NO. 21-926

In the
Supreme Court of the United States

COOPER TIRE & RUBBER, CO.,
Petitioner,

v.

TYRANCE MCCALL,
Respondent.

On Petition for Writ of Certiorari to the Georgia Supreme Court

BRIEF FOR THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND PRODUCT LIABILITY ADVISORY COUNCIL, INC. AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

Chilton D. Varner
Brandon R. Keel
KING & SPALDING LLP
1180 Peachtree St. NE
Atlanta, GA 30309

Ashley C. Parrish
Counsel of Record
Jeremy M. Bylund
Nicholas Mecsas-Faxon
KING & SPALDING LLP
1700 Pennsylvania Ave. NW
Washington, DC 20006
(202) 626-2627
aparrish@kslaw.com

Counsel for Amici Curiae

(Additional counsel listed on inside cover)

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Andrew R. Varcoe
Tyler S. Badgley
U.S. CHAMBER LITIGATION CENTER
1615 H Street NW
Washington, DC 20062

Counsel for Amicus Curiae Chamber of Commerce of the United States of America

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STATEMENT OF INTEREST[1]

The Chamber of Commerce of the United States of America (the "Chamber") is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community. The Chamber has participated as *amicus curiae* in every significant personal jurisdiction case recently decided by this Court—including *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873 (2011), *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011), *Daimler AG v. Bauman*, 571 U.S. 117 (2014), *Walden v. Fiore*, 571 U.S. 277 (2014), *BNSF Railway Co. v. Tyrrell*, 137 S. Ct. 1549 (2017), *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773 (2017), and *Ford Motor Co. v. Montana Eighth Judicial District Court*,

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[1] Pursuant to Supreme Court Rule 37.6, *amici curiae* state that no counsel for any party authored this brief in whole or in part and that no entity or person, aside from *amici curiae*, their members, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief. Pursuant to Supreme Court Rule 37.2(a), counsel of record for all parties received notice more than 10 days before the filing of this brief. Petitioner consented to this filing in a letter on file with the Clerk's office granting blanket consent. Respondent consented to this filing in writing to undersigned counsel.

141 S. Ct. 1017 (2021)—and has filed briefs in lower federal and state court cases applying those decisions. The Chamber's recent amicus curiae briefs in personal jurisdiction cases are available at http://www.chamberlitigation.com/cases/issue/jurisdiction-procedure/personal-jurisdiction.

PLAC is a non-profit professional association of corporate members representing a broad cross-section of American and international product manufacturers. *See* https://plac.com/PLAC/Membership/Corporate_Membership.aspx. Those companies seek to contribute to the improvement and reform of law in the United States and elsewhere, with emphasis on the law governing the liability of manufacturers of products and those in the supply chain. PLAC's perspective is derived from the experiences of a corporate membership that spans a diverse group of industries in various facets of the manufacturing sector. In addition, several hundred of the leading product litigation defense attorneys are sustaining (nonvoting) members of PLAC. Since 1983, PLAC has filed more than 1,100 briefs as *amicus curiae* in both state and federal courts, including this Court, on behalf of its members, while presenting the broad perspective of product manufacturers seeking fairness and balance in the application and development of the law as it affects product risk management.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Court should grant certiorari to enforce the constitutional requirements that limit when a state court may exercise personal jurisdiction over an out-of-state entity. The question presented is undeniably important for the Nation and its businesses. The departure from constitutional requirements that Georgia and other states have embraced warrants this Court's intervention.

Under this Court's settled precedents, a corporation is subject to *general* personal jurisdiction only in those states "in which [it] is fairly regarded as at home." *Bristol-Myers Squibb Co. v. Super. Ct.*, 137 S. Ct. 1773, 1780 (2017) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 924 (2011)), *see also Daimler AG v. Bauman*, 571 U.S. 117, 133–39 (2014). In the face of these precedents, the Georgia Supreme Court held that an out-of-state corporation is subject to the general jurisdiction of Georgia's courts merely by registering to do business within the state. In reaching that conclusion, the Georgia court not only eliminated the crucial distinction between specific and general jurisdiction, it also recognized that it was taking a position in conflict with this Court's recent decisions. It nonetheless concluded that Georgia's expansive assertion of general jurisdiction is justified under an expansive interpretation of this Court's rarely cited, century-old decision in *Pennsylvania Fire Insurance Co. v. Gold Issue Mining & Milling Co.*, 243 U.S. 93 (1917).

The Court should grant certiorari to clarify the reach of *Pennsylvania Fire* and to address this recurring, important issue of federal law. As petitioner explains, the Georgia Supreme Court's decision revives a split among state high courts that this Court's recent personal jurisdiction decisions should have resolved. *Compare* App. 15a–17a *with Mallory v. Norfolk S. Ry. Co.*, No. 3 EAP 2021, 2021 WL 6067172, at *21 (Pa. Dec. 22, 2021) (concluding that "conditioning" the "privilege of doing business" on an agreement to submit to general jurisdiction "strips foreign corporations of the due process safeguards guaranteed in *Goodyear* and *Daimler*"). It also forges a path for states to nullify established constitutional limits on their power to regulate disputes involving out-of-state conduct with no meaningful in-state nexus.

The need for this Court's intervention is heightened by constitutional policy considerations. Allowing states to make consent to general jurisdiction the price for registering to do business imposes a heavy burden on interstate commerce that serves no legitimate state interest and contravenes the original intent of state registration requirements. The Georgia Supreme Court's ruling also reduces predictability for businesses, impinges on the interests of other sovereign states, and encourages forum shopping by allowing individual states to exercise outsized control over business activities occurring outside their borders.

ARGUMENT

I. This Court Should Grant Review to Enforce Constitutional Limits on General Personal Jurisdiction.

When a state exercises general jurisdiction, it has authority to resolve "any and all claims" regardless of whether the defendant's forum-related activities have any relation to the lawsuit's specific allegations. *Daimler*, 571 U.S. at 137. Precisely because general jurisdiction has such an ends-of-the-earth reach, this Court has recognized that the Constitution imposes strict limits on when it is available. The doctrinal and practical consequences of the Georgia Supreme Court's disregard for these limits are immense, undermining the free flow of interstate commerce. Certiorari is needed to enforce this Court's precedents recognizing the due process limits on states' authority to exercise all-purpose, general jurisdiction.

In its opinion below, the Georgia Supreme Court addressed whether its earlier decision in *Allstate Insurance Co. v. Klein*, 422 S.E.2d 863 (Ga. 1992), survived this Court's recent decisions addressing personal jurisdiction, including *Daimler* and *Goodyear*. App. 15a–17a. In *Klein*, the Georgia court held that when a corporation registers to do business in the state, it is also deemed to have consented to the state's exercise of general jurisdiction and that this scheme of imputed consent complies with constitutional requirements. Reaffirming *Klein*, the decision below mistakenly relied on *Pennsylvania Fire*, which the Georgia Supreme Court emphasized has never been explicitly overruled. *Cf.* Tanya J. Monestier, *Registration Statutes, General*

Jurisdiction, and the Fallacy of Consent, 36 CARDOZO L. REV. 1343, 1361 (2015) ("There is ample scholarly work to suggest that courts have misread precedent concerning registration statutes and that *Pennsylvania Fire* does not stand for the proposition that registration to do business amounts to consent to general jurisdiction.").

Georgia's reading of *Pennsylvania Fire* cannot be reconciled with this Court's more recent decisions. As those decisions make clear, an entity's mere "casual presence" in a state is not sufficient to establish general jurisdiction. *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 317 (1945); *Goodyear*, 564 U.S. at 919. Nor is an entity's engagement in "a substantial, continuous, and systematic course of business." *Daimler*, 571 U.S. at 138 (quoting briefing). To be subject to general jurisdiction, an entity's in-state business conduct must be "so 'continuous and systematic' as to render [it] essentially at home in the forum state." *Goodyear*, 564 U.S. at 919 (quoting *Int'l Shoe Co.*, 326 U.S. at 317); *see also Daimler*, 571 U.S. at 138.

Corporate defendants are therefore ordinarily subject to general jurisdiction only in their state of incorporation or where they have chosen to locate their principal place of business, "the place where the corporation maintains its headquarters." *Hertz Corp. v. Friend*, 559 U.S. 77, 92–93 (2010). Merely registering to do business in a state—which is often a prerequisite to engaging in commerce—falls far short of the "essentially at home" standard. "A corporation that operates in many places can scarcely be deemed at home in all of them." *BNSF Ry. Co. v. Tyrrell*, 137

S. Ct. 1549, 1559 (2017) (quoting *Daimler*, 571 U.S. at 139 n.20).

Nor can deemed "consent" be a basis for disregarding constitutional protections that limit when states may regulate out-of-state conduct. Businesses that register in a state are merely complying with state-registration requirements; they are not in any meaningful sense agreeing to be haled into that state's courts on any claims that may arise unrelated to their in-state activities. *See Chen v. Dunkin' Brands, Inc.*, 954 F.3d 492, 498 (2d Cir. 2020) (expressing reservations as to whether an implicit consent theory could survive constitutional scrutiny). Moreover, forcing corporations to forfeit their due process rights as a condition of doing business within a state is constitutionally impermissible. The government is not allowed to condition the grant of benefits on the surrender of federal constitutional rights and privileges. *See Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 607 (2013); *see also United States v. Am. Library Ass'n*, 539 U.S. 194, 210 (2003). But that is precisely what Georgia law seeks to accomplish.

As the petition ably explains, there is a pressing need for this Court's intervention. There is no reason to believe that the constitutional and doctrinal departures embraced by the decision below will correct themselves—the Georgia Supreme Court has already expressly doubled down on its constitutional error. Because Georgia's highest court has mistakenly concluded that it is bound by *Pennsylvania Fire*, it falls to this Court to clarify the proper interpretation of that decision in light of its more recent precedent.

Without this Court's intervention, the decision below will render the holdings and essential reasoning of the Court's recent personal jurisdiction cases a nullity. The due process restrictions on the exercise of general personal jurisdiction are meaningless if the mere act of registering to do business in a state is sufficient to allow state courts to assert general jurisdiction over a business, no matter how remote a connection the claim may have to the business's in-state activities. The requirements for specific jurisdiction will also become largely superfluous, directly contrary to this Court's jurisprudence under which "specific jurisdiction has become the centerpiece of modern jurisdiction theory." *Daimler*, 571 U.S. at 128 (quoting *Goodyear*, 564 U.S. at 925).

II. Constitutional Policy Considerations Weigh in Favor of Granting Review.

Powerful constitutional policy considerations weigh against allowing general jurisdiction based merely on a defendant's registration to do business in a state. The Georgia Supreme Court's ruling interferes with this Court's "'primary concern'" about the exercise of personal jurisdiction: the "'burden on the defendant'" forced to litigate in a forum in which the defendant lacks sufficient connections and is forced to "submit[] to the coercive power of a State that may have little legitimate interest in the claims in question." *Bristol-Myers Squibb*, 137 S. Ct. at 1780 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980)). To avoid the imposition of that burden, the Constitution requires that "the defendant's contacts with the forum State … be such that maintenance of the suit 'does not offend

traditional notions of fair play and substantial justice.'" *World-Wide Volkswagen Corp.*, 444 U.S. at 292 (quoting *Int'l Shoe Co.*, 326 U.S. at 316).

1. State registration requirements were first adopted in the mid-1800s as corporations began to conduct more business across state lines. *See* Matthew Kipp, *Inferring Express Consent: The Paradox of Permitting Registration Statutes to Confer General Jurisdiction*, 9 REV. LITIG. 1, 9 (1990). At that time, registration requirements were employed to allow corporations to do business in a neighboring state in exchange for agreeing to be subject to the state's *specific* jurisdiction. That gave the state's citizens an avenue for seeking redress for harms that occurred *within the state's borders* at the hands of a foreign corporation. *Id.* at 12 ("In exchange for the right to enter, the corporation consented to the state's jurisdiction over its activities within the state.").

State registration regimes were in many respects a response to now-defunct views regarding the Constitution's commerce and due process clauses that allowed states to block foreign corporations from conducting business within their boundaries. *See Paul v. Virginia*, 75 U.S. 168, 177–83 (1868), *overruled by United States v. S.-E. Underwriters Ass'n*, 322 U.S. 533 (1944) (reflecting shift in jurisprudence). In that context, registration requirements increased competition across state lines by allowing corporations to conduct business outside their home state. They also increased consumer confidence in transacting with foreign corporations, facilitating the free flow of goods and services, because they assured customers

that their own state courts could exercise jurisdiction over the corporation's in-state activities.

Taking steps to hold businesses responsible for local, in-state conduct was important because state courts treated corporations as fictional creatures of their home states' laws. A corporation was understood to have no formal existence in a neighboring state and, absent its consent, could not be sued there. *See* William Laurens Walker, *Foreign Corporation Laws: The Loss of Reason*, 47 N.C. L. REV. 1 (1968). As one court explained: "[a] corporation … exists only in contemplation of law, and by force of the law; and where that law ceases to operate, and is no longer obligatory, the corporation can have no existence. It must dwell in the place of its creation …." Kipp, 9 REV. LITIG. at 11 (quoting *Bank of Augusta v. Earle*, 38 U.S. (13 Pet.) 519, 588 (1839)). Moreover, under the no-longer-accepted approach taken in *Pennoyer v. Neff*, 95 U.S. 714 (1877), personal jurisdiction existed only if a defendant could be served within the state's borders. *Compare Int'l Shoe Co.*, 326 U.S. at 316 (reversing *Pennoyer*). When a state adopted registration requirements, a foreign corporation was able to conduct business in the state while also designating an in-state agent eligible to receive service. Kipp, 9 REV. LITIG. at 5. State registration regimes thus provided a mechanism for protecting the interests of both the foreign corporation and the citizens of the state, which in turn promoted interstate commerce.

In the early 1900s, however, states began subjecting foreign corporations to *general* personal jurisdiction by imposing mandatory registration

requirements and finding implied consent to general jurisdiction as a result of registration. *See* Kipp, 9 REV. LITIG. at 17. That expansion in personal jurisdiction tracked broader trends that expanded the authority of states to regulate out-of-state interests, including changes that undermined original constitutional constraints on the extraterritorial application of state law. *See generally* Michael S. Greve, THE UPSIDE-DOWN CONSTITUTION 232–34 (2012). Notably, the courts accepted state-driven expansion in personal jurisdiction based on "a contradiction: express consent could confer jurisdiction over a foreign corporation's activities *outside the state*, yet the original principle underlying registration statutes was that the state should only concern itself with a foreign corporation's conduct *within the state*." Kipp, 9 REV. LITIG. at 19 (emphasis added).

This early 20th Century expansion in general personal jurisdiction is at odds with this Court's recent cases, including *Goodyear* and *Daimler*, which enforce constitutional requirements designed to curtail abuses stemming from the misuse of general jurisdiction. In today's world, state registration requirements are no longer essential to facilitating interstate commerce. Moreover, as this Court has now recognized, states are constitutionally *prohibited* from excluding foreign corporations from conducting business within their borders. *See Or. Waste Sys., Inc. v. Dep't of Env't Quality*, 511 U.S. 93, 99 (1994) (holding that a state may not "discriminate[] against interstate commerce" in the context of invalidating a state statute subjecting out-of-state entities to higher waste disposal fees (quoting *Hughes v. Oklahoma*, 441

U.S. 322, 336 (1979)). The outmoded rationale that foreign corporations are receiving a benefit (being able to conduct business in a state) in exchange for consenting to general jurisdiction is no longer valid. *See Tenn. Wine & Spirits Retailers Ass'n v. Thomas*, 139 S. Ct. 2449, 2461 (2019) (explaining why state protectionist measures are constitutionally impermissible).

Allowing states to employ registration requirements to expand their jurisdictional reach, and to export state policies extraterritorially, interferes with interstate commerce, forcing businesses to be more selective about the states in which they register. It also has unfortunate repercussions for foreign relations and for the United States' ability to work with other nations that do not want their corporations subjected to state courts that have no meaningful connection to the activities that gave rise to a specific dispute. *See* Charles W. Rhodes, *Clarifying General Jurisdiction*, 34 SETON HALL L. REV. 807, 900 (2004) ("applying the American conception of general jurisdiction ... to disputes without any relationship to the United States" often "is viewed with abhorrence by many other nations"). Foreign governments often object to "some domestic courts' expansive views of general jurisdiction," which have "in the past impeded negotiations of international agreements on the reciprocal recognition and enforcement of judgments." *Daimler*, 571 U.S. at 141–42 (internal quotation marks omitted).

2. The Georgia Supreme Court's ruling also threatens to reduce predictability for corporations of all sizes, which can only harm the interests of the

Nation as a whole. As this Court has explained, the Constitution's constraints on the exercise of personal jurisdiction are designed to "give[] a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance" as to where they may be haled into court. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 471–72 (1985) (quoting *World-Wide Volkswagen Corp.*, 444 U.S. at 297). *Goodyear*'s and *Daimler*'s focus on where a corporation is "at home" promotes predictability. A corporation's place of incorporation and principal place of business are "affiliations" that "have the virtue of being unique." *Daimler*, 571 U.S. at 137. "[T]hat is, each ordinarily indicates only one place"—a forum that is "easily ascertainable." *Id.*

This Court's approach also avoids needless "uncertainty and litigation over the preliminary issue of the forum's competence." *Burnham v. Super. Ct.*, 495 U.S. 604, 626 (1990). Because "[p]redictability is valuable to corporations making business and investment decisions," *Hertz Corp.*, 559 U.S. at 94, enforcing clear rules for when states may exercise general jurisdiction allows businesses to allocate resources efficiently and rationally across state lines, to the benefit of customers, employees, shareholders, lenders, and affected communities. As commentators have noted, "[b]y 'ensuring the orderly administration of the laws,' the Due Process Clause 'gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with minimum assurance as to where that conduct will and will not render them liable to suit.'" Danielle Tarin & Christopher Macchiaroli, *Refining the Due-Process*

Contours of General Jurisdiction over Foreign Corporations, 11 J. INT'L BUS. & L. 49, 61 (2012) (quoting *World-Wide Volkswagen Corp.*, 444 U.S. at 297). "With adequate notice, a foreign corporation 'can act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the State.'" *Id.* (quoting *World-Wide Volkswagen Corp.*, 444 U.S. at 297).

In contrast, permitting a state to assert all-purpose, general jurisdiction based on nothing more than a corporation's registration to do business within the state would undermine predictability. Indeed, because every state has a corporate registration statute, and because every state could readily adopt the "deemed consent" approach taken by the Georgia Supreme Court, businesses could be sued in multiple state venues on any claim arising anywhere in the world. *See* Monestier, 36 CARDOZO L. REV. at 1353–54, 1408–09 & n.282 (discussing the lack of predictability for corporations when general-jurisdiction standards are relaxed or ambiguous). That "loose and spurious form of general jurisdiction" would be even more pernicious than the "'sliding scale'" specific jurisdiction that this Court has rejected. *Bristol-Myers Squibb*, 137 S. Ct. at 1781. "Such exorbitant exercises of all-purpose jurisdiction would scarcely permit out-of-state defendants" to structure their affairs to provide some assurance regarding where a claim might be asserted. *Daimler*, 571 U.S. at 139.

The resulting unpredictability would negatively affect all businesses. For growing businesses, the inability to predict whether registration would lead to

being haled into court on claims unrelated to the business's in-state activities could serve as an insuperable barrier to engaging in business across state lines. The unpredictable costs of litigation could only stifle growth. And even for businesses where the economic burden of litigation may be more manageable, the costs are still significant. A business's inability to order its affairs based on where claims may be brought undermines the efficient deployment of resources. There is no reason to allow Georgia and other states to undermine the predictability that *Daimler* and this Court's other general personal jurisdiction decisions have provided.

3. The lower court's decision also raises significant federalism concerns because it deprives other states of their ability to decide cases in which they have a greater vested interest—thereby undermining "their status as coequal sovereigns in a federal system." *World-Wide Volkswagen Corp.*, 444 U.S. at 291–92. The Constitution's due process limits on personal jurisdiction protect each state's "sovereign power to try causes in [its] courts." *Id.* at 293. That sovereign power also "implie[s] a limitation on the sovereignty of all … sister States," including with respect to each state's ability to try cases that implicate the interests of other states more than its own. *Id.* Indeed, as this case illustrates, Georgia's expansive approach to general jurisdiction prevents other states from hearing lawsuits within their lawful purview and undermines the very "principles of interstate federalism" that due process is designed to protect. *Id.* States have no legitimate interest in meddling in affairs or regulating activities that occurred exclusively in other states.

Not surprisingly, the Georgia Supreme Court's expansive approach encourages forum shopping. By subjecting businesses to general jurisdiction in any state where they are registered to do business, plaintiffs and their lawyers will be able to shop aggressively for a plaintiff-friendly forum and bring litigation there even if none of the offending conduct has any connection to the state. That is precisely one of the more serious problems that this Court's decisions have tried to remedy. Before *Daimler*, plaintiffs seeking to bring suit in "magnet jurisdictions" would rely on expansive theories of general jurisdiction, arguing that defendant companies did a high volume of business there. *Daimler* foreclosed that approach by holding that even a "substantial, continuous, and systematic course of business" by a defendant is not enough to support general jurisdiction. 571 U.S. at 137–38 (internal quotation marks omitted); Daniel Klerman & Greg Reilly, *Forum Selling*, 89 S. CAL. L. REV. 241, 307 (2016) (citing the *Daimler* decision as a positive development to rein-in forum shopping). The standard applied by Georgia would circumvent *Daimler* and open a new forum-shopping avenue for plaintiffs' lawyers, allowing the filing of a limitless number of claims in a desired forum as long as the company is registered in that state.

4. Finally, there are no countervailing benefits that might justify state courts' imposing these significant costs on businesses, their customers, and our legal system. Imposing consent to general jurisdiction as the price of registering to do in-state business is not necessary to protect in-state residents or in-state interests. To the contrary, if a nonresident

corporation creates meaningful contacts with the forum state and its in-state conduct harms an in-state resident, that corporation may be sued on a specific jurisdiction theory. *See Walden v. Fiore*, 571 U.S. 277, 284 (2014) (observing that a state may "exercise jurisdiction consistent with due process" if "the defendant's suit-related conduct ... create[s] a substantial connection with the forum State"); *see also Daimler*, 571 U.S. at 128 ("specific jurisdiction has become the centerpiece of modern jurisdiction theory, while general jurisdiction [has played] a reduced role") (quoting *Goodyear*, 564 U.S. at 925). In other words, this Court's case law already protects Georgia's "sovereign power to try causes in [its] courts," *World-Wide Volkswagen Corp.*, 444 U.S. at 293, that implicate the state's legitimate interests. In contrast, because general jurisdiction applies only when a claim is *unrelated* to the defendant's in-state conduct, when a defendant is not at home in the state, there is no countervailing interest to offset the weighty harms of Georgia's unconstitutional approach.

CONCLUSION

The Court should grant the petition for certiorari.

Respectfully submitted,

Chilton D. Varner
Brandon R. Keel
KING & SPALDING LLP
1180 Peachtree St. NE
Atlanta, GA 30309

Ashley C. Parrish
Counsel of Record
Jeremy M. Bylund
Nicholas Mecsas-Faxon
KING & SPALDING LLP
1700 Pennsylvania Ave. NW
Washington, DC 20006
(202) 626-2627
aparrish@kslaw.com

Counsel for Amici Curiae

Andrew R. Varcoe
Tyler S. Badgley
U.S. CHAMBER LITIGATION CENTER
1615 H Street NW
Washington, DC 20062

Counsel for Amicus Curiae Chamber of Commerce of the United States of America

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