No. 21-1168

In the Supreme Court of the United States

ROBERT MALLORY,

Petitioner,

v.

NORFOLK SOUTHERN RAILWAY CO.,

Respondent.

On Petition for Writ of Certiorari to the Pennsylvania Supreme Court

BRIEF OF VIRGINIA, ALASKA, ARKANSAS, IDAHO, INDIANA, MONTANA, NEW HAMPSHIRE, AND SOUTH CAROLINA AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT

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INTERESTS OF *AMICI CURIAE*[1]

Amici curiae the Commonwealth of Virginia and seven other states have a strong interest in the question presented because it implicates their sovereign adjudicatory power over disputes involving their citizens and events that occur within their territories. Allowing States to assert general jurisdiction over other States' citizens would undermine these interests by permitting plaintiffs to bring suit in fora with no connection to the disputes. States, particularly larger States, could then improperly assert their adjudicatory and regulatory power extraterritorially without regard to the equal sovereignty of their sister States.

INTRODUCTION AND SUMMARY OF ARGUMENT

Since the Founding, the Constitution has enshrined the equal sovereignty of the States. "The sovereignty of each State . . . implie[s] a limitation on the sovereignty of all its sister States." *Bristol-Myers Squibb Co.* v. *Superior Ct. of Cal.*, 137 S. Ct. 1773, 1780 (2017) (alteration in original) (quoting *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 293 (1980)). This principle limits the personal jurisdiction of state courts—in particular, it restricts general jurisdiction over the citizens of other States.

Prior to the ratification of the Fourteenth Amendment, this Court held that state court judgments issued without personal jurisdiction over defendants were "an illegitimate assumption of power," and that sister States could therefore refuse to enforce them

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[1] No counsel for a party authored this brief in whole or in part, and no person or entity other than *amici curiae* made any monetary contribution to fund the preparation or submission of this brief.

under the Full Faith and Credit Clause, U.S. Const. art. IV, § 1. *D'Arcy* v. *Ketchum*, 52 U.S. (11 How.) 165, 174 (1850). The Fourteenth Amendment incorporated these longstanding restrictions on state court jurisdiction while providing a new mechanism for federal courts to review these questions directly. See *Pennoyer* v. *Neff*, 95 U.S. 714, 733 (1877), overruled on other grounds by *Shaffer* v. *Heitner*, 433 U.S. 186 (1977).

Traditional jurisdictional principles limited personal jurisdiction over foreign corporations. Indeed, the traditional rule was that state courts could never assert jurisdiction over foreign corporations, because corporations existed exclusively under the authority of the incorporating State. See *St. Clair* v. *Cox*, 106 U.S. 350, 354 (1882); *Bank of Augusta* v. *Earle*, 38 U.S. (13 Pet.) 519, 588 (1839). During the mid-nineteenth century, however, many States passed statutes requiring foreign corporations to register and accept service of process as a condition of conducting in-state business. By the time the Fourteenth Amendment was ratified, it had become widely accepted that in return for allowing a foreign corporation to conduct in-state business, a State could demand that the corporation submit to jurisdiction "in any litigation arising out of its transactions in the State." *St. Clair*, 106 U.S. at 356; see *Lafayette Ins. Co.* v. *French*, 59 U.S. (18 How.) 404, 408 (1855). Thus, under the original meaning of the Fourteenth Amendment, the exercise of what is now called *specific* jurisdiction over foreign corporations comports with due process. But no such historical tradition or widespread practice at the time of ratification supports the far more aggressive position that States can establish *general* jurisdiction over foreign corporations regarding disputes that arose elsewhere.

Rather, such expansive approaches to general jurisdiction emerged at end of the nineteenth century, and particularly during the early twentieth century, before being rejected again as an overly grasping intrusion into the sovereignty of sister States. *Pennsylvania Fire Ins. Co.* v. *Gold Issue Mining & Milling Co.*, 243 U.S. 93 (1917), is wrongly decided because it is inconsistent with fundamental principles of state sovereignty, and with the original meaning of the Fourteenth Amendment. It erred by failing to distinguish between specific and general jurisdiction, and by failing to recognize that state sovereignty restricts the exercise of personal jurisdiction.

Departing from the original meaning of the Fourteenth Amendment today would seriously damage state sovereignty and have far-reaching adverse consequences. Allowing States to require foreign corporations to submit to their general jurisdiction would improperly encroach upon the sovereignty of sister States, and allow larger States to impose their will on smaller States. States could improperly attempt to govern nationwide by distorting or refusing to apply the law of sister States to disputes involving the sister States' citizens that arose in the sister States' territory. Unrestrained general jurisdiction would also lead to widespread forum shopping and litigation tourism, undermining States' abilities to implement their own policies. For instance, plaintiffs could evade laws intended to promote economic growth and stability, such as caps on punitive damages or statutes of limitations, by seeking out plaintiff-friendly fora that will refuse to apply or misapply them. The decision of the Pennsylvania Supreme Court should be affirmed.

BACKGROUND

This case is a dispute between two Virginia citizens regarding alleged injuries that arose in Virginia. Pet. App. 12a. Petitioner Robert Mallory was employed by Norfolk Southern Railway Company, and alleges that his exposure to carcinogens on the job between 1988 and 2005 gives rise to claims under the Federal Employers' Liability Act, 45 U.S.C. §§ 51–60. *Id.* Mallory does not contend that the alleged exposure occurred in Pennsylvania, but in Virginia and Ohio. *Id.* When he brought suit, Mallory was a Virginia resident, and Norfolk Southern was incorporated and had its principal place of business in Virginia. *Id.* at 2a, 12a. Despite this dispute's strong connection with Virginia, and lack of any connection to Pennsylvania, Mallory filed suit in the Philadelphia Court of Common Pleas, presumably because of that court's reputation as a plaintiff-friendly forum. See Mark A. Behrens, *Litigation Tourism in Pennsylvania: Is Venue Reform Needed?*, 22 Widener L.J. 29, 30–31 (2012) ("Plaintiffs' attorneys often file suit in Philadelphia because they believe there is a litigation advantage to being there, and because Pennsylvania's permissive venue rules often allow plaintiffs to forum shop.").

Pennsylvania law requires foreign corporations to register before conducting business within the State, 15 Pa. Cons. Stat. § 411(a), and states that registration provides grounds for general jurisdiction over foreign corporations regardless of where the action arose. 42 Pa. Cons. Stat. § 5301(a)(2)(1); see 42 Pa. Cons. Stat. § 5301(b). Mallory contended that Pennsylvania has general jurisdiction pursuant to these statutes, because Norfolk Southern registered to conduct business in Pennsylvania. Pet. App. 45a.

The trial court held that the Pennsylvania statutes were not a valid basis for general jurisdiction under the Due Process Clause. Pet. App. 18a–19a. The Pennsylvania Supreme Court affirmed, holding the Pennsylvania statutes unconstitutional. *Id.* at 42a.

ARGUMENT

I. Under the original meaning of the Constitution, general jurisdiction over other States' citizens violates those States' equal retained sovereignty

A. Since the Founding, the Constitution has enshrined the equal sovereignty of States, and accordingly limited the jurisdiction of state courts over the citizens of other States

Long before the Fourteenth Amendment, it was firmly established that the equal sovereignty of States limited the jurisdiction of state courts. These restrictions on personal jurisdiction were "a consequence of territorial limitations on the power of the respective States." *Hanson* v. *Denckla*, 357 U.S. 235, 251 (1958); see James Weinstein, *The Federal Common Law Origins of Judicial Jurisdiction: Implications for Modern Doctrine*, 90 Va. L. Rev. 169, 215 (2004).

Territorial restrictions on personal jurisdiction have ancient roots in the English common law, and were acknowledged by Bracton in his seminal 13th Century treatise. Compare 2 Henry de Bracton, *On the Laws and Customs of England* 301, 304 (George E. Woodbine ed., Samuel E. Thorne trans. 1968) (jurisdiction of the king was vested in a single court regardless of where the cause of action arose) with 4 *id.* at 248–49 (private actions were required to be brought

in the correct territorial court due to jurisdictional limitations).

In America, recognition that the territorial limits of state sovereignty limited the jurisdiction of state courts "antedate[s] the Constitution itself." Weinstein, *supra*, at 215. Early American courts adopted the "ubiquitous" English rule that court "proceedings without jurisdiction were *coram non judice*," a legal nullity. William Baude, *The Judgment Power*, 96 Geo. L.J. 1807, 1828 (2008). Under the Articles of Confederation, state courts held that they were bound to recognize the judgments of sister state courts only "where both parties are within the jurisdiction of such courts at the time of commencing the suit." *Kibbe* v. *Kibbe*, 1 Kirby 119 (Conn. 1786). This rule was based on the bedrock principle that a sovereign "can bind only its own subjects, and others, who are within its jurisdictional limits; and the latter only while they remain there." Joseph Story, *Commentaries on the Conflict of Laws* 7 § 7 (Boston, Hilliard, Gray & Co. 1834).

At the Founding, "[t]he States retain[ed] many essential attributes of sovereignty, including, in particular, the sovereign power to try causes in their courts," and "[t]he sovereignty of each State . . . implie[d] a limitation on the sovereignty of all its sister States." *Bristol-Myers Squibb*, 137 S. Ct. at 1780 (second alteration in original) (quoting *World-Wide Volkswagen*, 444 U.S. at 293). As the Federalist Papers explained, "the States . . . retain[ed] all PRE-EXISTING authorities which may not be exclusively delegated to the federal head," including the "primitive jurisdiction" of the state courts. *The Federalist* No. 82, at 493 (Alexander Hamilton) (Clinton Rossiter ed., 1961); see *id*. ("The judiciary power of every government . . . in civil cases lays hold of all subjects of

litigation between parties within its jurisdiction."); *McElmoyle ex rel. Bailey* v. *Cohen*, 38 U.S. (13 Pet.) 312, 327 (1839) ("It has been well said, 'The Constitution did not mean to confer a new power of jurisdiction, but simply to regulate the effect of the acknowledged jurisdiction over persons and things within the state'" (quoting 3 Joseph Story, *Commentaries on the Constitution of the United States* 183 § 1307 (Boston, Hilliard, Gray & Co. 1833)); Anthony J. Bellia Jr. and Bradford R. Clark, *The International Law Origins of American Federalism*, 120 Colum. L. Rev. 835, 843 (2020) ("Under the law of nations, sovereign states retained all rights, powers, and immunities that they did not affirmatively surrender in a binding legal instrument.").

Thus, courts continued to recognize the same principles of territorial restrictions on personal jurisdiction following the adoption of the Constitution. See, *e.g.*, Story, *Commentaries on the Conflict of Laws*, *supra*, §§ 18, 20 ("[E]very nation possesses an exclusive sovereignty and jurisdiction within its own territory," and therefore "no state or nation can by its laws directly affect or bind property out of its own territory, or bind persons not resident therein"); *The Appollon*, 22 U.S. (9 Wheat.) 362, 370 (1824) ("The laws of no nation can justly extend beyond its own territories, except so far as regards its own citizens."); see also *Pennoyer*, 95 U.S. at 724, 730–32 (collecting cases).

Prior to the Fourteenth Amendment, federal courts had no direct authority to review the validity of an assertion of state court jurisdiction within that State. *Pennoyer*, 95 U.S. at 733; see Stephen Sachs, Pennoyer *was Right*, 95 Tex. L. Rev. 1249, 1270 (2017). Instead, jurisdictional issues primarily arose under the Full Faith and Credit Clause, which

requires the States to recognize the judgments of sister States. *Id.*; see U.S. Const. art. IV, § 1. Given that "the judgment of a state Court [could] not be enforced out of the state by an execution issued within it," a judgment against a non-resident defendant was often practically worthless absent such recognition. *McElmoyle*, 38 U.S. (13 Pet.) at 325; see Sachs, *supra*, at 1269–70.

"Within the first few decades after the Constitution was adopted, courts in the United States almost unanimously agreed that if the rendering court lacked jurisdiction over the person, the judgment would, despite the command of the Full Faith and Credit Clause, be considered void in the courts of other states." Weinstein, *supra*, at 193 (collecting cases); see Charles W. "Rocky" Rhodes, *Nineteenth Century Personal Jurisdiction Doctrine in a Twenty-First Century World*, 64 Fla. L. Rev. 387, 397 (2012) (same). For instance, one early case explained that for recognition to be due, "the jurisdiction of every court, must attach, either because the person is within the sphere of its authority, or because the property or effects of the person, or that which is the subject matter of the controversy, is within that sphere." *Rogers* v. *Coleman*, 3 Ky. (Hard.) 413, 415 (1808). This rule, the court held, was necessary to promote "the harmony of the states" by preventing them from exercising jurisdiction "*extra territorium*"; otherwise, "the citizens of all the states may be drawn within the vortex of one state jurisdiction." *Id.*; see *Hitchcock* v. *Aicken*, 1 Cai. 460, 466 (N.Y. Sup. Ct. 1803) (opinion of Thompson, J.) ("[T]he judgments of courts, in sister states, ought to receive full credence where both parties were within the jurisdiction of the court at the time of commencing the suit, and were duly served with process."); *Hampton* v. *M'Connel*, 16 U.S. (3 Wheat.) 234, 235–36 n.c (1818)

("[A] plea to the jurisdiction of the court in which the judgment was obtained . . . might, in some cases, be pleaded in the state court to avoid the judgment" under the Full Faith and Credit Clause).

This Court affirmed that state court judgments issued without personal jurisdiction are "void" in *D'Arcy* v. *Ketchum*, 52 U.S. (11 How.) at 176. Looking to "the international law as it existed among the States in 1790," the Court held "that a judgment rendered in one State, assuming to bind the person of a citizen of another," was an "illegitimate assumption of power" if the court lacked personal jurisdiction over the defendant. *Id*. at 174; see *id*. ("[N]or has any faith and credit, or force and effect, been given to such judgments by any State of this Union, so far as we know; the State courts have uniformly, and in many instances, held them to be void"). Significantly, this "Court expressly rejected the option by which the only jurisdictional inquiry would be whether the judgment conformed to the jurisdictional rules of the rendering state." Weinstein, *supra*, at 179. To the contrary, it was undisputed in *D'Arcy* that the New York court had obtained personal jurisdiction over the defendant "according to a statute of that State." *D'Arcy*, 52 U.S. (11 How.) at 173. Nonetheless, the state court judgment was "void," because its assertion of jurisdiction where the defendant had not been personally served within the territory was contrary to "the international law as it existed among the States in 1790." *Id*. at 176.

"Furthermore, the Court regarded subject matter jurisdiction, personal jurisdiction, and service of process as three separate, distinct, and indispensable requirements for a state-court judgment to receive full faith and credit from other states' courts." Pierre Riou, *General Jurisdiction over Foreign Corporations: All*

that Glitters is not Gold Issue Mining, 14 Rev. Litig. 741, 754 (1995). The Court held in *Harris* v. *Hardeman* that "where the court has no jurisdiction over the subject-matter, or the person, or where the defendant has no notice of this suit, or was never served with process, and never appeared to the action, the judgment will be esteemed of no validity," and therefore need not be recognized by other States. 55 U.S. (14 How.) 334, 339–40 (1852). In short, "if a court has acted without jurisdiction, the proceeding is void, and if this appear on the face of the record, the whole is a nullity." *Id*. at 342.

Thus, well before the Fourteenth Amendment, "it was already firmly established that limitations upon state-court jurisdiction were derived from the limits on the power of coequal sovereigns inherent in our constitutional system of federalism." Riou, *supra*, at 793; see *Bristol-Myers Squibb*, 137 S. Ct. at 1780.

B. The Fourteenth Amendment incorporated the existing principles of state sovereignty, and prohibits general jurisdiction over foreign corporations

The Fourteenth Amendment incorporated the traditional limitations on state jurisdiction inherent in the States' equal sovereignty, while creating a jurisdictional hook for federal courts to review the validity of state court judgments. See, *e.g.*, Stephen E. Sachs, *The Unlimited Jurisdiction of the Federal Courts*, 106 Va. L. Rev. 1703, 1726 & n.144 (2020). At the time of ratification, the exercise of specific jurisdiction over foreign corporations had been widely accepted, including by this Court. There was no such tradition or widespread acceptance, however, of general jurisdiction over foreign corporations.

1. While territorial restrictions on judicial jurisdiction are ancient, see *supra* p.5, questions of personal jurisdiction over foreign corporations rarely arose before the mid-nineteenth century—for the simple reason that "until the mid-nineteenth century, practically all corporations were municipal, thus courts rarely saw cases involving private corporations." Riou, *supra*, at 750. When cases did arise, the traditional rule was that a State could *never* establish personal jurisdiction over a corporation incorporated in another State. See *St. Clair*, 106 U.S. at 354 ("Formerly it was held that a foreign corporation could not be sued in an action for the recovery of a personal demand outside of the State by which it was chartered."); Riou, *supra*, at 750 ("[A]t common law, a corporation could be sued only in the chartering state"); see also, *e.g.*, *McQueen* v. *Middletown Mfg. Co.*, 16 Johns. 5, 7 (N.Y. Sup. Ct. 1819) ("[A] foreign corporation never could be sued here. The process against a corporation, must be served on its head, or principal officer, within the jurisdiction of the sovereignty where this artificial body exists."); *Peckham* v. *Inhabitants of N. Par. in Haverhill*, 33 Mass. (16 Pick.) 274, 286 (1834) ("[A]ll foreign corporations are without the jurisdiction of the process of the courts of this Commonwealth."); *Middlebrooks* v. *Springfield Fire Ins. Co.*, 14 Conn. 301, 305 (Conn. 1841) ("By the common law, there is no process which can be served, either upon natural persons, not inhabitants of or within the realm, or upon foreign corporations, by which their appearance can be compelled in any court . . . ."); Edward Quinton Keasbey, *Jurisdiction over Foreign Corporations*, 12 Harv. L. Rev. 1, 2 (1898) ("At common law, service of process upon a corporation could be made only upon the head or principal officer of the corporation, and within the jurisdiction of the sovereignty which created it; and from this rule it followed

of necessity that a valid judgment against it *in personam* could not be obtained in the courts of another jurisdiction.").

This rule followed from the traditional doctrine that States could not establish personal jurisdiction over absent citizens of other States. See *supra* p.5–7. Corporations had long been understood to be "present" *only* in the State of incorporation. As this Court explained, a corporation "exists only in contemplation of law, and by force of the law, and where that law ceases to operate . . . the corporation can have no existence. It must dwell in the place of its creation, and cannot migrate to another sovereignty." *Bank of Augusta* v. *Earle*, 38 U.S. (13 Pet.) 519, 588 (1839); *Lafayette*, 59 U.S. (18 How.) at 407 ("This corporation, existing only by virtue of a law of Indiana, cannot be deemed to pass personally beyond the limits of that State."). Indeed, the incorporating State had such exclusive authority over the corporation that it was an open question until *Bank of Augusta* whether corporations could validly conduct interstate business at all. 38 U.S. (13 Pet.) at 588 (holding that although the corporation "must live and have its being in that [incorporating] state only," that did not prevent "its power of contracting in another").

Even where a corporate agent was present in another State conducting business on the corporation's behalf, the corporation itself was still considered absent; thus, "there was no mode of compelling [a corporation's] appearance in the foreign jurisdiction." *St. Clair*, 106 U.S. at 354; see *Moulin* v. *Trenton Mut. Life & Fire Ins. Co.*, 24 N.J.L. 222, 244 (1853) (a corporate officer does not "bear[] about in his person so much of its artificial existence as to subject the body to the laws of any state or kingdom which he may enter . . . .

'[H]is functions and his character would not accompany him when he moved beyond the jurisdiction of the government under whose laws he derived that character.'" (quoting *McQueen*, 16 Johns. 5, 7)).[2]

With "the great increase in the number of corporations" in the mid-nineteenth century, and the increasingly "immense extent of their business" interstate, this traditional doctrine began to cause "inconvenience" and "manifest injustice." *St. Clair*, 106 U.S. at 355. As a result, many States enacted statutes requiring foreign corporations conducting business there to register and appoint an agent to accept in-state service of process, and to submit to jurisdiction "in those courts to obligations and liabilities there incurred." *St.*

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[2] As a result, the longstanding tradition of establishing personal jurisdiction by serving a non-resident defendant temporarily present in the territory, see *Burnham* v. *Superior Ct. of Cal.*, 495 U.S. 604 (1990), did not apply to corporations, see *St. Clair*, 106 U.S. at 359 (basing personal jurisdiction on service of corporate officer "accidentally within [a state's] jurisdiction" would be "contrary to natural justice and to the principles of international law"); *Burnham*, 495 U.S. at 610 n.1 (plurality opinion) (Scalia, J.) (noting that "corporations . . . have never fitted comfortably in a jurisdictional regime based primarily upon de facto power over the defendant's person"); Riou, *supra*, at 813–14. The different treatment makes sense. Corporate personhood, unlike natural personhood, is entirely fictive. Unlike for a natural person, special legal rules are necessary to determine whether a corporation is "present." See *Burnham*, 495 U.S. at 617–18 (noting that "consent and presence were purely fictional"); *Shaffer*, 433 U.S. at 202–03 (same). A natural person can be in only one place at a time; whether that is true of a fictive person like a corporation depends on the legal rules defining its "presence." Comparing the rules governing the acquisition of jurisdiction over foreign corporations and foreign natural persons, as Mallory proposes, see, *e.g.*, Pet. Br. 47–48, is therefore a bit like "judging whether a particular line is longer than a particular rock is heavy," *Bendix Autolite Corp.* v. *Midwesco Enterprises, Inc.*, 486 U.S. 888, 897 (1988) (Scalia, J., concurring in the judgment).

Clair, 106 U.S. at 355; see Riou, *supra*, at 752; Rhodes, *supra*, at 436; see also, *e.g.*, Conn. Gen. Stat. § 7-289 (1866); 112 Ill. Comp. Stat. § 68 (1855); 1854 Ohio Laws 91(4) (1854); Vt. Stat. Ann. tit. 27, ch. 87, § 6 (1862).

This Court upheld a state court's specific jurisdiction over a foreign corporation in 1856. *Lafayette*, 59 U.S. (18 How.) at 407. An Ohio citizen sued an Indiana corporation in Ohio to enforce a contract insuring his Ohio property. *Id.* at 406. This Court held that although the corporation "cannot be deemed to pass personally beyond" Indiana, "it does not necessarily follow that a valid judgment could be recovered against it only in that State." *Id.* "[O]ne of the conditions imposed by Ohio was, in effect, that the agent who should reside in Ohio and enter into contracts of insurance there in behalf of the foreign corporation, should also be deemed its agent to receive service of process in suits founded on such contracts." *Id. Lafayette* held jurisdiction proper because there was "nothing in this provision either unreasonable in itself, or in conflict with any principle of public law." *Id. Lafayette*, however, explicitly limited this ruling to disputes arising from the foreign corporation's transactions in the forum State. *Id.* at 408–09 ("We limit our decision to the case of a corporation acting in a State foreign to its creation, under a law of that State which recognized its existence, for the purposes of making contracts there and being sued on them, through notice to its contracting agents."). Moreover, the Court made clear that registration statutes must not be "inconsistent with those rules of public law which secure the jurisdiction and authority of each State from encroachment by all others." *Id.* at 407.

Other mid-nineteenth century cases similarly accepted the exercise of specific jurisdiction—but not general jurisdiction—over foreign corporations pursuant to the new registration statutes. For instance, an 1859 New York case rejected general jurisdiction over foreign corporations as an "impertinent interference" with other States, and "a nullity" that "would operate on nothing in the state, and be regarded by nobody out of it." *Cumberland Coal & Iron Co.* v. *Hoffman Steam Coal Co.*, 30 Barb. 159, 159 (N.Y. Gen. Term. 1859) ("The cause of action, or the subject, or at least some property to be acted on, must have arisen or be situated within our jurisdiction."); see also *Smith* v. *Mut. Life Ins. Co. of New York*, 96 Mass. (14 Allen) 336, 339 (1867) (rejecting, as "a question of sovereignty," personal jurisdiction over a foreign corporation as to "a contract made without the jurisdiction"); *Camden Rolling Mill Co.* v. *Swede Iron Co.*, 32 N.J.L. 15, 18 (1866) (similar).

Thus, at the time the Fourteenth Amendment was ratified, while corporate registration statutes were a relatively recent innovation, they had become widely accepted as a means of obtaining specific jurisdiction over foreign corporations. *General* jurisdiction over foreign corporations, however, was not "an established part of the American common law." *Burnham*, 495 U.S. at 611. Mallory is correct that the registration "statutes all established personal jurisdiction that would not have been available absent that consent." Pet. Br. 12. But that is because, at common law, the States exercised *no* jurisdiction over foreign corporations. See *supra* pp. 11–13.[3]

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[3] Following *International Shoe Co.* v. *Washington*, 326 U.S. 310 (1945), the use of corporate registration statutes to obtain specific jurisdiction became largely obsolete; if foreign corporations

2. At the time of its ratification, the Fourteenth Amendment was understood as incorporating the pre-existing limitations on the jurisdiction of state courts, while for the first time directly subjecting state judgments to federal review. As this Court explained in *Pennoyer*, "[s]ince the adoption of the Fourteenth Amendment to the Federal Constitution, the validity of such [state] judgments may be directly questioned, and their enforcement in the State resisted, on the ground that proceedings in a court of justice to determine the personal rights and obligations of parties over whom that court has no jurisdiction do not constitute due process of law." *Pennoyer*, 95 U.S. at 733; see Weinstein, *supra*, at 209 ("[B]y virtue of the then-recently ratified Due Process Clause of the Fourteenth Amendment, the jurisdictional rules that had long governed interstate recognition cases would now directly limit the assertion of state court jurisdiction").

In particular, the Due Process Clause required a "course of legal proceedings according to those rules and principles which have been established in our systems of jurisprudence for the protection and enforcement of private rights." *Pennoyer*, 95 U.S. at 733. Among these well-established "rules and principles" was the principle that the States' equal sovereignty

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have "minimum contacts" with the forum, States can assert specific jurisdiction for suits arising out of those contacts, see *Ford Motor Co.* v. *Mont. Eighth Judicial Dist. Ct.*, 141 S. Ct. 1017, 1026–27 (2021). At the time the Fourteenth Amendment was ratified, however, registration statutes were important to obtain *specific* jurisdiction over foreign corporations because of the longstanding common-law rule that foreign corporations were not amenable to suit outside of their State of incorporation. See *supra* pp.11–13. Registration statutes continue to serve other significant state interests today, such as establishing official contact information, and clarifying how process is to be served. *E.g.*, N.Y. Bus. Corp. Law § 1304 (6)–(7); N.M.S.A. § 53-17-9(B).

limited the personal jurisdiction of state courts: "any direct exertion of authority upon [non-residents], in an attempt to give ex-territorial operation to [a State's] laws, or to enforce an ex-territorial jurisdiction by its tribunals, would be deemed an encroachment upon the independence of the State in which the persons are domiciled or the property is situated, and be resisted as usurpation." *Id.* at 723; see Weinstein, *supra*, at 214 ("[J]urisdiction based on state borderlines was deeply ingrained in American legal tradition at the time the Fourteenth Amendment was adopted"); see *supra* pp. 5–10.

Following the Fourteenth Amendment's ratification, "subsequent nineteenth century cases continued to describe the permissible corporate consent for the privilege of conducting business as limited to actions related to the corporation's conduct of business within the forum." Rhodes, *supra*, at 437. *Pennoyer*, for instance, noted that a State could "require a non-resident" corporation "making contracts enforceable" in a State to submit to that State's jurisdiction "with respect to such . . . contracts." *Pennoyer*, 95 U.S. at 735. And this Court discussed personal jurisdiction over foreign corporations at length in *St. Clair*, 106 U.S. at 353–59, again approving the exercise of specific but not general jurisdiction. *St. Clair* noted the erosion of the traditional "doctrine of the exemption of a corporation from suit in a State other than that of its creation." *Id.* at 355. It reasoned that where a foreign corporation "was protected by the laws of [other] states, allowed to carry on its business within their borders, and to sue in their courts, it seemed only right that it should be held responsible in those courts to obligations and liabilities there incurred." *Id. St. Clair* held that "[t]he state may, therefore, impose as a condition upon which a foreign corporation shall be permitted to

do business within her limits, that it shall stipulate that *in any litigation arising out of its transactions in the State*, it will accept as sufficient the service of process on its agents or persons specially designated, and the condition would be eminently fit and just." *Id.* at 356 (emphasis added).

St. Clair's reasoning expressly turns upon the connection between the defendant's forum activities and the litigation, just like *International Shoe*'s reasoning would do more than sixty years later. *Id.*; *c.f.*, *e.g.*, *Int'l Shoe*, 326 U.S. at 319 ("[T]o the extent that a corporation exercises the privilege of conducting activities within a state" and "obligations arise out of or are connected with the activities within the state, a procedure which requires the corporation to respond to a suit brought to enforce them" satisfies due process). Nowhere did *St. Clair* suggest that States could require foreign corporations to consent to general jurisdiction over cases unrelated to their forum activities. To the contrary, *St. Clair* holds that conditions imposed upon foreign corporations must comport with "those rules of public law which secure the jurisdiction and authority of each state from encroachment by all others." *St. Clair*, 106 U.S. at 356, quoting *Lafayette*, 59 U.S. (18 How.) at 407; see also *S. Pac. Co.* v. *Denton*, 146 U.S. 202, 207 (1892) (holding that a "statute requiring the corporation, as a condition precedent to obtaining a permit to do business within the State, to surrender a right and privilege secured to it by the Constitution and laws of the United States, was unconstitutional and void").

Numerous cases from this Court and others decided shortly after the Fourteenth Amendment's ratification similarly "adhered to the principle that a state could only exercise power over a foreign corporation

for causes of action arising from its activities within the state." Matthew Kipp, *Inferring Express Consent: The Paradox of Permitting Registration Statutes to Confer General Jurisdiction*, 9 Rev. Litig. 1, 15 (1990). See, *e.g.*, *Ex parte Schollenberger*, 96 U.S. 369, 378 (1877) (upholding jurisdiction in Pennsylvania over a foreign corporation as to an insurance contract created in Pennsylvania with a Pennsylvania citizen; a corporation "may, for the purpose of securing business, consent to be 'found' away from home, for the purposes of suit as to matters growing out of its transactions."); *Chi. & N.W.R.R. Co.* v. *Whitton*, 80 U.S. (13 Wall.) 270, 290 (1871) (upholding jurisdiction in Illinois over a suit by an Illinois citizen against a Wisconsin railroad company for injuries sustained in Illinois); see also *Sawyer* v. *N. Am. Life Ins. Co.*, 46 Vt. 697, 706 (1874) (refusing to construe registration statute as "providing means to give the courts of the state jurisdiction over causes of action that accrued out of the state in favor of persons not citizens of the state, against a corporation existing out of the state"); *Bawknight* v. *Liverpool & London & Globe Ins. Co.*, 55 Ga. 194, 196 (1875) ("We are not aware of any case which has decided that a foreign corporation may be sued *in personam* here on a foreign judgment, or on a contract or debt of any sort with which the Georgia agency has had no connection. It would be strange if such were the law.").

Mallory's contention that this Court upheld general jurisdiction over a foreign corporation in *Baltimore & Ohio Railroad Co.* v. *Harris*, 79 U.S. (12 Wall.) 65, 77 (1870), is incorrect. Pet. Br. 19–20, 26 n.1. *Harris* was a breach-of-contract case: the plaintiff asserted that a railroad ticket created a contract "to carry the plaintiff safely," and that a "breach of the contract" occurred when the train crashed, injuring

him. *Harris*, 79 U.S. at 69–70. The plaintiff was a resident of Washington, D.C., and purchased the ticket in D.C., giving rise to specific jurisdiction in D.C. court. *Id*. at 84–85.

Mallory's assertion that an 1827 Virginia statute concerning the same railroad authorized general jurisdiction over a foreign corporation is similarly erroneous. See Pet. Br. 15, 19. By its terms, the statute required neither registration nor consent to personal jurisdiction at all; rather, it "incorporate[s] the Baltimore and Ohio Rail Road company" as a parallel corporation in Virginia. Pet. App. 251a. (Indeed, in 1827, it was not even clear that corporations could legally conduct interstate business, see *supra* p.12). The Supreme Court of Virginia interpreted the statute in accordance with its plain language, holding "[t]he company under this law is a Virginia corporation," and "[t]he subsequent legislation of the state shows that the legislature has uniformly treated it as a Virginia corporation." *Baltimore & Ohio R.R. Co.* v. *Gallahue's Adm'rs*, 53 Va. (12 Gratt.) 655, 659 (1855).[4] And the statute neither authorized the company to operate outside Virginia nor subjected it to suit in Virginia for extraterritorial actions. Rather, it "erect[ed] the company into a Virginia corporation within her territory," and established a "remedy in her courts for causes of action *arising under contracts and acts entered into or done within her territory*." *Ibid.* (emphasis added).

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[4] *Harris* suggested that the statute "license[d]" the corporation to operate in Virginia rather than created a parallel Virginia corporation, 79 U.S. at 82–83, but it is unclear on what grounds this Court disagreed with the Supreme Court of Virginia on this question of Virginia law. *E.g.*, *City of Chicago* v. *Morales*, 527 U.S. 41, 61 (1999) (Supreme Court "ha[s] no authority to construe the language of a state statute more narrowly than the construction given by that State's highest court").

Under the original meaning of the Fourteenth Amendment, specific jurisdiction over foreign corporations comports with due process, but general jurisdiction does not. "A longstanding American jurisdictional tradition authorizes a state to require a nonresident corporation to appoint an in-state agent for service of process and to consent to jurisdiction for claims related to its forum business in return for the privilege of conducting in-state business." Rhodes, *supra*, at 442. Indeed, this "Court first upheld such consent in 1856, and the judiciary has never questioned its constitutionality." *Id.* By contrast, no "longstanding historical tradition traceable to the ratification of the Fourteenth Amendment" supports "employing a statutory consent scheme to establish amenability for claims wholly unrelated to the defendant's forum activities when the defendant is not conducting business in such a manner as to subject it to general jurisdiction." *Id.* at 443. The Pennsylvania Supreme Court correctly held the Pennsylvania statute to be unconstitutional.

C. *Pennsylvania Fire* is inconsistent with the original meaning of the Constitution

In the late nineteenth and early twentieth centuries, a new view arose that States could use registration statutes to assert general jurisdiction over foreign corporations. This position is not consistent with state sovereignty or the original meaning of the Fourteenth Amendment.

Beginning in the late nineteenth century, a "difference of opinion among the courts" developed as to whether "the fact that a corporation transacts some business within the State make[s] it subject to an action over a matter having no relation to that business." Keasbey, *supra*, at 5; see, *e.g.*, *Pullman Palace-*

Car Co. v. *Lawrence*, 22 So. 53, 55 (Miss. 1897) (acknowledging "some divergence of opinion on the subject," but upholding jurisdiction in Mississippi over an Illinois corporation for an action arising out of state). Particularly in the early twentieth century, "[a]s the corporate presence fiction developed . . . service on a statutory agent evolved into a jurisdictional basis . . . to adjudicate claims unrelated to the corporation's activities within the state." Rhodes, *supra*, at 437.

In 1917, this Court held for the first time in *Pennsylvania Fire*, 243 U.S. at 95, that "a nonresident could consent for all claims by registering and appointing an agent." Rhodes, *supra*, at 443. *Pennsylvania Fire* was wrongly decided. It is closer in time to *International Shoe* than to the ratification of the Fourteenth Amendment. And it "represented a significant departure from the Court's nineteenth-century view of registration statutes," because it "abandoned the narrow premises supporting the Court's nineteenth-century view by concluding that compliance with a registration statute could constitute consent to jurisdiction for causes of action arising outside the state." Kipp, *supra*, at 1. This departure is inconsistent with the original meaning of the Due Process Clause of the Fourteenth Amendment, and "violates limitations on territorial sovereignty inherent in the federal structure established by the Constitution." Riou, *supra*, at 815; see *supra* pp.6–7.

Pennsylvania Fire erred by giving no consideration to the distinction between specific and general jurisdiction, even though this "distinction between related and unrelated contacts is strongly rooted in tradition," Lea Brilmayer, *How Contacts Count: Due Process Limitations on State Court Jurisdiction*, 1980 Sup. Ct. Rev. 77, 84 (1980) [hereinafter Brilmayer, *How*

Contacts Count], and predates the Fourteenth Amendment's ratification, see *supra* pp.7–9, 13–15. And it erred by failing to consider state sovereignty, which has been a critical aspect of jurisdictional limits on state courts since the Founding. See *supra* pp.5–7. This "unacceptably grasping" view of general jurisdiction was subsequently discredited, *Daimler AG* v. *Bauman*, 571 U.S. 117 (2014), and conflicts with the original meaning of the Fourteenth Amendment.

II. General jurisdiction over foreign corporations would intrude on state sovereignty and have far-reaching adverse consequences

In addition to being inconsistent with the original meaning of the Constitution, general jurisdiction over foreign corporations would have significant adverse consequences on States' equal sovereignty.

"A basic principle of federalism is that each State may make its own reasoned judgment about what conduct is permitted or proscribed within its borders, and each State alone can determine what measure of punishment, if any, to impose on a defendant who acts within its jurisdiction." *State Farm Mut. Auto. Ins Co.* v. *Campbell*, 538 U.S. 408, 422 (2003); *Magnolia Petrol. Co.* v. *Hunt*, 320 U.S. 430, 436 (1943) ("[E]ach of the states of the Union has constitutional authority to make its own law with respect to persons and events within its borders.").

The exercise of general jurisdiction over citizens of other States threatens this equal sovereignty by encroaching on those States' adjudicatory and regulatory authority. See *Lafayette*, 59 U.S. (18 How.) at 407. When a State asserts judicial jurisdiction over a dispute with which it has no connection, it thwarts its sister States' constitutional authority to regulate their own citizens and actions occurring on their own

territory. Unrestrained general jurisdiction also allows some States—particularly large ones—to impose their legislative will on others, effectively legislating nationally by applying their own laws to the dispute, or misapplying the law of their sister States. And it leads to widespread forum shopping and litigation tourism, eroding States' abilities to impose their own policies. See Philip S. Goldberg, *The U.S. Supreme Court's Personal Jurisdiction Paradigm Shift to End Litigation Tourism*, 14 Duke J. Const. L. & Pub. Pol'y 51, 52 (2019) ("'[F]orum shopping' or 'litigation tourism,' . . . is the practice of filing a lawsuit in a location believed to provide a litigation advantage to the plaintiff regardless of the forum's affiliation with the parties or claims.").

Even more troubling, exercising general jurisdiction over other States' citizens can undermine those States' policies in a way that they cannot correct through their political processes. State legislative and regulatory rules embody choices, made by the people through their elected representatives, about how best to balance a wide range of interests within the State's territory. They balance competing economic, moral, and social concerns. They include choices about the kind of conduct to prohibit, the extent to which it should be prohibited, the extent to which violations of the prohibition should be punished, and how to allocate losses caused by the violations of those prohibitions. "[O]ne of the happy incidents" of our federal system of independent and territorial States is that States are free to reach sharply divergent conclusions about how to balance those interests. *New State Ice Co.* v. *Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).

When one State exercises jurisdiction over a dispute with which it has no connection, however, it imposes its own policy choices on citizens of those other States that have some meaningful regulatory interest in the dispute. If the forum State, for example, imposes heavy punishment for engaging in some form of conduct, the forum State's exercise of general jurisdiction could effectively prohibit that conduct in other States notwithstanding the legislative choice made in those States to allow it. That exercise of jurisdiction could defeat a sister State's determination that the conduct promotes economic growth, or a sister State's determination that the conduct is moral and therefore not to be deterred.

Most dangerously, the exercise of jurisdiction subverts self-government in the sister State because the citizens of that State have no political power over the policy choices made in the forum State. See *S. Pac. Co.* v. *Arizona ex rel. Sullivan*, 325 U.S. 761, 767 n.2 (1945) ("[T]o the extent that the burden of state regulation falls on interests outside the state, it is unlikely to be alleviated by the operation of those political restraints normally exerted when interests within the state are affected."). It also severely undermines the equal sovereignty upon which our federal system is built. See *Garcia* v. *San Antonio Metro. Transit Auth.*, 469 U.S. 528, 546 (1985) ("The essence of our federal system is that within the realm of authority left open to them under the Constitution, the States must be equally free to engage in any activity that their citizens choose for the common weal.").

1. Punitive damages, statutes of limitations, and juries all illustrate these problems. The States take diverse approaches to punitive damages in pursuit of diverse policy aims. Some States reject punitive

damages altogether, viewing them as unfair "windfall[s]" to plaintiffs that improperly "impose on the defendant a penalty generally reserved for criminal sanctions." *Dailey* v. *N. Coast Life Ins. Co.*, 919 P.2d 589, 590 (Wash. 1996). Others permit punitive damages but impose monetary caps. For instance, Virginia does not permit punitive damages to exceed $350,000. Va. Code § 8.01-38.1. Such caps balance the use of punitive damages "as a punishment to [the] defendant, and as a warning and example to deter him and others," *Doe* v. *Isaacs*, 579 S.E.2d 174, 177 (Va. 2003), with a public policy of "prevent[ing] awards that burden the state's economy," *Wackenhut Applied Technologies Center, Inc.* v. *Sygnetron Protection Systems, Inc.*, 979 F.2d 980, 985 (4th Cir. 1992). Still other States impose no limits on punitive damages. See *Roby* v. *McKesson Corp.*, 219 P.3d 749, 765 (Cal. 2009). Such a diversity of approaches reflects the fact that in "our federal system, States necessarily have considerable flexibility" to adopt differing policies. *BMW of N. Am., Inc.* v. *Gore*, 517 U.S. 559, 568 (1996).

General jurisdiction over foreign corporations undermines these diverse policy approaches by creating opportunities for plaintiffs to evade any limits. For instance, a plaintiff injured in a State with a punitive damages cap could seek to avoid the cap by filing in an unrelated forum willing to assert general jurisdiction. "If a plaintiff has a large number of states from which to choose, the plaintiff and his counsel would be foolish—indeed, might be committing malpractice in the latter's case—not to base the choice upon obtaining plaintiff-friendly legal rules, including the availability of punitive damages." Patrick J. Borchers, *Punitive Damages, Forum Shopping, and the Conflict of Laws*, 70 La. L. Rev. 529, 536 (2010); see *id.* at 532 (noting that forum shopping "is most critical to

punitive damages law because the choice of one state as a forum over another often affects the availability of punitive damages").

But when the uninterested forum State imposes punitive damages beyond what the interested State has chosen to impose, the forum State effectively defeats its sister State's substantive legislative determination about the extent to which the prohibited conduct should be regulated. And it does so without any "legitimate concern in imposing punitive damages to punish a defendant for unlawful acts committed outside of the State's jurisdiction." *State Farm Mut. Auto. Ins. Co.* v. *Campbell*, 538 U.S. 408, 421 (2003); *cf. Merrill Lynch, Pierce, Fenner & Smith, Inc.* v. *Lauer*, 49 F.3d 323, 326 (7th Cir. 1995) (noting forum shopping to avoid application of "New York ban on punitive damages").

Statutes of limitations present similar issues. Again, States take diverse approaches to effectuate a variety of policy preferences. Some States have shorter statutes of limitations, "to compel the exercise of a right to sue within a reasonable time; to suppress fraudulent and stale claims; to prevent surprise," and to promote predictability and repose. *Lavery* v. *Automation Mgmt. Consultants, Inc.*, 360 S.E.2d 336, 338 (Va. 1987); see David Crump, *Statutes of Limitations: The Underlying Policies*, 54 U. Louisville L. Rev. 437, 452–53 (2016). Other States have longer statutes of limitations, placing more weight on the ability of an injured plaintiff to seek redress, regardless of the passage of time. Crump, *supra*, at 450, 453. For example, a civil suit that must be filed within two years in Virginia could be filed within six years in Maine. Compare Va. Code § 8.01-243 (two-year limitations period

for personal injuries), with Me. Stat. tit. 14, § 752 (six-year limitations period for all civil actions).

General jurisdiction over other States' citizens can undermine the policies of States with shorter periods; if plaintiffs can shop for fora unrelated to their claim, they will choose fora with the most lenient statutes of limitations, as well as the greatest tendency to apply those statutes to claims arising elsewhere. James A. Martin, *Statutes of Limitations and Rationality in the Conflict of Laws*, 19 Washburn L.J. 405, 405–06 (1980) ("[T]he desire not to see an injured plaintiff lose a claim that might be substantively meritorious sometimes leads a forum with no interest in the action to open the doors of its courts even though they are shut in all interested states.").

This concern is not merely theoretical. See Tanya J. Monestier, *Registration Statutes, General Jurisdiction, and the Fallacy of Consent*, 36 Cardozo L. Rev. 1343, 1410 (2015). In *Cowan* v. *Ford Motor Co.*, 694 F.2d 104, 105 (5th Cir. 1982), for example, a Texas plaintiff was injured in an accident in Texas. The defendant was incorporated in Delaware with a principal place of business in Michigan, but was registered to conduct business in Mississippi, which Mississippi considered as consent to general jurisdiction. *Id.* Because the statute of limitations had run on the accident in Texas, the plaintiff filed suit in Mississippi, where the statute of limitations was longer. *Id.* The court asserted general jurisdiction and applied the Mississippi limitations period. *Id.*; see also, *e.g.*, *Powell* v. *I-Flow Corp.*, 711 F. Supp. 2d 1012, 1015–16 (D. Minn. 2010) (explaining "[t]here is no doubt" parties sue in Minnesota "to take advantage of favorable law," specifically an unusually long statute of limitations). This type of forum shopping for "statute of limitations

havens" impairs the ability of States to impose their own statutes of limitations to their own citizens and events within their territory. Monestier, *supra*, at 1412.

In addition, general jurisdiction over other States' citizens promotes forum shopping for favorable juries. See Mary Garvey Algero, *In Defense of Forum Shopping: A Realistic Look at Selecting a Venue*, 78 Neb. L. Rev. 79, 80 n.2 (1999) (noting that an "attorney who is forum shopping might take into account . . . an evaluation of the reputation and characteristics of potential jurors who would make up the jury venire").

Trial by jury is a fundamental part of the American system of democratic self-governance. *E.g.*, *Chauffers Local No. 391* v. *Terry*, 494 U.S. 558, 564–65 (1990); *Letters from the Federal Farmer* (IV), *reprinted in* 2 The Complete Anti-Federalist 249–50 (Herbert J. Storing ed. 1981) (discussing the "essential" part juries play "in every free country"). Part of its purpose is to allow citizens to participate in the implementation of their legislative choices, and to determine the community's standards in passing judgment on their peers. See *The Federalist* No. 83, *supra*, at 498 (Alexander Hamilton) (explaining that "trial by jury" is "a valuable safeguard to liberty" and "free government"). Allowing a plaintiff to litigate in a State with no connection to the dispute because he prefers the values of that community to the community with a meaningful interest in the claim is contrary to these purposes. See *Thiel* v. *S. Pac. Co.*, 328 U.S. 217, 220 (1946) ("The American tradition of trial by jury . . . necessarily contemplates an impartial jury drawn from a cross-section of the community."). It forces citizens of the State where the dispute arose to live

under a judgment handed down by a distant jury that may have vastly different community standards.

2. Neither choice-of-law rules nor the doctrine of *forum non conveniens* solves these problems. *Contra* Brief for Am. Ass'n for Justice as Amicus Curiae Supporting Petitioner 4, 29–31 (July 12, 2022). States generally apply their own choice-of-law rules. See Peter Hay et al., *Conflict of Laws* 126–27 (6th ed. 2018); see also *Klaxon Co.* v. *Stentor Elec. Mfg. Co.*, 313 U.S. 487, 496–97 (1941). Modern choice-of-law rules give considerable discretion to the forum in deciding which law to apply, and have generated a strong preference for the law of the forum. See Patrick J. Borchers, *The Choice of Law Revolution: An Empirical Study*, 49 Wash. & Lee L. Rev. 357, 377, 382 (1992) (describing modern choice-of-law theories as "malleable" and documenting strong tendency of those theories to favor the law of the forum); see also Antony L. Ryan, *Principles of Forum Selection*, 103 W. Va. L. Rev. 167, 191–92 (2000) ("One feature of many modern approaches to the conflict of laws is a marked tendency to apply the law of the forum (the *lex fori*)."). Although this Court has imposed some limitations on the States' authority to apply forum law to disputes, see, *e.g.*, *Phillips Petroleum Co.* v. *Shutts*, 472 U.S. 797, 814–23 (1985), those limitations are not difficult to overcome, see Douglas Laycock, *Equal Citizens of Equal & Territorial States: The Constitutional Foundations of Choice of Law*, 92 Colum. L. Rev. 249, 257–58 (1992); see also Gene R. Shreve, *Choice of Law and the Forgiving Constitution*, 71 Ind. L.J. 271, 271 (1996).

Thus, in many cases, plaintiffs can avoid a State's unfavorable substantive law by shopping for a different forum and taking advantage of its preference for *lex fori*. See Lea Brilmayer, *Interest Analysis and the*

Myth of Legislative Intent, 78 Mich. L. Rev. 392, 399 (1980); see, *e.g.*, *Hanna* v. *Plumer*, 380 U.S. 460, 467–68 (1965) (noting "forum-shopping" creates problems as to "inequitable administration of the laws"); see also *Franchise Tax Bd.* v. *Hyatt*, 578 U.S. 171, 176 (2016) ("The Nevada Supreme Court has ignored both Nevada's typical rules of immunity and California's immunity-related statutes . . . [and instead] has applied a special rule of law that evinces a policy of hostility toward California." (internal quotation marks omitted)). And even if the forum State applies sister-state law, this Court has chosen not to police the faithfulness with which forum States interpret sister-state law. See *Sun Oil Co.* v. *Wortman*, 486 U.S. 717, 730–31 (1988) ("To constitute a violation of the Full Faith and Credit Clause or the Due Process Clause, it is not enough that a state court misconstrue the law of another State."); Laycock, *supra*, at 258 (discussing the ease with which forum States can misconstrue sister-state law).

The suggestions of some *amici* that *forum non conveniens* solves any problems with forum shopping is likewise erroneous. *E.g.*, Brief for Am. Ass'n for Justice as Amicus Curiae Supporting Petitioner 29–31. Again, the forum State will apply its own *forum non conveniens* doctrine. See *supra* p.30. The state courts that are most aggressive in encroaching on other States' sovereignty by asserting general jurisdiction over suits with no ties to the forum cannot be relied upon to restrain themselves unilaterally by declaring their forum to be inconvenient. See Brilmayer, *How Contacts Count*, *supra*, at 95 (States have "no incentive to weigh countervailing considerations against loosening the standards" for exercising jurisdiction; the "incentive is always to expand jurisdiction" over non-citizens). Given the "crazy quilt of *ad hoc*,

capricious, and inconsistent decisions," *forum non conveniens* is simply no safeguard against encroachment on the sovereignty of sister States. Allan R. Stein, *Forum Non Conveniens and the Redundancy of Court-Access Doctrine*, 133 U. Penn. L. Rev. 781, 785 (1985).

CONCLUSION

The Pennsylvania Supreme Court's decision should be affirmed.

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