No. 21-926

In The

Supreme Court of the United States

COOPER TIRE & RUBBER COMPANY,

Petitioner,

v.

TYRANCE MCCALL,

Respondent.

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

BRIEF IN OPPOSITION

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COUNTERSTATEMENT OF QUESTION PRESENTED

Can a state court constitutionally exercise personal jurisdiction over a defendant when the defendant has registered to do business in the forum state, has systematically and continuously done business in the forum state for decades, and has been on notice for decades that registration makes it amenable to suit in the forum state, and the claim has substantial connections to the forum state, but the injury occurred in another state?

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INTRODUCTION

For thirty years, the Georgia Supreme Court has held that corporations registered to do business in Georgia consent to be sued in the courts of that state. *Allstate Ins. Co. v. Klein*, 262 Ga. 599 (1992). The *Klein* decision is based primarily on Georgia's unique personal jurisdiction statute (O.C.G.A. §§ 9-10-90, 91), which confers "resident" status on foreign corporations that, like Petitioner, have voluntarily complied with the State's registration requirements (for seventy years in Petitioner's case).[1] Importantly, this is the only mechanism under Georgia law to exercise personal jurisdiction over a foreign corporation that is registered to transact business in Georgia.[2]

In the proceedings below, Petitioner requested that the Georgia Supreme Court overrule *Klein* or, in the alternative, find that the long-arm and registration statutes are unconstitutional, to the extent they allow Georgia courts to obtain personal jurisdiction over claims that have no connection with the state, *i.e.*, general jurisdiction. Petitioner's argument is that Georgia law is now incompatible with *Daimler AG v. Bauman*, 571 U.S. 117 (2014), and other recent decisions of this Court, which re-defined the scope of general jurisdiction, but which did not address, much less abrogate, consent jurisdiction through state registration

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[1] Respondent is unaware of any other states with the same, or a similar, statutory scheme.

[2] As discussed in further detail below, unlike in other states, Georgia's long-arm statute is inapplicable to corporations like Petitioner.

statutes. In *Cooper Tire & Rubber Co. v. McCall*, 312 Ga. 422 (2021), the Georgia Supreme Court declined Petitioner's request, upholding *Klein* and finding that Georgia's consent-based jurisdiction is constitutionally permissible in this case.

Petitioner claims that the Georgia Supreme Court has improperly provided the equivalent of general jurisdiction over *any* company that has registered to do business in Georgia in *any* case. While Petitioner's broad framing does pose an interesting constitutional question—whether a state may, through its corporate registration requirements, exercise personal jurisdiction over a foreign corporation in a case with no connection to the forum state—that is not the issue presented here. Rather, the issue here is narrower: can a state, through its registration requirements, exercise personal jurisdiction over a corporate defendant in a case where, as here, both the underlying controversy and the defendant's conduct are substantially related to the forum state? This Court "reviews judgments, not opinions," *Texas v. Hopwood*, 518 U.S. 1033 (1996), and the judgment here is based on facts showing a substantial connection between Respondent's claim and the forum state of Georgia.

This Court strongly favors "as applied" challenges because they are more consistent with the goals of resolving concrete disputes and deferring as much as possible to the legislative process. *See Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 443, 450–51 (2008) (discussing the preference for as-applied challenges to facial challenges). On the other hand,

facial invalidation "is, manifestly, strong medicine" that "has been employed by the Court sparingly and only as a last resort." *Nat'l Endowment of the Arts v. Finley*, 524 U.S. 569, 580 (1998) (quoting *Broadrick v. Oklahoma*, 413 U.S. 601, 613 (1973)). Accordingly, the question before this Court is whether the Georgia Supreme Court properly concluded that the state registration statute was constitutionally applied to provide personal jurisdiction over Petitioner *in this case*. Given the relationship between the activities of Petitioner in Georgia and Respondent's claim against it, the Georgia Supreme Court was correct in rejecting Petitioner's challenge, and, therefore, this Court should deny review because the question that Petitioner seeks to present is not before the Court in this case. *See Wash. State Grange*, 552 U.S. at 449–50 ("In determining whether a law is facially invalid, we must be careful not to go beyond the statute's facial requirements and speculate about hypothetical or imaginary cases." (internal quotations omitted)).

Before turning to the facts of this case, it is important to make clear what Respondent is *not* arguing. Respondent does not contest that this issue should be reviewed in a more traditional "general jurisdiction" case including one, for example, where one of its tires was manufactured in Arkansas, sold in Oklahoma to a resident of that state, installed in a car in Texas, and involved in an accident in New Mexico. Those are, with slight modifications, the claims in *Pennsylvania Fire Insurance Company of Philadelphia v. Gold Issue Mining & Milling Co.*, 243 U.S. 93 (1917). But those are not

the facts of this case. Rather, as detailed below, both Petitioner and the underlying cause of action have strong ties to the forum state of Georgia. What Respondent *is* arguing is that given those connections, exercising jurisdiction over Petitioner through Georgia's statutory scheme is constitutional in this case. If this Court were presented with a case similar to the hypothetical posed above (that is, where a registration statute is used to obtain personal jurisdiction over a case with no connection to the forum state), it would be sensible for this Court to review the issue presented by Petitioner.

The Court will have a superior vehicle to review this issue in the case of *Mallory v. Norfolk Southern Railway Company*, 266 A.3d 542 (Pa. 2021), where the Pennsylvania Supreme Court held that Pennsylvania's registration statute could not constitutionally confer consent to personal jurisdiction. A Petition for a Writ of *Certiorari* was filed in that case on February 18, 2022. As outlined therein, the Pennsylvania statute lacks the quirks of Georgia's resident/non-resident scheme and contains facts more consistent with other cases that have reviewed this issue—that is, the underlying controversy in *Mallory* has little connection with Pennsylvania. Thus, this Court should grant review in *Mallory* instead of in this case.

THE RELEVANT FACTS

This case arises out of a 2016 single-vehicle crash, in which Respondent suffered serious injuries, including an open pelvis fracture, an extraperitoneal bladder rupture, vertebral fractures, and a closed-head injury. Pet. App. 43a. At the time of the crash, Respondent was a passenger in a vehicle that was equipped with a rear tire designed, manufactured, and sold by Petitioner. That tire failed and separated, causing the driver to lose control of the vehicle, which left the roadway and rolled over until it came to rest in a nearby wooded area. Pet. App. 2a. Respondent is a Florida resident, and the crash occurred in Florida. The driver, however, is a Georgia resident, and just weeks before the crash had purchased the vehicle (with the subject tire affixed) in Georgia from a Georgia-based used-car dealer. Pet. App. 2a. The driver, Karla Gould, drove the vehicle from Georgia to Florida, where she was visiting Respondent.

Respondent filed suit in the State Court of Gwinnett County, Georgia and, pleading in the alternative, alleged that the crash was caused by Petitioner's defective tire, driver error, negligence on the part of the used-car dealer, or some combination of all three. Thus, Respondent named three defendants in the suit: Petitioner Cooper Tire & Rubber Company, the designer and manufacturer of the tire; the driver Karla Gould, a Georgia resident who purchased the vehicle in Georgia with the subject tire affixed; and Pars Car Sales, Inc., a used-car dealer based in Georgia, which last inspected the tire and sold the vehicle and tire to Gould.

Pet. App. 38a–40a. Notably, Petitioner ignored the fact the driver and the used-car dealer are Georgia residents and that the vehicle and tire were purchased in Georgia just weeks before the crash, although those facts are plainly stated in the opinion of the Georgia Supreme Court.

The State of Georgia provided the only forum in which it is constitutionally permissible to join all three potentially responsible parties, as Pars Cars Sales, Inc. is a Georgia-based corporation with no business dealings in Florida (at least of which Respondent is aware) and is not likely subject to suit there. The driver would likely be subject to suit in Florida as an out-of-state motorist but hauling her to Florida is certainly more burdensome than suing Petitioner in Georgia, where it has profited from tire sales for years. Thus, this is not a case of a plaintiff forum shopping for a favorable venue with no connection to the lawsuit. Rather, hearing this case in Georgia promoted judicial economy and provided the most sensible forum for this case, rather than forcing Respondent to bear the burden of filing separate suits in Georgia and Florida, as Petitioner's urged ruling would require.[3] In addition to burdening the court systems of Georgia and Florida, Petitioner's proposal would also allow each defendant in the separate lawsuits to blame the absent person or entity. Petitioner would surely blame the absent car dealer in

[3] Petitioner conceded that it could constitutionally be sued by Respondent in Florida.

the separate suit in Florida. Thus, any forum shopping in this case is being done by Petitioner.

The State of Georgia also provided a logical and constitutionally sound forum in which to sue Petitioner, which has continuously filed annual business registration documents in Georgia since 1949, including during each of the last 30 years when Georgia law explicitly provided that registration would subject Petitioner to suit in Georgia. Petitioner also maintains an enormous regional distribution facility in Albany, Georgia, one of eleven such facilities in the country. This distribution center is the sixth-largest warehousing building in the entire State of Georgia and previously served as a manufacturing plant for Petitioner. From 2013 to 2017, Cooper distributed approximately 2,500,000 tires through this facility, and during those same years, sold more than 1,000,000 tires in Georgia, including 107,056 Dakota H/T Definity M+S tires (the brand of the subject tire) in 2013 alone, the year in which the subject tire was sold. Petitioner also leases property in Savannah, Georgia, where it imports its products and components into the United States.[4]

In the trial court, Petitioner moved to dismiss on the ground that the registration statute could not provide the basis for personal jurisdiction, both as a matter of Georgia law and under the Constitution. As for *Klein*, it argued that it should be overruled because

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[4] The facts contained in this paragraph are not in the underlying opinion but are contained in Respondent's "Brief of Appellee," filed in the Georgia Supreme Court.

this Court's intervening decisions in *Daimler* and *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011) implicitly held that registration statutes could not confer general jurisdiction on it, and, therefore, the Georgia courts should no longer follow *Klein*. Petitioner was successful in the trial court, but not in the Georgia Court of Appeals—which deferred to *Klein*—or the Georgia Supreme Court—which upheld *Klein*.

REASONS FOR DENYING THE PETITION

A. Unique features of Georgia law make this case a poor vehicle for review of the issue Petitioner has presented.

In the decision below, the Georgia Supreme Court interpreted Georgia law in the only manner that the applicable statutory language allows. Article 4 of the Georgia Civil Practice Act, which includes the long-arm statute and is titled "Personal Jurisdiction Over Nonresidents," defines the term "nonresident" as follows:

> As used in this article, the term "nonresident" includes . . . a corporation which is not organized or existing under the laws of this state and is not authorized to do or transact business in this state at the time a claim or cause of action under Code Section 9-10-91 arises.

O.C.G.A. § 9-10-90.[5] By the plain language of the statute, foreign corporations (*i.e.*, those domiciled in another state) that are *not* authorized to transact business in Georgia are "non-residents," over which jurisdiction may be exercised pursuant to the long-arm statute. Conversely, as the Georgia Supreme Court first held in *Klein*, and affirmed in the decision below, a foreign corporation that *is* authorized to transact business in Georgia (like Petitioner) is a "resident" for purposes of personal jurisdiction and is not subject to the long-arm statute. As a result of these special features of Georgia law, foreign corporations are subject to personal jurisdiction in Georgia *only* through their registration, which confers "resident" status.

In the decision below, the Georgia Supreme Court squarely confronted the problem with Petitioner's argument:

> Additionally, *Klein*'s holding about general jurisdiction in this context was sensible because, had the Court reached a different conclusion, a jurisdictional gap would have emerged whereby a *registered* out-of-state corporation would apparently not have been subject to *any* jurisdiction in Georgia—specific or general. Cooper Tire does not explain what alternative holding the Court should have reached in *Klein*, other than to suggest that registered corporations should not be subject

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[5] Code Section 9-10-91 subsequently sets forth the circumstances under which a plaintiff may assert personal jurisdiction over a non-resident.

> to the jurisdiction of Georgia's courts at all. If we were to overrule that holding, we would generate the jurisdictional gap . . . whereby a potentially large swath of out-of-state corporations like Cooper Tire could fall into a class exempt from all personal jurisdiction—specific and general—in this State simply because they are authorized and registered to do business here.

Cooper Tire, 312 Ga. at 435–36 (emphasis in original). It is no surprise that Petitioner advocated for this "jurisdictional gap," which would result in it not being amenable to suit in Georgia on any claim, and Petitioner failed to offer a solution or interpretation of Georgia law that avoids this "jurisdictional gap." In other states with different long-arm statutes, a plaintiff could perhaps have obtained specific jurisdiction over a similarly-situated defendant and set of facts. However, because that avenue is foreclosed under Georgia law, using Petitioner's "resident" status through registration was the only method for Respondent to obtain personal jurisdiction over a foreign corporation like Petitioner.

Given the illogical solution urged by Petitioner, Justice Bethel issued a concurrence in the underlying opinion "for the sole purpose of calling the General Assembly's attention to the peculiar and precarious position of the current law of Georgia." *Id.* at 437 (Bethel, J., concurring). He explained that if *Klein* were overruled, "the 'gap' identified in the Court's opinion in this case will immediately spring to life, and Georgia's law

governing the exercise of personal jurisdiction will not include a basis for jurisdiction over those businesses domiciled outside of Georgia that have registered to conduct business in Georgia." *Id.* If this Court were to grant this Petition, it would necessarily be wading into a Georgia-specific political controversy that would be better sorted out by the Georgia legislature.

On the other hand, granting review in *Mallory v. Norfolk Southern Railway Company*, 266 A.3d 542 (Pa. 2021) poses no such risk. The Pennsylvania registration statute contains no ambiguity or potential for a jurisdictional "gap." It provides,

> (a) General Rule. The existence of any of the following relationships between a person and this Commonwealth *shall constitute a sufficient basis of jurisdiction* to enable the tribunals of this Commonwealth *to exercise general personal jurisdiction* over such person. . . .
>
> . . .
>
> (2)(i) Corporations [that are] *qualifi[ed] as a foreign corporation* under the laws of this Commonwealth.

42 Pa. Stat. § 5301(a) (emphases added). The *Mallory* case provides this Court with a clean opportunity to review the issue presented by Petitioner without requiring the Court to parse through Georgia's unique statutory language, the Georgia Supreme Court's interpretation of that language, and most importantly, without potentially uprooting the entire jurisdictional

process in Georgia by "springing to life" the jurisdictional "gap" highlighted in the underlying opinion.

B. The lower court decisions relied upon by Petitioner are distinguishable from the instant case because those causes of action had no connections to the forum states.

Petitioner suggested that the decision below presents this Court with an opportunity to address an "entrenched split" regarding whether state registration statues can confer consent jurisdiction. As discussed above, courts addressing this issue have done so on a state-specific or statute-specific level, and the Georgia statute is unlike any others considered in the cases relied upon by Petitioner. In addition, the state and federal decisions cited by Petitioner involve cases in which the cause of action had no connection to the forum state. In the instant case, both the controversy and Petitioner's conduct have significant connections to Georgia, and Georgia provides the only forum in which to join all three defendants. Thus, this case does not present the Court with the concern, as expressed in *Daimler*, of unfairly hauling an unwilling defendant into a court with no connection to this case or controversy. Here, it is hardly unfair to sue Cooper in Georgia.

In its request for review, Petitioner primarily relied on cases in which registration statutes were used by the plaintiff to engage in improper forum shopping—that is, cases in which neither the defendant's conduct nor the underlying controversy had any

connection to the forum state, other than the defendant's registration there. For example, in *Genuine Parts Co. v. Cepec*, 137 A.3d 123 (Del. 2016), the plaintiff was a Georgia resident who was exposed to asbestos during the three years he worked in Florida for the defendant Genuine Parts, a Georgia corporation. *Id.* at 128. He brought suit in Delaware against Genuine Parts (and others) and claimed personal jurisdiction based on Genuine's registration to do business in Delaware. *Id.* The court ruled against the plaintiff, declining to interpret Delaware law as providing a basis for jurisdiction. *Id.* at 148. While the Delaware Supreme Court reached a different conclusion than the Georgia Supreme Court did in the decision below, the *Cepec* case had no connection to the forum state other than the defendant's registration there. This case, on the other hand, involves multiple Georgia-based defendants and Georgia-related conduct, as well as a defendant (Petitioner) with strong ties to Georgia outside of its registration. Therefore, this case is distinguishable from *Cepec* and other lower court decisions cited by Petitioner because those cases lack any forum state connections. Two other asbestos forum shopping cases relied on by Petitioner, where there was no connection with the state where the cases were filed, are *Waite v. All Acquisition Corp.*, 901 F.3d 1307 (11th Cir. 2018), and *Brown v. Lockheed-Martin Corp.*, 814 F.3d 619 (2d Cir. 2016).

The Missouri Supreme Court rejected a similar forum shopping effort as a matter of state law in *State ex rel. Norfolk Southern Railway Co. v. Dolan*, 512 S.W.3d 41 (Mo. 2017), where an Indiana resident sued

a Virginia corporation in Missouri over an incident that occurred in Indiana. There, in another state-specific decision, the Missouri Supreme Court held that its registration statute "does not require foreign corporations to consent to suit over activities unrelated to Missouri." *Id.* at 52. Again, that cause of action had no connection to the forum state outside of the defendant's registration there.

Other cases trumpeted by Petitioner as demonstrating a need for review by this Court also have little bearing on the issue presented here. In *Pittock v. Otis Elevator Co.*, 8 F.3d 325 (6th Cir. 1993), the court described the facts of a case (unrelated to the forum state of Ohio) as follows:

> Ronald and Lisa Pittock, Ohio residents, were in Las Vegas, Nevada when they were injured. An elevator in which the Pittocks were riding at the Vegas World Hotel and Casino fell several floors, and the Pittocks were hurt. At the time of the accident, the hotel was owned and operated by Vegas World Corporation, and the elevator was maintained by the Otis Elevator Company. Neither Otis nor Vegas World is incorporated in Ohio.

Id. at 327. The court rejected the plaintiff's attempt to assert personal jurisdiction through Ohio's business registration statute, which merely required the registered corporation to designate an agent to accept service of process.

Petitioner also relied heavily on *Lanham v. BNSF Railway Co.*, 939 N.W.2d 363 (Neb. 2020). The plaintiff,

a Nebraska resident, sued a Texas railroad in Nebraska for an injury he sustained while working for the defendant in Texas. *Id.* at 366. The plaintiff normally worked for the railroad in Iowa, Nebraska, and Minnesota, but to avoid a layoff, he bid for a job in Texas. *Id.* Based in part on its reading of the Due Process Clause, and in light of general jurisdiction cases like *Daimler* and *Goodyear*, the Nebraska Supreme Court concluded that prior decisions allowing jurisdiction based on registration should be overruled as a matter of state law. *Id.* at 135–36. In contrast to the instant case, the actual claim—injuries to plaintiff's ankle resulting from being hit by a sledgehammer in Texas—had no relation to the railroad's conduct in Nebraska.[6]

Despite Petitioner's argument to the contrary (at 3, 10), there are no cases holding that consent jurisdiction based upon a party's registration to do business in the state is unconstitutional when the underlying controversy was as connected to the forum state as is this

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[6] Lanham's decision to sue in Nebraska was routine and would not, as of that time, have been thought of as aggressive forum shopping. His claim arose in 2014, and for many years until *Goodyear* and *Daimler*, courts had routinely upheld personal jurisdiction over BNSF based on a provision of the Federal Employer Liability Act and a broader understanding of general jurisdiction. BNSF had not contested jurisdiction in those cases for many years, until it did so successfully in *BNSF Railway Co. v. Tyrrell*, 137 S.Ct. 1549 (2017). Even that decision specifically left open the possibility of using a state registration statute as a basis for personal jurisdiction under applicable state (Montana) law, *id*. at 1559, although a different case rejected that effort as a matter of state law. *DeLeon v. BNSF Ry. Co.*, 426 P.3d 1 (Mont. 2018).

case. Indeed, most of the cases that the Petitioner identified (at 12–13) as creating a conflict with the holding here are plainly distinguishable on their facts or on consequential differences in state law. Many of those cases identified Due Process Clause problems with extending state law to claims with no connection to the forum state. They have often done so because the plaintiff had urged a result that would bring in claims with no connection to the forum state based on registration, giving the state court unlimited general jurisdiction. Given the choice between construing a statute to require general jurisdiction or construing it not to apply at all, it is hardly surprising that state courts have chosen the latter course and avoided the constitutional issues in the other path. By contrast, Respondent used the Georgia statute to obtain jurisdiction over claims with close ties to Georgia, notwithstanding that the injury to Respondent occurred in Florida. As long as state courts continue to construe their state registration laws not to affect limited personal jurisdiction of the kind upheld in this case, there is no need for this Court to intervene.

C. There is no constitutional basis to overturn personal jurisdiction in this case.

Petitioner contended that there are three grounds on which jurisdiction based on Georgia's registration statute is unconstitutional. Petitioner did not argue that the requirement for foreign corporations to register in Georgia is on its own unconstitutional; indeed, it invokes the mandatory rule as a basis for its claim that

consent based on registration is coerced and for that reason is unconstitutional. Petitioner also did not argue that the Georgia registration statute is unconstitutional in all its applications, nor could it properly do so. Suppose that a case like *Ford Motor Company v. Montana Eighth Judicial District Court*, 141 S.Ct. 1017 (2021) arose in Georgia, where the incident occurred in the state based on a product used there. Surely, it would not be per se unconstitutional for a Georgia court to cite the Georgia registration statute, as the Georgia Supreme Court did in this case, as one of the reasons why personal jurisdiction was proper, especially where its long-arm statute, the more common basis for obtaining personal jurisdiction, does not apply to corporations that are registered to do business in the state.

In every personal jurisdiction case decided by this Court, it has looked to the facts of the claims in relation to the forum state in resolving the constitutional question. In no case has this Court struck down a state jurisdictional statute on which the plaintiff had relied, even where it concluded that the exercise of jurisdiction in that case was unconstitutional. Therefore, because Petitioner does not make a facial challenge to the Georgia statute, its claim can only be that using registration as a basis for personal jurisdiction on the facts of this case violates the Constitution, but, as Respondent now demonstrates, that argument lacks merit.

The constitutional basis of Petitioner's primary claim is Due Process, *i.e.*, that relying on a defendant's registration is an end run on the decisions in *Goodyear*

and *Daimler*, limiting general jurisdiction to states where the defendant is "at home." However, Respondent did not seek, and does not need, the equivalent of general jurisdiction to sustain jurisdiction in this case. It is immaterial what label the Georgia court placed on its jurisdictional ruling, for as this Court observed in *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950), "the requirements of the Fourteenth Amendment to the Federal Constitution do not depend upon a classification for which the standards are so elusive and confused generally and which, being primarily for state courts to define, may and do vary from state to state." *Id.* at 312; *see also NAACP v. Button*, 371 U.S. 415, 429 (1963) ("[A] State cannot foreclose the exercise of constitutional rights by mere labels.").

Respondent recognizes that this Court, in its recent decisions, has often divided personal jurisdiction into general and specific. But those categories, which are not found in the Constitution, are not exclusive. Thus, in *Burnham v. Superior Court of California*, 495 U.S. 604 (1990), there was neither general nor specific jurisdiction over the defendant, but the Court upheld personal jurisdiction over the out-of-state defendant because he had been personally served in the forum state. *Id.* at 619. Similarly, even Petitioner did not argue that actual case-specific consent or a blanket consent to be sued in a state—for example, as part of a business transaction—would violate Due Process. Nor would a failure to make a timely objection to personal jurisdiction under Federal Rule of Civil Procedure 12(h)(1), which constitutes a waiver of that objection,

be invalid under the Due Process Clause. And despite the demise of quasi in rem jurisdiction after *Shaffer v. Heitner*, 433 U.S. 186 (1977), no one suggests that actual in rem jurisdiction, where ownership to real property is at issue, is not available when some of the claimed owners are not residents of the forum state. *See also Mullane*, *supra* (upholding power of state court to bind non-resident beneficiaries to an accounting brought by the trustee).[7]

Petitioner also relied on *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), which did not mention *Pennsylvania Fire*. Respondent agrees that *International Shoe's* basic Due Process message is that personal jurisdiction must comport with fundamental notions of fairness, but that standard is easily met in this case. As in *International Shoe*, where the defendant had conducted its business in Washington State on a continuous and systematic basis for many years, Petitioner has sold thousands of tires annually in Georgia, including the brand of the subject tire at issue in this case. Beginning with *International Shoe*, and

[7] Petitioner suggested (at 19) that *Shaffer* and *Burnham* constitute an "express rejection" of *Pennsylvania Fire*, even though neither *Pennsylvania Fire* nor the concept of registration were mentioned in those decisions. On the contrary, *Burnham* made the same "carve-outs" for consent that *Daimler* and *Goodyear* did. *See* 495 U.S. at 618 ("The validity of assertion of jurisdiction *over a nonconsenting defendant* who is not present in the forum depends upon whether 'the quality and nature of [his] activity' in relation to the forum . . . renders such jurisdiction consistent with 'traditional notions of fair play and substantial justice.' " (emphasis added) (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945))).

most recently in *Ford*, this Court's cases leave no doubt that, if the incident in question in this case had occurred in Georgia, the Due Process Clause would not be a barrier to jurisdiction. Petitioner does not explain, nor could it, why it would be fundamentally unfair for Petitioner to defend this claim in Georgia given that the driver of the vehicle in which Respondent was a passenger is a Georgia resident and had purchased the car (affixed with Petitioner's tire) in Georgia. And if it was not fundamentally unfair for Mr. Burnham to travel from his residence in New Jersey to defend his wife's action for divorce, alimony, and child support in California simply because he was served with process in that state, it cannot be fundamentally unfair for Petitioner to defend this claim in Georgia where it does millions of dollars of business each year and has continued to register its business since 1949, despite having notice since *Klein* was decided in 1991 that doing so will subject it to suit in Georgia.[8]

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[8] If Petitioner's theory that the use of registration statutes is, in every case, an end run on the limits of general jurisdiction were correct, then *Burnham* was wrongly decided because the holding there, based on in-state service, gave the California courts general jurisdiction over Mr. Burnham. *See Ford Motor Co., supra*, 141 S.Ct. at 1038 (Gorsuch & Thomas, JJ., concurring). It would also call into question the *International Shoe* Court's approval of registration jurisdiction in the circumstances of this case, where it stated that "it has been generally recognized that the casual presence of the corporate agent or even his conduct of single or isolated items of activities in a state on the corporation's behalf are not enough to subject it to suit on causes of action *unconnected with the activities there*." 326 U.S. at 317 (emphasis added).

As for Petitioner's second constitutional objection, there is no claim of facial discrimination because under the applicable Georgia statute, domestic and registered foreign corporations are treated identically.[9] Nonetheless, Respondent agrees that, in an appropriate case, the Dormant Commerce Clause could provide a basis to set aside an exercise of personal jurisdiction based on a use of a registration statute as in *Pennsylvania Fire*, where there was no connection between the claim at issue and the forum state. The supposed problem would be that, under modern Commerce Clause jurisprudence as enunciated in cases such as *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970), such exercise of personal jurisdiction could be unconstitutional as a "clearly excessive burden" on interstate commerce:

> Where the statute regulates even-handedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits. If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local

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[9] O.C.G.A. § 14-2-1505(b) provides:

> A foreign corporation with a valid certificate of authority has the same but no greater rights under this chapter and has the same but no greater privileges under this chapter as, and except as otherwise provided by this chapter is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic corporation of like character.

> interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities.

Id. at 142.

But once again, that is not this case, nor may the Court decide this case on the basis that the statute may be unconstitutional in other circumstances. As this Court properly concluded in *South Dakota v. Wayfair, Inc.*, 138 S.Ct. 2080 (2018), the possibility that a state statute may create Commerce Clause issues should not cause the Court to decline to uphold the statute in a case where there are no impermissible burdens. *Id.* at 2099.

As to the burden on Petitioner, it will have to defend this claim either in Georgia or Florida, and there is no basis to conclude that it will be burdened any more to litigate this case in Georgia rather than Florida. In addition, Georgia and Respondent have a substantial interest in having Georgia courts available to resolve this dispute, which has a substantial connection to the sale of the vehicle equipped with the tire at issue in Georgia, because only Georgia can obtain jurisdiction over all three defendants. If Petitioner is correct, and it can be sued only in Florida over this claim, *that* would impose an unnecessary burden on the Florida courts, as well as on Respondent and the driver. In fact, even if Petitioner were to escape from personal jurisdiction as a defendant in Georgia, it is likely to be subpoenaed as a third-party witness by the dealer, who will seek to shift the blame to Petitioner.

Thus, upholding personal jurisdiction over Petitioner in this case will not create an unreasonable burden on interstate commerce, but rejecting it will impose the very burdens that the Commerce Clause prohibits.

Finally, Petitioner has largely merged its final claim, based on the unconstitutional-conditions doctrine, with its Commerce Clause objection (Pet. at 21-22). To the extent that this is a separate claim, the cases relied on by Petitioner involve rights of individuals, not business entities. But even they do not prohibit a state from imposing any and all conditions to obtain a state benefit or to comply with a state law. At bottom, although not couched in the language of the Commerce Clause cases, the doctrine aims to prevent a state from extracting unreasonable or excessive obligations in situations in which the state has substantial leverage. Respondent agrees that states have leverage over corporations that wish to do business in their state but requiring that a corporation such as Petitioner to respond to a lawsuit in Georgia involving a claim in which a vehicle affixed with allegedly defective tire was sold in Georgia is a perfectly reasonable condition, especially where both of the other two defendants can only be joined in the same case in Georgia.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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