not at issue in those cases. It is here.

If the Court in *Daimler* and *Goodyear* wanted to preserve *Pennsylvania Fire*'s holding, Justice Ginsburg would have included it in those opinions. Again, she knew about the holding as shown by her questions at the *Goodyear* oral argument. Yet neither opinion mentions consent-by-registration statutes.

*Daimler* and *Goodyear* discuss consent jurisdiction, which is "[j]urisdiction that parties have agreed to, either by accord, by contract, or by general appearance." Black's Law Dictionary (11th ed. 2019). For example, two parties may sign a contract that provides that one party consents to personal jurisdiction in Wyoming of any claim despite not having any ties to the State. This complies with the Due Process Clause because parties can waive a personal-jurisdiction defense. *See Hyatt*, 139 S. Ct. at 1493-94.

Consent jurisdiction differs substantially from consent-by-registration statutes. Such statutes give parties no choice but to consent to general jurisdiction to do business in a State. It is no answer that all a company loses by not registering to do business in a State is the ability to sue in state court. No company that wants to stay in business would knowingly engage in commerce without the ability to enforce contracts and sue when necessary.

Mallory and Professor Sachs are thus wrong about the holdings in *Daimler* and *Goodyear*. Both cases restrict general jurisdiction to a company's State of incorporation and the location of its headquarters. They do not bless *Pennsylvania Fire*'s much broader view of general jurisdiction.

So all the Court's personal-jurisdiction cases diverge from *Pennsylvania Fire*'s reasoning. It makes no sense to keep an outdated precedent that does not fit with current jurisprudence just because of stare decisis. Thus, this factor favors the Court's overruling *Pennsylvania Fire*.

### D. No Reliance Interests Counsel Against Overruling *Pennsylvania Fire*.

It is hard to imagine any reliance interests that weigh against overruling *Pennsylvania Fire*. In most States, state courts cannot exercise general jurisdiction over a company that merely registers to do business in the State. There is no evidence that this requirement prejudices the State's residents. If an action is tied to the company's business activities in a State, then that State's courts can always exercise specific jurisdiction over the company.

The only thing that overruling *Pennsylvania Fire* would do is require that plaintiffs sue in a jurisdiction with a connection to the case. So an Alaska resident could not sue a Florida business headquartered in Washington for a New York skiing accident in Louisiana state court. What harm is there in requiring that the suit be filed in Washington, Florida, or (maybe) New York? The answer is simple: none.

There are similarly no reliance interests for States. Requiring companies doing business in a State to "consent" to general jurisdiction does not advance any legitimate state goal. The State is still free to require that the company designate a local agent for service of process for suits related to the company's forum contacts. So a company could not operate freely in the State without the State's courts overseeing those actions. Rather, a Delaware state court would lack jurisdiction over a Minnesota company for an incident that occurred in Mississippi.

It is telling that no States—even Pennsylvania—appeared as *amicus curiae* here to explain their interest in consent-by-registration statutes. That is because none exists. Thus, there are no reliance interests and all the stare decisis factors support overruling *Pennsylvania Fire*.

* * *

The Court's current precedent takes the correct approach to the Fourteenth Amendment's Due Process Clause. That precedent conflicts with *Pennsylvania Fire*. The Court should protect companies' due-process rights and explicitly overrule *Pennsylvania Fire*.

## CONCLUSION

This Court should affirm.

Respectfully submitted,

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