No. 21-926

In The
Supreme Court of the United States

COOPER TIRE & RUBBER COMPANY,

Petitioner,

v.

TYRANCE MCCALL,

Respondent.

On Petition for a Writ of Certiorari
to the Supreme Court of Georgia

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

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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* urging strict adherence to rules barring States from exercising unlimited 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 principles. *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 core due-process principles. The Court should grant the Petition to eliminate any confusion about whether States may exercise general jurisdiction over almost every American company.

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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. After timely notice, all parties consented to WLF's filing this brief.

INTRODUCTION

The Court's case law on personal jurisdiction has evolved over the past century. Old decisions had not yet recognized the limits the Fourteenth Amendment's Due Process Clause imposes on state courts' exercise of personal jurisdiction over foreign defendants. Today, the Court properly limits the States' exercise of personal jurisdiction over a defendant.

Under current law, only States where a company is incorporated or headquartered may exercise general jurisdiction over the company. But a decision from 1917 has given some States—including Georgia—an excuse to exercise general jurisdiction over almost every company that has even a remote link to the State. These courts hold that a 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 operating out of her basement can sell goods or services throughout the world with the click of a mouse.

If this Court's cases have not already overruled its 1917 precedent, the Court should revisit that century-old precedent and 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 that happened in

Iowa just because that company is registered to do business in Hawaii. Yet that untethered jurisdictional rule will persist if the Court denies review here.

STATEMENT

Tyrance McCall is a Florida resident. While driving a car in Florida, a tire tread made by Cooper Tire allegedly separated from the rest of the tire. McCall lost control of his car and crashed. Cooper Tire is a Delaware corporation headquartered in Ohio. The tires involved in the accident were manufactured in Arkansas. So nothing about these parties involved Georgia.

Yet McCall did not sue Cooper Tire in Florida. Nor did he sue in Delaware, Ohio, or Arkansas. Rather, he sued in Georgia state court asserting negligence and products liability claims. Why would someone with no ties to Georgia sue a defendant with no Georgia ties in Georgia state court? The answer is simple. The plaintiffs' bar believes that Georgia is much friendlier to plaintiffs than other States. *Cf.* ATR Foundation, *Judicial Hellholes, 2021/22* at 24-29, https://bit.ly/3pu2wAc (Georgia Supreme Court is the most plaintiff-friendly state court of last resort in the nation).

The trial court properly granted Cooper Tire's motion to dismiss for want of jurisdiction. Pet. App. 33a-35a. It held that States cannot exercise general jurisdiction over a foreign corporation based on the company's registering to do business in those States. *Id.* at 33a. The Court of Appeals of Georgia reversed. Feeling bound by its Supreme Court's decision in

Allstate Ins. Co. v. Klein, 422 S.E.2d 863 (Ga. 1992), which held that the State can exercise personal jurisdiction over any company that registers to do business in Georgia, the appeals court held that the trial court could exercise jurisdiction over Cooper Tire. Pet. App. 28a-32a.

On appeal, the Supreme Court of Georgia doubled down on its *Klein* decision. Reasoning that this Court has not explicitly overruled *Pa. Fire Ins. Co. of Phila. v. Gold Issue Min. & Mill. Co.*, 243 U.S. 93 (1917), the Georgia Supreme Court held that it could ignore this Court's more recent case law. *See* Pet. App. 1a, 5a-6a. In other words, rather than apply this Court's currently governing precedent, it applied an outdated case from a century ago. Because the Georgia Supreme Court's decision creates a split with other state courts of last resort and federal courts of appeals, Cooper Tire now seeks certiorari.

SUMMARY OF ARGUMENT

I.A. Before the Georgia Supreme Court's decision, businesses almost universally thought that they could rely on this Court's recent personal-jurisdiction jurisprudence when deciding how and where to operate. Under those precedents, only States in which a company is incorporated or headquartered may exercise general jurisdiction over the company. But now massive uncertainty exists about whether registering to do business in a State allows that State's courts to exercise general jurisdiction over the company. The Court's intervention is needed to end the uncertainty and assure companies that they cannot be subject to general jurisdiction everywhere they register to do business.

B. When companies face legal uncertainty, they do not invest as much in innovation and expansion. They also take other steps to mitigate potential risks of suits over actions with no link to plaintiff-friendly jurisdictions. In the most extreme cases, companies will stop operating in some jurisdictions. This reduces trade and hinders consumer consumption. All this uncertainty therefore hurts our nation's economy. Not only that, it hurts the most vulnerable members of society far more than it hurts billionaires. The Court should not allow this damage caused by the Georgia Supreme Court's decision to spread.

II. As Cooper Tire argues, this Court's modern personal-jurisdiction jurisprudence has impliedly overruled or abrogated *Pennsylvania Fire*. Pet. 4-5. 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 rather weighs these stare decisis factors, it will 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. 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. 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*.

D. There are no reliance interests that weigh against overruling *Pennsylvania Fire*. Consumers don't decide whether they will buy a product based on whether they will be able to 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 business there. Because the stare decisis factors favor overruling *Pennsylvania Fire*, the Court should grant the Petition and reconsider the decision.

ARGUMENT

I. REVIEW IS NEEDED BECAUSE UNCERTAINTY ABOUT THE SCOPE OF GENERAL JURISDICTION HURTS THE ECONOMY.

Businesses "crave certainty as much as almost anything: certainty is what allows them to make long-

term plans and long-term investments." Alan Greenspan & Adrian Wooldridge, *Capitalism in America: A History* 258 (2018). By drawing a bright line between general and specific jurisdiction, this Court's modern personal-jurisdiction precedents give companies certainty about where they may be sued.

But businesses across the country must now ask difficult questions. Should they participate in the national economy and register to do business in other States? If they do, they are likely to see their businesses grow. But that simple act may also make the businesses "at home" in States thousands of miles from their State(s) of incorporation and headquarters. This uncertainty hurts the economy.

A. The Split In Authority Creates Uncertainty For Businesses.

Even before ratification, the Founders understood that "The power of determining causes * * * between the citizens of different States" was "essential to the peace of the Union." *The Federalist* No. 80, 477 (Alexander Hamilton) (Clinton Rossiter ed. 1961). This is because "prejudice[d]" state courts sometimes throw up "obstructions" to foreign corporations. *See* Felix Frankfurter & James Landis, *The Business of the Supreme Court*, 38 Harv. L. Rev. 1005, 1014 (1925). Thus, many companies care about where they must litigate disputes. There is a big difference between litigating in the Delaware Court of Chancery and litigating in Los Angeles County Superior Court or Madison County, Illinois Circuit Court. In one you can rest assured knowing you will get a fair hearing. In the other two, it's like throwing loaded dice at the craps table. The plaintiffs' bar

knows to sue where it has unfair odds of extorting a settlement.

The Petition sets forth how the Supreme Court of Georgia's decision splits from other state courts of last resort and federal courts of appeals. Pet. 8-17. If the Court denies review here, it will embolden courts with outdated case law to not revisit decisions holding that the Due Process Clause permits consent-by-registration general jurisdiction. It may also reopen the question in those States that already decided the issue. The near unanimous consensus in the business community before the decision below was that no court would uphold consent-by-registration statutes. But declining to review this outlying decision would shake the business community's confidence that companies can conduct business nationwide without fear of being hauled into court over 5,000 miles away.

B. This Uncertainty Hurts The Economy.

1. Legal uncertainty hurts the economy. The seminal paper in this area shows that when companies face legal uncertainty, they cannot reach their ideal level of economic productivity. *See* John E. Calfee & Richard Craswell, *Some Effects of Uncertainty on Compliance with Legal Standards*, 70 Va. L. Rev. 965, 986 (1984). The reason is intuitive. When companies face legal uncertainty, they must alter their decision-making calculus from what is best.

This case proves the point. Suppose Cooper Tire makes $X per year from doing business in Georgia. But if it faces legal uncertainty about

litigation exposure in Georgia unconnected to the State, it will pull out if the increased damages faced in a Georgia court multiplied by the probability of those damages is greater than $X. Even if it is less than $X, Cooper Tire may decide to leave the State. The variance surrounding the increased damages could lead it to decide that it would rather know that it gains $0 from operating in Georgia than have a 60% chance of making $Y while having a 40% chance of losing $Y. Just like humans, corporations are risk averse. And so it isn't as simple as seeing whether the expected value of operating in a jurisdiction is positive or negative.

This would harm the overall economy. It's Economics 101: Cooper Tire is growing the economy by operating in Georgia. It benefits the company, consumers, and tax coffers. If this increased economic production disappeared for many companies across the economy, the effect would be substantial. Rather than a mere blip on the radar, we would see slower economic growth—or even an economic downturn.

2. So who would the economic decline hurt? Sure, Jeff Bezos would feel the effects. But the most serious effects would fall on those who can least afford to see a smaller paycheck, increased prices, or lower quality products.

"Legal uncertainty has a regressive distributive effect." Uri Weiss, *The Regressive Effect of Legal Uncertainty*, 2019 J. Disp. Resol. 149, 149 (2019). In other words, "legal uncertainty leads to a transfer of wealth from poor people to rich people." *Id.* This is because the poor are less able to risk the little that they have while the rich can afford to take the

positive expected value gamble. This means that although the rich may be able to have one less cabin on their yachts, the poor will have to choose between putting food on the table and buying their medications.

That's not all. "[L]egal uncertainty leads to a transfer of wealth from women to men. In other words, legal uncertainty has class-regressive and gender-regressive effects." Weiss, 2019 J. Disp. Resol. at 149. This is because "even if it is a false belief based on" the stereotype that women are more risk averse than men, "legal uncertainty still leads to a regressive transfer of wealth from women to men because litigators, who are also creatures of their culture, act on this stereotype." *Id.* at 169.

Granting the Petition and resolving the split between the Georgia Supreme Court and many state courts of last resort and courts of appeals would end this uncertainty. The Court should take that step to help protect our economy—especially those who are most vulnerable.

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

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 *Korematsu v. United States*, 323 U.S. 214 (1944) and *Plessy v. Ferguson*, 163 U.S. 537 (1896) would remain good law. 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 current stare decisis jurisprudence, it should overrule *Pennsylvania Fire*. The Court considers several factors when deciding whether to overrule a case. The factors 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.

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 the salesperson 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 that registered to do business in more jurisdictions had large presences in those jurisdictions—like department stores. As most companies did not 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).

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 the Georgia Supreme Court's flawed reasoning, this means that companies could be sued anywhere in the United States for conduct unrelated to the forum. This is not a workable solution.

The gap between current realities and those of the 1910s is 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 without a 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 factual change from *Pennsylvania Fire* having a limited effect to a large effect is important in the workability analysis. The current situation shows the large consequences of allowing consent-by-registration jurisdiction. So *Pennsylvania Fire* is now unworkable and the Court should not hesitate to reconsider it.

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 to do business. *See Pa. 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 is making 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.

States cannot require that companies agree to face all suits just because they designate an agent to receive process. Yet that is what general jurisdiction allows. The same is true for a company registering to do business in a State. By registering, the company is alerting consumers and the government that it is conducting business in the State and agreeing to pay all required taxes. This does not also mean that it is consenting to unlimited jurisdiction in that State.

That was the Court's entire due-process analysis in *Pennsylvania Fire*. So the Court touched no factor considered in 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 reconsidering the decision over 100 years later.

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 recent 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 writing on the wall. That, of course, is its prerogative under our federal structure. But it also is this Court's duty to ensure that the Due Process Clause functions the same in Atlanta as it does in Philadelphia and Santa Fe.

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 recognized some limits on state courts' ability to exercise jurisdiction over foreign corporations.

More recently, 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 tremendous amount of power. When a court has general jurisdiction over a company, there is no territorial limit on what claims can be brought there. So a suit by a West Virginian against a North Dakota company over an accident that happened in Idaho can be heard by an Ohio state court. Courts with general jurisdiction therefore can easily bankrupt companies because of poor procedural protections, bad state court judges, and ill-informed juries.

That is why the Court's most recent 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 this was enough for the State's courts to exercise general jurisdiction over Goodyear.

This is almost exactly what happened here. Cooper Tire registered to do business in Georgia. Because of that, some of the same type of tire that allegedly caused the accident in Florida were sold and used in Georgia. But there was no other connection between Georgia and the parties to this Petition.

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 announced a 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 given the Court's far-more-recent decision in *Goodyear*.

The Georgia Supreme Court took a different approach. Afraid that it would put attorneys who serve as local counsel for suits unrelated to Georgia out of business, the court held that this Court's failure to explicitly overrule *Pennsylvania Fire* allowed it to exercise personal jurisdiction over Cooper Tire because it was registered to do business in the State. This was wrong. The only way to correct this due-process-flouting ruling is to grant certiorari and reverse.

Three years after *Goodyear*, the Court revisited general jurisdiction and interpreted the "at home" test of *Goodyear* as establishing a bright-line test for 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 that was 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.

There is no contention here that Cooper Tire had forum contacts related to the accident that allowed Georgia to exercise specific jurisdiction. And as explained above, Cooper Tire is neither incorporated nor headquartered in Georgia. So under *Daimler*, that should be the end of the inquiry. Georgia cannot exercise personal jurisdiction over

Cooper Tire without violating the Fourteenth Amendment's Due Process Clause.

If the Georgia Supreme Court's ruling is viewed as an application of the Court's exceptional-case exception, that argument fails. Since *Daimler* 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*, 131 S. Ct. 2846 (No. 10-76). Because the Court knew about these consent-by-registration statutes, if that were one of the exceptional cases that permitted other States to exercise general jurisdiction over a corporation it would have said so. This is particularly true because Justice Ginsburg asked the question 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 Georgia courts to exercise general jurisdiction over Cooper Tire.

So all of the Court's recent personal-jurisdiction case law diverges 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 reconsidering *Pennsylvania Fire*.

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

It is hard to imagine any reliance interests that counsel 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 States' residents. If an action arises because of 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 Vermont skiing accident in Louisiana state court. What harm is there in requiring that the suit be filed in Washington, Florida, or (maybe) Vermont? 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 that may be brought in the forum State under specific jurisdiction. So a company could not operate freely in the State without the State's courts overseeing those actions. Rather, a Wyoming state court would lack jurisdiction over a Minnesota

company for an incident that occurred in Mississippi. 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 clear up the confusion by granting certiorari and overruling *Pennsylvania Fire*. Otherwise, state courts will feel emboldened to ignore the Court's more recent jurisprudence.

CONCLUSION

This Court should grant the Petition.

Respectfully submitted,

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