No. 21-1168

In the Supreme Court of the United States

ROBERT MALLORY, PETITIONER

v.

NORFOLK SOUTHERN RAILWAY CO.

ON WRIT OF CERTIORARI
TO THE SUPREME COURT OF PENNSYLVANIA

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING RESPONDENT

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QUESTION PRESENTED

Whether a state court may exercise general personal jurisdiction based on a corporation's registration to do business in the State.

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INTEREST OF THE UNITED STATES

This case presents the question whether a state court may exercise general personal jurisdiction based on a corporation's registration to do business in the State. The United States has a substantial interest in the proper resolution of that question. Although this case involves a domestic defendant and domestic conduct, the theory of jurisdiction asserted here would allow state courts to hear cases against foreign defendants based on foreign conduct, and thus could affect the United States' diplomatic relations and foreign trade. In addition, petitioner invokes (Br. 46-47) a federal statute that treats specified defendants who have engaged in certain activities as having consented to personal jurisdiction. See 18 U.S.C. 2334(e) (Supp. I 2019). The United States has an interest in explaining how that statute differs from the state law challenged here.

STATEMENT

1. Respondent is a railway company that is incorporated in Virginia and, when this suit began, maintained its principal place of business in Norfolk, Virginia. Pet. App. 12a. Petitioner, a citizen of Virginia, worked for the railroad in Virginia and Ohio from 1988 to 2005. *Ibid.* Petitioner claims that he developed cancer because of exposure to carcinogens in that work. *Ibid.*

Petitioner sued under the Federal Employers' Liability Act, 45 U.S.C. 51-60, a federal statute that, among other things, makes railroads liable to their employees for negligence. Pet. App. 12a. Even though petitioner was from Virginia, the railroad was from Virginia, and the alleged torts occurred in Ohio and Virginia, petitioner sued in the Court of Common Pleas of Philadelphia County, Pennsylvania. *Id.* at 45a, 64a.

To establish personal jurisdiction, petitioner turned to Pennsylvania's registration and long-arm statutes. The registration statute provides that an out-of-state corporation "may not do business" in the State "until it registers" with the State. 15 Pa. Cons. Stat. Ann. § 411(a) (2019). And the long-arm statute provides that a state court may exercise "general personal jurisdiction" based on "qualification as a foreign corporation." 42 *id.* § 5301(a)(2)(i). Qualification is equivalent to registration. Pet. App. 52a. Respondent has registered to do business in Pennsylvania, where it maintains more than 2000 miles of track. *Id.* at 32a. Petitioner argued that, by registering, the railroad had consented to personal jurisdiction in the State. *Id.* at 22a.

2. The state trial court dismissed the suit for lack of personal jurisdiction. Pet. App. 64a-82a. The court held that a State may not require an out-of-state corporation

to submit to general jurisdiction as a condition of doing business there. *Id.* at 70a-82a.

3. The state supreme court affirmed. Pet. App. 1a-58a. It explained that, under this Court's precedents, a state court may exercise general jurisdiction over a corporation only if the corporation is "at home" there, but Pennsylvania is not respondent's home State. *Id.* at 45a.

The state supreme court then rejected petitioner's contention that respondent had consented to general jurisdiction in Pennsylvania by registering to do business there. Pet. App. 55a. The court explained that registration is not "voluntary consent," but rather "compelled submission to general jurisdiction by legislative command." *Id.* at 53a. The court further observed that a State imposes an unconstitutional condition by requiring a corporation to consent to general jurisdiction as a condition of doing business. *Id.* at 52a. The court added that treating registration as valid consent would, as a practical matter, nullify this Court's cases limiting the scope of general jurisdiction. *Id.* at 54a-55a.

Justice Mundy issued a concurring opinion. See Pet. App. 57a-58a. She noted (*ibid.*) that the Federal Employers' Liability Act could be read to make railroads amenable to suit everywhere they operate, but this Court had rejected that reading in *BNSF Railway Co.* v. *Tyrrell*, 137 S. Ct. 1549 (2017).

SUMMARY OF ARGUMENT

A. Pennsylvania's long-arm statute conflicts with this Court's precedents on personal jurisdiction. In a series of recent cases, the Court has held that a corporation is subject to general jurisdiction only in its home States—for example, in its State of incorporation and in the State where it has its principal place of business. Yet Pennsylvania's long-arm statute allows state courts

to exercise general jurisdiction over a corporation that has simply registered to do business in the State and is not at home there.

Pennsylvania's jurisdictional regime also violates the principles underlying this Court's precedents on personal jurisdiction. It subverts interstate federalism by reaching beyond Pennsylvania's borders and allowing state courts to hear cases in which Pennsylvania has no legitimate interest. It poses risks to international comity by allowing state courts to hear cases against foreign defendants arising out of occurrences in foreign countries. It imposes unfair burdens on defendants. And it serves no legitimate countervailing interest of the forum State or of plaintiffs.

Invoking the label "consent" rather than "general jurisdiction" does not render Pennsylvania's long-arm statute constitutional. The statute by its terms treats registration as a basis for exercising "general personal jurisdiction," not as a form of consent. In any event, consent statutes must comply with principles of fairness and interstate federalism, and Pennsylvania's long-arm statute does not do so. And under the unconstitutional-conditions doctrine, a State may not require a corporation to consent to general jurisdiction as a condition of doing business in the State.

B. Petitioner's arguments lack merit. Petitioner cites *Pennsylvania Fire Insurance Co.* v. *Gold Issue Mining & Milling Co.*, 243 U.S. 93 (1917), where this Court held that a State could require an out-of-state corporation to submit to all-purpose jurisdiction as a condition of doing business in the State. That decision rested on two premises: (1) a State may exclude out-of-state corporations and (2) the power to exclude out-of-state corporations includes the lesser power to require

them to give up constitutional rights as a condition of entering the State. But the Court has long since repudiated each of those premises. Modern dormant Commerce Clause cases establish that States generally lack the power to exclude out-of-state corporations, and modern unconstitutional-conditions cases establish that the greater power to withhold a benefit does not include the lesser power to attach unconstitutional conditions.

More broadly, the Court decided *Pennsylvania Fire* under the territorial framework of *Pennoyer* v. *Neff*, 95 U.S. 714 (1878). But the Court abandoned that framework in *International Shoe Co.* v. *Washington*, 326 U.S. 310 (1945). And the Court has repeatedly refused to accord significant precedential weight to cases decided under the old framework.

Petitioner also contends that, in the 19th century, States enacted laws requiring out-of-state actors to consent to suit in the State as a condition of engaging in business there. But courts traditionally applied those consent laws only to permit claims arising out of business conducted within the State or claims that otherwise had some connection to the State. Unlike Pennsylvania's statutes, those laws did not enable state courts to hear claims that had nothing to do with the forum State.

C. This case concerns only the Fourteenth Amendment's limits on state courts' general jurisdiction. This Court need not consider whether similar limits would constrain federal jurisdictional statutes or whether a State may require corporations to consent to suit on claims connected with the State in order to do business there. And the only federal jurisdictional statute that petitioner invokes differs significantly from Pennsylvania's long-arm statute.

ARGUMENT

A. A State Court May Not Exercise General Jurisdiction Based Solely On Registration To Do Business

A state court violates the Due Process Clause of the Fourteenth Amendment by subjecting a defendant to judgment without personal jurisdiction. See *Ford Motor Co.* v. *Montana Eighth Judicial District Court*, 141 S. Ct. 1017, 1024 (2021). In *International Shoe Co.* v. *Washington*, 326 U.S. 310 (1945), this Court explained that a state court's exercise of personal jurisdiction must be consistent with "'traditional notions of fair play and substantial justice'" and must be "reasonable, in the context of our federal system of government." *Id.* at 316-317 (citation omitted).

Since *International Shoe*, this Court has recognized two main types of personal jurisdiction: general (or all-purpose) and specific (or case-linked) jurisdiction. See *Ford*, 141 S. Ct. at 1024. A court with general jurisdiction may hear any and all claims against a defendant. See *ibid.* In contrast, a court with specific jurisdiction may hear only claims that arise out of or relate to the defendant's contacts with the forum, and that accordingly have a link to the forum. See *id.* at 1025.*

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* The terms "general" and "specific" jurisdiction date from the 1960s, but the concepts go back to the Romans. See Friedrich K. Juenger, *The American Law of General Jurisdiction*, 2001 U. Chi. Legal F. 141, 142. "Justinian's *Corpus iuris civilis* distinguished between actions brought in the defendant's domicile, where he was amenable to jurisdiction for any cause of action, and those against nonresidents on, for example, contracts made or to be performed there. In the latter case, the forum's power to adjudicate was limited to causes of action arising from the contractual relationship." *Id.* at 143 (footnote omitted).

A state court may not exercise general jurisdiction based solely on a corporation's registration to do business in the forum. Such an exercise of jurisdiction conflicts both with this Court's precedents on personal jurisdiction and with the principles underlying those precedents. And invoking the label "consent" rather than "general jurisdiction" does not render such an exercise of jurisdiction any more constitutional.

1. General jurisdiction based on registration violates this Court's precedents

a. Specific jurisdiction is the centerpiece of this Court's modern doctrine on personal jurisdiction, with general jurisdiction occupying "a less dominant place." *Daimler AG* v. *Bauman*, 571 U.S. 117, 133 (2014). Because general jurisdiction allows a State to hear *any* claims against a defendant, even claims with no link to that State, its exercise can intrude on the sovereignty of other States and other countries. See *id.* at 140-142. General jurisdiction can also impose severe burdens on defendants. See *id.* at 139. And the Court has found little practical justification for giving general jurisdiction broad scope because specific jurisdiction already protects the interests of the forum State and the plaintiff. See *id.* at 132-133 nn.9-10. "General jurisdiction exists as an imperfect safety valve that sometimes allows plaintiffs access to a reasonable forum in cases when specific jurisdiction would deny it." *Id.* at 133 n.9 (brackets and citation omitted).

For those reasons, this Court has repeatedly held that defendants are subject to general jurisdiction only in their home States. See *Daimler*, 571 U.S. at 137. As a general rule, an individual's home is his domicile, and a corporation's homes are its place of incorporation and principal place of business. See *ibid.*

For example, in *Goodyear Dunlop Tires Operations, S.A.* v. *Brown*, 564 U.S. 915 (2011), this Court held that a North Carolina court lacked general jurisdiction over foreign tire companies in a case arising out of a bus accident in France. *Id.* at 918-920. The Court rejected the "sprawling" theory that a "substantial manufacturer or seller of goods" is subject to general jurisdiction "wherever its products are distributed." *Id.* at 929.

Similarly, in *Daimler AG* v. *Bauman*, *supra*, this Court held that a court in California lacked general jurisdiction over a German car company in a case involving alleged wrongdoing in Argentina against Argentinian plaintiffs. See 571 U.S. at 120-122. The Court rejected the "exorbitant" and "unacceptably grasping" theory that a court may exercise general jurisdiction over any defendant that does "'substantial, continuous, and systematic'" business in the forum. *Id.* at 138-139 (citation omitted).

More recently, in *BNSF Railway Co.* v. *Tyrrell*, 137 S. Ct. 1549 (2017), this Court held that a Montana court lacked general jurisdiction in a suit brought by an out-of-state plaintiff against an out-of-state railroad based on out-of-state injuries. *Id.* at 1555. The railroad had more than 2000 miles of track and more than 2000 workers in Montana, but those activities did not entitle Montana's courts to exercise general jurisdiction on claims that had nothing to do with the State. *Id.* at 1559.

The legal principle on which those decisions rest—a defendant's general business activities in the forum do not entitle state courts to hear claims unrelated to the forum—transcends general-jurisdiction doctrine. This Court has adhered to the same principle in its cases on specific jurisdiction. Thus, in *Bristol-Myers Squibb Co.* v. *Superior Court*, 137 S. Ct. 1773 (2017), the Court held

that a California court lacked specific jurisdiction as to out-of-state claims brought by out-of-state plaintiffs against an out-of-state defendant—even though the defendant had extensive business ties to California. *Id.* at 1777-1782. And in *Ford Motor Co.* v. *Montana Eighth Judicial District Court*, *supra*, the Court rejected the view that a car company's extensive business activities in a State would enable state courts to exercise specific jurisdiction as to "*any* claim, no matter how unrelated to the State." 141 S. Ct. at 1027 n.3.

b. Pennsylvania's long-arm statute produces the same result that this Court rejected in *Goodyear*, *Daimler*, *BNSF*, *Bristol-Myers*, and *Ford*: It allows state courts to hear claims that have nothing to do with the State simply because the defendant does some business in the forum. Pennsylvania does not achieve that result in one step; it does not exercise general jurisdiction based on the defendant's business activity as such. Pennsylvania instead achieves that result in two steps. It first requires any company that does business in the State to register, and it then treats that compelled registration as a basis for general jurisdiction.

Pennsylvania law thus goes further than the theories rejected in this Court's recent decisions. Those decisions establish that even a "substantial, continuous, and systematic course of business" in the forum State does not justify jurisdiction on claims unrelated to the State. *Daimler*, 571 U.S. at 138 (citation omitted). But a company must register to do *any* business in Pennsylvania, even if the business is not substantial. See 15 Pa. Cons. Stat. Ann. § 411(a) (2019). Even a single office can trigger the registration statute—and with it, the all-purpose jurisdiction of Pennsylvania's courts. See *Hoffman Constr. Co.* v. *Erwin*, 200 A. 579, 580 (Pa. 1938).

Petitioner's logic would allow Pennsylvania to go further still. Consider a hypothetical that this Court distinguished in *Ford*: "A retired guy in a small town in Maine carves decoys and uses a site on the Internet to sell them." 141 S. Ct. at 1029 n.4 (brackets, citations, and internal quotation marks omitted). Petitioner's theory would seemingly allow any State to which the seller ships his decoys to exercise unlimited personal jurisdiction over him. The State need only require sellers to register before shipping products to the State and then treat registration as a basis for all-purpose jurisdiction over claims wholly unrelated to those sales.

The fact that Pennsylvania's long-arm statute achieves its result in two steps rather than one does not make it constitutional. "The Constitution deals with substance, not shadows." *Cummings* v. *Missouri*, 4 Wall. 277, 325 (1867). There is no substantive difference between (1) a state law that subjects every corporation that does business in the State to general jurisdiction and (2) a state law that requires every corporation that does business in the State to register, and then treats that compulsory registration as a basis for exercising general jurisdiction. If the first violates the Due Process Clause, then so does the second.

2. General jurisdiction based on registration violates the principles underlying this Court's precedents on personal jurisdiction

a. Limits on the personal jurisdiction of state courts protect the States' "status as coequal sovereigns in a federal system." *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 292 (1980). Each State may hear cases that are brought against its residents or arise out of activities within its territory. But when States reach beyond their borders and seize cases that

concern only other States, they threaten to "upset the federal balance, which posits that each State has a sovereignty that is not subject to unlawful intrusion by other States." *J. McIntyre Machinery, Ltd.* v. *Nicastro*, 564 U.S. 873, 884 (2011) (plurality opinion).

Pennsylvania's jurisdictional regime defies those principles of interstate federalism. Pennsylvania does not treat registration as a basis for hearing claims that concern Pennsylvania. Rather, it treats registration as a basis for hearing cases in which it has no legitimate interest. This case proves the point. The plaintiff was from Virginia, the defendant was from Virginia, and the underlying conduct occurred in Virginia and Ohio. See p. 1, *supra*. The case indisputably has "no connection whatsoever" to Pennsylvania. Pet. App. 45a. Yet Pennsylvania's long-arm statute would allow petitioner to sideline Virginia and Ohio, bring the case in Pennsylvania's courts, and (by virtue of the Full Faith and Credit Clause) compel Virginia and Ohio to abide by Pennsylvania's decision. See U.S. Const. Art. IV, § 1.

b. By confining each State to its territory, limits on the personal jurisdiction of state courts also promote international comity. See *Daimler*, 571 U.S. at 141. Foreign countries have objected to our state courts' expansive assertions of personal jurisdiction against foreign defendants in cases that concern foreign activities. See *id.* at 141-142. Those objections have impeded the negotiation of international conventions on the reciprocal recognition and enforcement of judgments. See *ibid.* In one negotiation in the 1990s, for example, "[m]ost delegations focused on jurisdictional rules they believed went too far, were 'exorbitant,' and thus should be placed on the prohibited list"; general jurisdiction based on doing business in the forum was "quickly voted

onto that list." Ronald A. Brand, *The 1999 Hague Preliminary Draft Convention Text on Jurisdiction and Judgments: A View from the United States*, in *The Hague Preliminary Draft Convention on Jurisdiction and Judgments* 12 (Fausto Pocar & Constanza Honorati eds., 2005).

By recreating, under a new name, the sprawling view of general jurisdiction rejected in *Daimler*, petitioner's theory poses the same "risks to international comity." 571 U.S. at 141. Like the view of general jurisdiction rejected in *Daimler*, Pennsylvania law would enable a state court to hear a case against a foreign defendant based on foreign conduct simply because the defendant does unrelated business (and has registered to do that unrelated business) in the forum. For example, suppose a car made by a German manufacturer gets into an accident in Poland, injuring Polish plaintiffs. See *Daimler*, 571 U.S. at 127 n.5. Pennsylvania's long-arm statute would allow state courts to hear a case about that accident, so long as the German car manufacturer does business (and so must register to do business) in Pennsylvania.

That concern is not merely hypothetical. Plaintiffs have recently invoked registration as a basis for our courts to exercise general jurisdiction over foreign defendants. See, *e.g.*, *AM Trust* v. *UBS AG*, 681 Fed. Appx. 587, 588-589 (9th Cir. 2017); *Torson* v. *Hyundai Oilbank Co.*, No. 21-cv-778, 2022 WL 79649, at *3 (S.D. Tex. Jan. 7, 2022); *Diab* v. *British Airways, PLC*, No. 20-cv-3744, 2020 WL 6870607, at *4-*5 (E.D. Pa. Nov. 23, 2020) (finding general jurisdiction under Pennsylvania's statute).

c. The Fourteenth Amendment's limits on state courts' personal jurisdiction also reflect the need to en-

sure fairness to defendants. See *Ford*, 141 S. Ct. at 1025. But Pennsylvania's long-arm statute does not treat defendants fairly. The statute's expansive assertion of general jurisdiction impairs defendants' ability "to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *Daimler*, 571 U.S. at 139 (citation omitted). It also exposes defendants to forum-shopping—to being sued in Pennsylvania despite the absence of any link between a case and the State, simply because the plaintiff considers that State a friendly forum. And while large railroads might suffer little inconvenience from litigating in Pennsylvania, petitioner's theory extends to any small enterprise that must register in Pennsylvania because it does any business there.

In any event, this Court has explained that, even in the absence of any unfairness, principles of interstate federalism alone can preclude a state court's exercise of personal jurisdiction. See *Bristol-Myers*, 137 S. Ct. at 1780; *Volkswagen*, 444 U.S. at 293-294; *Hanson* v. *Denckla*, 357 U.S. 235, 251 (1958). So even if exercising registration-based jurisdiction were thought to be fair to especially "large corporations" like respondent, Pet. Br. 47, it would still violate the Constitution.

d. Finally, the rules of personal jurisdiction also account for the legitimate interests of the forum State and the plaintiff. See *Ford*, 141 S. Ct. at 1029. But no such justifying interest exists here. A State has little legitimate interest in hearing a case brought by an out-of-state plaintiff against an out-of-state defendant based on out-of-state conduct. And a plaintiff has little legitimate interest in suing in a forum that is neither the defendant's home, nor the plaintiff's home, nor the location of the conduct or injuries that prompted the suit.

3. Registration to do business does not constitute valid consent to general jurisdiction

A state court may exercise personal jurisdiction with the defendant's consent, even if it would have lacked the power to proceed without that consent. See *Insurance Corp. of Ireland* v. *Compagnie des Bauxites de Guinee*, 456 U.S. 694, 703 (1982). And a State may require a party to consent to suit as a condition of engaging in an activity, or deem the party to have consented by engaging in that activity. See *id.* at 704. But Pennsylvania's long-arm statute is not a valid consent statute.

a. As a threshold matter, Pennsylvania does not even treat registration as consent—reinforcing the reality that compulsory registration requirements do not function as a form of actual consent. The Pennsylvania long-arm statute provides that each of the following provides a basis for exercising "general personal jurisdiction" over a corporation:

> (i) Incorporation under or qualification as a foreign corporation under the laws of this Commonwealth.
>
> (ii) Consent, to the extent authorized by the consent.
>
> (iii) The carrying on of a continuous and systematic part of its general business within the Commonwealth.

42 Pa. Cons. Stat. Ann. § 5301(a)(2) (2019). As the statutory text shows, Pennsylvania treats "qualification as a foreign corporation" the same way it treats "[i]ncorporation"—*i.e.*, as a substantive basis for exercising "general personal jurisdiction." *Id.* § 5301(a)(2)(i). That the long-arm statute itself lists "qualification as a foreign corporation" *separately* from "[c]onsent" demon-

strates that registration cannot be understood as a species of consent. *Id.* § 5301(a)(2)(i)-(ii).

b. A State in any event may not require a company to consent to general jurisdiction in order to do business there. A state court's exercise of personal jurisdiction must comport with "'traditional notions of fair play and substantial justice'" and must be "reasonable, in the context of our federal system." *International Shoe*, 326 U.S. at 316-317 (citation omitted). Those requirements apply to state consent statutes no less than they apply to other jurisdictional statutes. See *Insurance Corp.*, 456 U.S. at 703 (considering "traditional notions of fair play and substantial justice" in the context of consent) (citations omitted); *Burger King Corp.* v. *Rudzewicz*, 471 U.S. 462, 472 n.14 (1985) (explaining that a forum-selection clause does not provide valid consent if it is "unreasonable and unjust") (citation omitted).

Pennsylvania's long-arm statute does not comply with those standards. As discussed above, it is neither fair nor reasonable in our federal system for a State to exercise unlimited jurisdiction simply because the defendant does business (and so must register to do that business) in the forum. See pp. 10-13, *supra*.

c. A state law requiring a company to consent to general jurisdiction to operate in the State would also violate the unconstitutional-conditions doctrine—a general principle of constitutional law that limits a State's power to require a person to give up a constitutional right in order to receive a benefit. See *Koontz* v. *St. Johns River Water Management District*, 570 U.S. 595, 604 (2013). Applying that doctrine, this Court has long held that a State generally may not require a company, as a condition of doing business, "to surrender a right and privilege secured to it by the Constitution and laws

of the United States." *Southern Pacific Co.* v. *Denton*, 146 U.S. 202, 207 (1892). Any waiver or consent secured through such a condition has "no validity or effect." *Ibid.* The Court has applied that principle in a variety of cases and to a variety of rights. See *44 Liquormart, Inc.* v. *Rhode Island*, 517 U.S. 484, 513 (1996) (opinion of Stevens, J.) (free speech); *Western & Southern Life Ins. Co.* v. *State Board of Equalization*, 451 U.S. 648, 656-668 (1981) (equal protection); *Frost & Frost Trucking Co.* v. *Railroad Commission*, 271 U.S. 583, 599 (1926) (due process); *Missouri ex rel. The Burnes National Bank of St. Joseph* v. *Duncan*, 265 U.S. 17, 24-25 (1924) (federal statutory rights).

In particular, this Court has applied that principle in the context of territorial limits on state power. The Due Process Clause limits each State's power to regulate conduct and to tax property in other States. See *North Carolina Department of Revenue* v. *The Kimberly Rice Kaestner 1992 Family Trust*, 139 S. Ct. 2213, 2220 (2019); *Allstate Ins. Co.* v. *Hague*, 449 U.S. 302, 307-313 (1981) (plurality opinion). The Court has held that a State may not evade those limits by requiring companies, as a condition of operating in the State, to consent to the regulation of activities or the taxation of property in other States. See *Fidelity & Deposit Co.* v. *Tafoya*, 270 U.S. 426, 435 (1926); *Western Union Telegraph Co.* v. *Kansas*, 216 U.S. 1, 33-48 (1910).

No good reason exists to treat due process limits on personal jurisdiction any differently. "[T]hose who live or operate primarily outside a State have a due process right not to be subjected to judgment in its courts as a general matter." *Nicastro*, 564 U.S. at 881 (plurality opinion). Demanding that a company give up that right violates the general rule, "well settled in the jurispru-

dence of this [C]ourt, that the right to do business cannot be made to depend upon the surrender of a right created and guaranteed by the Federal Constitution." *Frost*, 271 U.S. at 596 (citation omitted).

To be sure, the unconstitutional-conditions doctrine is not absolute. A State may, in some circumstances, seek the surrender of a right if it has a legitimate reason for doing so. See *Koontz*, 570 U.S. at 605-606. But as discussed above, no such reason exists here. A State has no legitimate interest in hearing suits that relate only to other States. See p. 13, *supra*.

Petitioner argues (Br. 50) that the unconstitutional-conditions doctrine does not apply to waivable litigation rights. But this Court has applied the doctrine to procedural rights, such as the right to remove cases from state to federal court. See *Terral* v. *Burke Constr. Co.*, 257 U.S. 529, 532-533 (1922). On petitioner's contrary view, a State could require a person to give up his procedural rights to confrontation, compulsory process, and trial by jury as a condition of doing business in the State. Petitioner also argues (Br. 49) that in *Insurance Co.* v. *Morse*, 20 Wall. 445 (1874), this Court suggested that the unconstitutional-conditions doctrine does not apply to laws requiring consent to personal jurisdiction. That is incorrect; in fact, the Court in *Morse* stated that conditions imposed in such consent statutes must comport with "the Constitution and laws of the United States" and "those rules of public law which secure the jurisdiction and authority of each State from encroachment by others." *Id.* at 457.

B. Petitioner's Arguments Lack Merit

Petitioner advances a series of contrary arguments, but those arguments lack merit.

1. Pennsylvania Fire *does not justify the exercise of general jurisdiction based on registration*

Petitioner heavily relies (Br. 28-34) on this Court's decision in *Pennsylvania Fire Insurance Co.* v. *Gold Issue Mining & Milling Co.*, 243 U.S. 93 (1917). There, Missouri had required an out-of-state insurer to consent to personal jurisdiction as a condition of getting a license to do business in the State. *Id.* at 94. In an opinion by Justice Holmes, the Court held that Missouri could rely on that consent to hear a suit brought by an out-of-state plaintiff against the out-of-state insurer concerning out-of-state property. *Id.* at 94-95.

Petitioner's reliance on *Pennsylvania Fire* is misplaced. That decision has been superseded by more recent precedents—many times over.

a. *Pennsylvania Fire* contained little reasoning, but the Court explained in a later opinion by Justice Holmes that it rested on two premises: First, that the State has the power to "exclude foreign corporations altogether," *Flexner* v. *Farson*, 248 U.S. 289, 293 (1919), and second, that the power to exclude corporations altogether carries with it the lesser power to require them to consent to suit "as a condition of letting them in," *ibid.* That rationale explains why *Pennsylvania Fire* only ever applied to corporations: Because the Privileges and Immunities Clause of Article IV deprived States of the greater power to exclude nonresident individuals, States also lacked the lesser power to require those individuals to consent to unlimited personal jurisdiction as a condition of allowing them in. See *Hess* v. *Pawloski*, 274 U.S. 352, 355 (1927); Restatement (First) of Judgments § 22, cmt. e (1942); 1 Joseph H. Beale, *A Treatise on the Conflict of Laws* 363 (1935); Restatement (First) of Conflict of Laws § 84, cmt. b (1934).

That rationale also reflects Justice Holmes's general views about unconstitutional conditions. See *McAuliffe* v. *City of New Bedford*, 29 N.E. 517, 517 (Mass. 1892) ("The petitioner may have a constitutional right to talk politics, but he has no constitutional right to be a policeman.").

Since *Pennsylvania Fire*, however, this Court has repudiated both premises underlying that special rule for corporate defendants. First, the Court has rejected the notion that a State has the power to "exclude foreign corporations altogether." *Flexner*, 248 U.S. at 293. The Court's modern cases treat carrying on interstate commerce as a "right" guaranteed by the Constitution, "not a franchise or privilege granted by the State." *Dennis* v. *Higgins*, 498 U.S. 439, 448 (1991) (citation omitted). A State thus generally lacks the power to exclude out-of-state competitors from its markets. See *Tennessee Wine & Spirits Retailers Ass'n* v. *Thomas*, 139 S. Ct. 2449, 2459 (2019). That makes *Pennsylvania Fire* inapplicable on its own terms. "It would seem to follow that if the state's power to exact consent to be sued depended on its power to exclude, and it could not exclude, it could not exact such consent." Philip B. Kurland, *The Supreme Court, the Due Process Clause and the In Personam Jurisdiction of State Courts*, 25 U. Chi. L. Rev. 569, 581 (1958).

Second, this Court also has abandoned Justice Holmes's view that the power to withhold a benefit includes the unlimited power to attach otherwise unconstitutional conditions. The Court has held in a variety of contexts that the Constitution limits the government's ability to require a person to give up a constitutional right to receive a benefit. See, *e.g.*, *Carson* v. *Makin*, 142 S. Ct. 1987, 1996 (2022); *Koontz*, 570 U.S. at

604. More specifically, as discussed above, it is now "well settled" that "the right to do business cannot be made to depend upon the surrender of a right created and guaranteed by the Federal Constitution." *Frost*, 271 U.S. at 596 (citation omitted); see pp. 15-16, *supra*.

b. If anything remained of *Pennsylvania Fire*, it was fully extinguished by *International Shoe* and its follow-on cases. *Pennsylvania Fire* applied the territorial rules of *Pennoyer* v. *Neff*, 95 U.S. 714 (1878). But *International Shoe* discarded those rules and held instead that state courts' assertions of personal jurisdiction must comport with "'traditional notions of fair play and substantial justice'" and must be "reasonable, in the context of our federal system." 326 U.S. at 316-317 (citation omitted). This Court has since explained that "all assertions of state-court jurisdiction must be evaluated according to the standards set forth in *International Shoe* and its progeny." *Rush* v. *Savchuk*, 444 U.S. 320, 327 (1980) (quoting *Shaffer* v. *Heitner*, 433 U.S. 186, 212 (1977)). The Court added: "It would not be fruitful for us to re-examine the facts of cases decided on the rationales of *Pennoyer* * * * to determine whether jurisdiction might have been sustained under the standard we adopt today. To the extent that prior decisions are inconsistent with this standard, they are overruled." *Shaffer*, 433 U.S. at 212 n.39.

More recently, this Court has declined to accord significant weight to decisions that predate *International Shoe* and conflict with its standards. In *Daimler*, the Court dismissed a century-old general-jurisdiction precedent in a footnote, observing that cases "decided in the era dominated by *Pennoyer*'s territorial thinking * * * should not attract heavy reliance today." 571 U.S. at 138 n.18 (discussing *Barrow S.S. Co.* v. *Kane*, 170

U.S. 100 (1898)). And in *BNSF*, the Court waved aside several cases that predated *International Shoe*, observing that *Daimler* had already warned "against reliance on cases 'decided in the era dominated by' the 'territorial thinking'" of *Pennoyer*. 137 S. Ct. at 1558 (citation omitted).

c. *Stare decisis* is a "foundation stone of the rule of law." *Allen* v. *Cooper*, 140 S. Ct. 994, 1003 (2020) (citation omitted). This Court always "demand[s] a 'special justification,' over and above the belief 'that the precedent was wrongly decided,'" before reversing one of its decisions. *Ibid.* That demanding standard "contributes to the actual and perceived integrity of the judicial process," *Kimble* v. *Marvel Entertainment, LLC*, 576 U.S. 446, 455 (2015) (citation omitted), and "permits society to presume that bedrock principles are founded in the law rather than in the proclivities of individuals," *Vasquez* v. *Hillery*, 474 U.S. 254, 265 (1986).

But resolving this case does not require this Court to decide anew whether, under principles of *stare decisis*, *Pennsylvania Fire* should now be overruled. As shown above, more recent cases have already superseded *Pennsylvania Fire*—and, accordingly, it is petitioner's position that is inconsistent with precedent.

In addition, in a line of cases that began before *Pennsylvania Fire* and continued after it, this Court held that a State violates the dormant Commerce Clause by requiring an out-of-state company to submit to personal jurisdiction for out-of-state claims brought by out-of-state plaintiffs. *E.g.*, *Davis* v. *Farmers Co-operative Equity Co.*, 262 U.S. 312, 315 (1923); *Sioux Remedy Co.* v. *Cope*, 235 U.S. 197, 203-204 (1914). The insurance company in *Pennsylvania Fire* could not rely on those Commerce Clause cases because of the then-prevailing

doctrine that insurance is not commerce. See *Paul* v. *Virginia*, 75 U.S. 168, 183 (1869), overruled by *United States* v. *South-Eastern Underwriters Ass'n*, 322 U.S. 533, 553 (1944). But railroads could and did invoke Commerce Clause limits on personal jurisdiction. See *Michigan Central R.R.* v. *Mix*, 278 U.S. 492, 495 (1929). Petitioner gives no principled reason for exhuming *Pennsylvania Fire* but not the contemporaneous Commerce Clause cases that might block this suit.

Affirming the state supreme court's dismissal for lack of personal jurisdiction here would simply "formalize what is evident": *Pennsylvania Fire* "'must be regarded as retaining no vitality.'" *Herrera* v. *Wyoming*, 139 S. Ct. 1686, 1697 (2019) (citation omitted). State jurisdictional regimes throughout the Nation already reflect that reality. Pennsylvania appears to be the only State that expressly treats registration as a basis for general jurisdiction, and its own supreme court has invalidated the application of its long-arm statute in this context. See Pet. App. 40a-41a & n.17.

2. History does not justify the exercise of general jurisdiction based on registration

Petitioner also contends (Br. 11-28) that States in the 19th century required corporations, as a condition of doing business, to consent to suit on any and all claims. That is incorrect. States traditionally required submission to jurisdiction on claims connected with the State, not on claims (like petitioner's) that concerned only other States.

a. Under the territorial regime of *Pennoyer*, a state court could exercise personal jurisdiction over a defendant only if (1) the defendant was physically present in the forum when served with process or (2) the defendant had consented to suit. See 95 U.S. at 733. States

relied on the consent doctrine to hear cases involving defendants who were absent from the forum: out-of-state corporations that did business there, out-of-state individuals who had entered into contracts there, and (later) out-of-state drivers who caused car accidents there. See Kurland, 25 U. Chi. L. Rev. at 578-579. States either required parties to consent to suit before engaging in those activities or deemed them to have consented by engaging in those activities.

Nevertheless, this Court's leading 19th-century case applying the consent doctrine, *St. Clair* v. *Cox*, 106 U.S. 350 (1882), made clear that the States' power to enact consent statutes was subject to limits. For example, a consent statute had to be "reasonable" and had to ensure that the defendant would receive "notice" of any suit. *Id.* at 356. A consent statute also had to comport with the "rules of public law which secure the jurisdiction and authority of each State from encroachment by all others." *Ibid.* (citation omitted).

One important limit on the consent doctrine was that it generally applied only to claims that arose "out of the business done within the state." Kurland, 25 U. Chi. L. Rev. at 583. Many of this Court's decisions reflected that limit:

- A State may require an out-of-state insurer that makes contracts in the State to consent to service of process "in suits *founded on such contracts*." *The Lafayette Ins. Co.* v. *French*, 18 How. 404, 408 (1856) (emphasis added).
- "It would be a startling proposition if in all such cases citizens of [a State] should be denied all remedy in her courts, *for causes of action arising under contracts and acts entered into or done within her territory*, and should be turned over to the courts

and laws of a sister State to seek redress." *Railroad Co.* v. *Harris*, 12 Wall. 65, 83 (1871) (emphasis added; citation omitted).

- A State may "require a non-resident entering into a partnership or association within [the State's] limits, or making contracts enforceable there," to consent to suit "in legal proceedings instituted *with respect to such partnership, association, or contracts*." *Pennoyer*, 95 U.S. at 735 (emphasis added).
- "The 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." *St. Clair*, 106 U.S. at 356 (emphasis added).
- A corporation that operates in a State may be deemed to have consented to suit "as to business there transacted by it," but not "as to business transacted in another State." *Old Wayne Mutual Life Ass'n* v. *McDonough*, 204 U.S. 8, 23 (1907).
- The "statutory consent of a foreign corporation to be sued does not extend to causes of action arising in other States." *Simon* v. *Southern Ry. Co.*, 236 U.S. 115, 130 (1915).

Nineteenth-century state courts, for their part, disagreed about whether the consent doctrine required the claim to arise out of business done in the forum, or whether it was enough if the claim was connected to the forum in some other way. But even in the absence of limiting language in the statutory text, many state supreme courts refused to apply consent statutes to claims that had no connection at all to the forum.

For example, the Vermont Supreme Court refused to apply a consent statute to "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." *Sawyer* v. *The North American Life Ins. Co.*, 46 Vt. 697, 706 (1874). The Georgia Supreme Court rejected a "wide construction" of its state statute, explaining that an out-of-state corporation with agents in Georgia could be sued in Georgia on "contracts made here by agents in Georgia," but not "on a contract or debt of any sort"—lest a "debt created in England by [an] English corporation" or a "debt made in China" prompt a suit in Georgia. *Bawknight* v. *Liverpool & London & Globe Ins. Co.*, 55 Ga. 194, 196-197 (1875). The Alabama Supreme Court considered it "well settled" that "no action *in personam* can be maintained against a foreign corporation, unless the contract sued on was made, or the injury complained of was suffered, in the State in which the action is brought." *Central R.R. & Banking Co.* v. *Carr*, 76 Ala. 388, 393 (1884). Many other state supreme courts agreed that jurisdiction over an out-of-state corporation generally does not extend to claims unrelated to the forum. See, *e.g.*, *Morris* v. *Missouri Pacific Ry. Co.*, 78 Tex. 17, 21 (1890); *Berlin Iron Bridge Co.* v. *Norton*, 17 A. 1079, 1079 (N.J. 1889); *Peters* v. *Neely*, 84 Tenn. 275, 281 (1886); *Newell* v. *Great Western Ry. Co.*, 19 Mich. 336, 345-346 (1869); *Parke* v. *The Commonwealth Ins. Co.*, 44 Pa. 422, 422-423 (1863).

b. Petitioner identifies (Br. 15) "four categories" of state statutes and judicial decisions that ostensibly support the exercise of personal jurisdiction in this case. But two of those categories involve (*ibid.*) "claims brought by residents of the State" and "claims arising within the State." They have no bearing on the question

presented here: whether a State may subject a corporation to personal jurisdiction on claims that have no connection at all to the forum.

Nor does petitioner's theory draw meaningful support from the evidence in the remaining two categories. Petitioner relies (Br. 16, 19) on state consent statutes that, on their face, drew no distinction between claims arising in the State and claims arising elsewhere. But as explained above, many courts refused to apply consent statutes to claims unrelated to the forum, even in the absence of limiting language in the statutory text. See pp. 24-25, *supra*. As one scholar summarized: "The statutes relating to corporations frequently make no distinction between causes of action arising within the state and those arising elsewhere, and although * * * these statutes have been held invalid as to causes of action arising outside the state, they are upheld as to causes of action arising within the state." Austin W. Scott, *Jurisdiction over Nonresidents Doing Business Within a State*, 32 Harv. L. Rev. 871, 890 (1919).

Petitioner also cites (Br. 16-20) seven cases in which he asserts state courts relied on consent laws to hear claims unrelated to the forum. But in two of those cases, the claim did relate to the forum. See *Littlejohn* v. *Southern Ry. Co.*, 22 S.E. 761, 761 (S.C. 1895) (suit based on injuries suffered in the forum); *Farrel* v. *Oregon Gold-Mining Co.*, 49 P. 876, 877-878 (Or. 1897) (suit based on services rendered in the forum). Three of the cases involved garnishment proceedings, which were subject to special jurisdictional rules because they were viewed as *in rem* actions. See *Mooney* v. *Buford & George Manufacturing Co.*, 72 F. 32, 41 (7th Cir. 1896); *Barr* v. *King*, 96 Pa. 485, 488 (1880); *Fithian, Jones & Co.* v. *New York & Erie R.R. Co.*, 31 Pa. 114, 117 (1857);

see also *Shaffer*, 433 U.S. at 200, 211 n.38 (discussing traditional rules for garnishment proceedings). And one case came more than four decades after the Fourteenth Amendment, elicited a dissent, and was soon overruled. See *State ex rel. Pacific Mutual Life Ins. Co.* v. *Grimm*, 143 S.W. 483, 492-493 (Mo. 1911) (in banc), overruled by *State ex rel. American Central Life Ins. Co.* v. *Landwehr*, 300 S.W. 294, 297-298 (Mo. 1927) (in banc); *id.* at 499-500 (Graves, J., dissenting).

That leaves only a single case supporting petitioner's view. See *Johnston* v. *Trade Ins. Co.*, 132 Mass. 432, 434 (1882). And the court that decided that case, the Massachusetts Supreme Judicial Court, had adopted the opposite position in the year that Massachusetts actually ratified the Fourteenth Amendment. See *Smith* v. *Mutual Life Ins. Co.*, 96 Mass. 336, 341-342 (1867) (refusing to apply a consent statute to a claim brought by an out-of-state plaintiff against an out-of-state defendant concerning an out-of-state contract because the claim was "not within the sovereign power of the state," "particularly under our federal system of government"); *id.* at 343 (noting the court was not addressing the limits of judicial power "in the case of a contract by a foreign corporation made within this state, with a citizen thereof, and insuring a life or property therein"). Petitioner's one viable 19th-century example is outweighed by the decisions from eight other state supreme courts—and multiple decisions from this Court—discussed above. See pp. 23-25, *supra*.

Petitioner also invokes (Br. 25) two 19th-century commentators. But one of them explained that most state courts refused to apply their consent statutes to cases unrelated to the State, that Massachusetts had adopted a distinctive approach, and that even the Mas-

sachusetts decisions were inconsistent. See 6 Seymour D. Thompson, *Commentaries on the Law of Private Corporations* §§ 8003-8004, at 6378-6379 & n.4 (1896). The other commentator also recognized that, as of 1898, the courts had divided on whether such statutes could reach causes of action arising out of state. Edward Quinton Keasbey, *Jurisdiction over Foreign Corporations*, 12 Harv. L. Rev. 1, 5-6 (1898). Without reaching his own "definite conclusions," he offered as a potential argument the same syllogism eventually used in *Pennsylvania Fire* and later repudiated by this Court: "[S]ince a State has a right to exclude a foreign corporation altogether, it may impose conditions under which alone it may come within the State." *Id.* at 18, 22.

c. Petitioner separately relies (Br. 24-25) on a 19th-century federal statute that made corporations doing business in the District of Columbia amenable to suit there. As noted above, however, courts traditionally read state consent statutes to apply only to claims related to the forum, even when the statutory text lacked such limiting language. See pp. 24-25, *supra*. Petitioner provides no reason to think that the federal statute was applied any differently. Petitioner cites (Br. 24) one case in which he says this Court applied the federal statute, but that case involved a claim arising out of activities in the District of Columbia. See *Harris*, 12 Wall. at 77 (suit by injured train passenger who had bought his ticket in "the city of Washington").

In any event, Fifth Amendment limits on personal jurisdiction in federal courts differ from Fourteenth Amendment limits on personal jurisdiction in state courts. See *Nicastro*, 564 U.S. at 884 (plurality opinion). Given Congress's authority to legislate for the whole Nation and its constitutional powers in the field of for-

eign affairs, principles of interstate federalism and international comity do not constrain Congress in the same way that they constrain state legislatures. That is so even when Congress legislates for the District of Columbia, for Congress may exercise "this particular power, like all its other powers, in its high character, as the legislature of the Union." *Cohens* v. *Virginia*, 6 Wheat. 264, 429 (1821). Thus, even if the 1867 federal statute had been applied more broadly than the state-law provisions of that era, that would say little about the validity of Pennsylvania's long-arm statute.

3. General jurisdiction based on registration is not analogous to transient jurisdiction over individuals

Petitioner additionally invokes (Br. 34-48) *Burnham* v. *Superior Court*, 495 U.S. 604 (1990), where this Court upheld a state court's exercise of transient jurisdiction (*i.e.*, jurisdiction over an individual based on service of process in the forum). But general jurisdiction based on registration is not analogous to transient jurisdiction.

Although no opinion commanded a majority of the Court in *Burnham*, all nine members relied, in whole or in significant part, on the deeply rooted American tradition supporting transient jurisdiction over individuals. See 495 U.S. at 610-616 (opinion of Scalia, J.); *id.* at 628 (White, J., concurring in part and concurring in the judgment); *id.* at 633-637 (Brennan, J., concurring in the judgment); *id.* at 640 (Stevens, J., concurring in the judgment). The lead opinion explained that many state courts had invoked transient jurisdiction in the 19th and 20th centuries; that "*not one* American case from the period" suggested that service of process in the forum was insufficient to confer jurisdiction; that commentators were "seemingly unanimous on the rule"; and that transient jurisdiction remained the practice of "*all* the

States and the Federal Government." *Id.* at 613-615 (opinion of Scalia, J.).

No comparable tradition exists here. Many of this Court's cases from the 19th and early 20th centuries, including *Pennoyer* itself, indicate that a State could require a non-individual defendant from elsewhere to consent to personal jurisdiction only on claims connected with the State. See pp. 23-24, *supra*. State courts, too, refused to apply consent statutes to claims that concerned only other States. See pp. 24-25, *supra*. And whatever tradition once existed has died out: Pennsylvania appears to be the only State that expressly treats registration as a basis for general jurisdiction. See Pet. App. 40a-41a & n.17. This case is thus nothing like *Burnham*.

Petitioner finds it anomalous (Br. 42-48) that a nonresident traveling through the forum is subject to personal jurisdiction on all claims, while a corporation doing business in the forum is subject to personal jurisdiction only on claims related to that business. But petitioner overlooks the conceptual, historical, and practical explanations for that seeming anomaly. As a conceptual matter, the foundation of transient jurisdiction is the sovereign's physical power to seize any individual who is present in its lands and to compel that individual to attend its courts. See *Michigan Trust Co.* v. *Ferry*, 228 U.S. 346, 353 (1913). That notion does not comfortably carry over to a corporation, which is "an artificial being, invisible, intangible, and existing only in contemplation of law." *The Trustees of Dartmouth College* v. *Woodward*, 4 Wheat. 518, 636 (1819). A corporation's officers, agents, and shareholders can travel from State to State, but the corporation itself has no physical location. And when 19th-century courts assigned the corporation it-

self a physical location, they generally held that it "must dwell in the place of its creation," unable to "migrate to another sovereignty." *St. Clair*, 106 U.S. at 354.

As a historical matter, rules of personal jurisdiction for individuals grew out of English practice going back to the 17th century. See *Burnham*, 495 U.S. at 611 (opinion of Scalia, J.). Rules for corporations, in contrast, developed in the United States in the 19th century. See *St. Clair*, 106 U.S. at 353-357. It should come as no surprise that doctrines developed in this country would be more sensitive to interstate federalism than those inherited from England.

And as a practical matter, petitioner's theory would do far more damage to our federal system than does the continuation of transient jurisdiction. An individual can be in only one place at a time, and that place is most often his home State. A corporation, in contrast, can "be" everywhere at once if the presence of an agent suffices. Transient jurisdiction over individuals may on occasion allow a State to hear a case in which it lacks a meaningful interest, but general jurisdiction based on corporate registration would create an unprecedented jurisdictional free-for-all.

C. This Court Need Not Address Circumstances Beyond A State Court's Exercise Of General Jurisdiction Based On Registration

This case concerns the Fourteenth Amendment's limits on the personal jurisdiction of state courts, not the Fifth Amendment's limits on the personal jurisdiction of federal courts. The United States' constitutional powers and special competence in foreign affairs, as distinguished from the geographically cabined and mutually exclusive sovereignty of the several States, would permit exercises of federal judicial power that have no

analogue at the state level. And because "the United States is a distinct sovereign, a defendant may in principle be subject to the jurisdiction of the courts of the United States but not of any particular State." *Nicastro*, 564 U.S. at 884 (plurality opinion). As this Court has done before, it should reserve the question whether the Fourteenth Amendment's limits on personal jurisdiction also apply in cases governed by the Fifth Amendment. See *Bristol-Myers*, 137 S. Ct. at 1783-1784.

This case also concerns only general jurisdiction (*i.e.*, jurisdiction over claims irrespective of any connection with the forum). It presents no occasion to decide whether States may adopt special statutes, whether labeled "consent" or otherwise, that enable state courts to hear claims that are tied to the State but go beyond this Court's specific-jurisdiction doctrine. Cf. *Kulko* v. *Superior Court*, 436 U.S. 84, 98 (1978) ("California has not attempted to assert any particularized interest in trying such cases in its courts by * * * enacting a special jurisdictional statute.").

Because this case concerns only the Fourteenth Amendment and only general jurisdiction, petitioner errs in suggesting (Br. 46) that a ruling against him would call into doubt the constitutionality of 18 U.S.C. 2334(e) (Supp. I 2019). That federal statute provides that the Palestinian Authority, Palestine Liberation Organization, and affiliated or successor organizations are deemed to have consented to suit in the United States on claims by U.S. nationals arising from acts of international terrorism if those entities (1) make certain payments to terrorists or their families or (2) maintain or establish offices or engage in certain other activities in the United States. See 18 U.S.C. 2333(a); 18 U.S.C. 2334(e)(1), (3), and (5) (Supp. I 2019). That statute dif-

fers in significant ways from Pennsylvania's long-arm statute. It is governed by the Fifth Amendment, not the Fourteenth; it concerns foreign affairs, a field in which Congress is entitled to substantial deference; it applies only to a narrow class of defendants and a well-defined set of claims; it does not attach a condition to the right to do business in a State; it raises no questions of interstate federalism; and it applies only to claims in which the United States has a legitimate interest, not to claims that concern only other sovereigns.

CONCLUSION

The judgment of the Supreme Court of Pennsylvania should be affirmed.

Respectfully submitted.

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SEPTEMBER 2022

APPENDIX

1. 15 Pa. Cons. Stat. Ann. § 411 provides:

Registration to do business in this Commonwealth

(a) Registration required.—Except as provided in section 401 (relating to application of chapter) or subsection (g), a foreign filing association or foreign limited liability partnership may not do business in this Commonwealth until it registers with the department under this chapter.

(b) Penalty for failure to register.—A foreign filing association or foreign limited liability partnership doing business in this Commonwealth may not maintain an action or proceeding in this Commonwealth unless it is registered to do business under this chapter.

(c) Contracts and acts not impaired by failure to register.—The failure of a foreign filing association or foreign limited liability partnership to register to do business in this Commonwealth does not impair the validity of a contract or act of the foreign filing association or foreign limited liability partnership or preclude it from defending an action or proceeding in this Commonwealth.

(d) Limitations on liability preserved.—A limitation on the liability of an interest holder or governor of a foreign filing association or of a partner of a foreign limited liability partnership is not waived solely because the foreign filing association or foreign limited liability partnership does business in this Commonwealth without registering.

(e) Governing law not affected.—Section 402 (relating to governing law) applies even if a foreign association fails to register under this chapter.

(f) Registered office.—Subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), every registered foreign association shall have, and continuously maintain, in this Commonwealth a registered office, which may but need not be the same as its place of business in this Commonwealth.

(g) Foreign insurance corporations.—A foreign insurance corporation is not required to register under this chapter.

2. 42 Pa. Cons. Stat. Ann. § 5301 provides:

Persons

(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, or his personal representative in the case of an individual, and to enable such tribunals to render personal orders against such person or representative:

(1) Individuals.—

(i) Presence in this Commonwealth at the time when process is served.

(ii) Domicile in this Commonwealth at the time when process is served.

(iii) Consent, to the extent authorized by the consent.

(2) Corporations.—

(i) Incorporation under or qualification as a foreign corporation under the laws of this Commonwealth.

(ii) Consent, to the extent authorized by the consent.

(iii) The carrying on of a continuous and systematic part of its general business within this Commonwealth.

(3) Partnerships, limited partnerships, partnership associations, professional associations, unincorporated associations and similar entities.—

(i) Formation under or qualification as a foreign entity under the laws of this Commonwealth.

(ii) Consent, to the extent authorized by the consent.

(iii) The carrying on of a continuous and systematic part of its general business within this Commonwealth.

(b) Scope of jurisdiction.—When jurisdiction over a person is based upon this section any cause of action may be asserted against him, whether or not arising from acts enumerated in this section. Discontinuance of the acts enumerated in subsection (a)(2)(i) and (iii) and (3)(i) and (iii) shall not affect jurisdiction with respect to any act, transaction or omission occurring during the period such status existed.

3. 18 U.S.C. 2333(a) provides:

Civil remedies

(a) ACTION AND JURISDICTION.—Any national of the United States injured in his or her person, property, or business by reason of an act of international terrorism, or his or her estate, survivors, or heirs, may sue therefor in any appropriate district court of the United States and shall recover threefold the damages he or she sustains and the cost of the suit, including attorney's fees.

4. 18 U.S.C. 2334(e) (Supp. I 2019) provides:

Jurisdiction and venue

(e) CONSENT OF CERTAIN PARTIES TO PERSONAL JURISDICTION.—

(1) IN GENERAL.—Except as provided in paragraph (2), for purposes of any civil action under section 2333 of this title, a defendant shall be deemed to have consented to personal jurisdiction in such civil action if, regardless of the date of the occurrence of the act of international terrorism upon which such civil action was filed, the defendant—

(A) after the date that is 120 days after the date of the enactment of the Promoting Security and Justice for Victims of Terrorism Act of 2019, makes any payment, directly or indirectly—

(i) to any payee designated by any individual who, after being fairly tried or pleading guilty, has been imprisoned for committing any act of terrorism that injured or killed a na-

tional of the United States, if such payment is made by reason of such imprisonment; or

(ii) to any family member of any individual, following such individual's death while committing an act of terrorism that injured or killed a national of the United States, if such payment is made by reason of the death of such individual; or

(B) after 15 days after the date of enactment of the Promoting Security and Justice for Victims of Terrorism Act of 2019—

(i) continues to maintain any office, headquarters, premises, or other facilities or establishments in the United States;

(ii) establishes or procures any office, headquarters, premises, or other facilities or establishments in the United States; or

(iii) conducts any activity while physically present in the United States on behalf of the Palestine Liberation Organization or the Palestinian Authority.

(2) APPLICABILITY.—Paragraph (1) shall not apply to any defendant who ceases to engage in the conduct described in paragraphs (1)(A) and (1)(B) for 5 consecutive calendar years. Except with respect to payments described in paragraph (1)(A), no court may consider the receipt of any assistance by a nongovernmental organization, whether direct or indirect, as a basis for consent to jurisdiction by a defendant.

(3) EXCEPTION FOR CERTAIN ACTIVITIES AND LOCATIONS.—In determining whether a defendant shall be deemed to have consented to personal jurisdiction under paragraph (1)(B), no court may consider—

(A) any office, headquarters, premises, or other facility or establishment used exclusively for the purpose of conducting official business of the United Nations;

(B) any activity undertaken exclusively for the purpose of conducting official business of the United Nations;

(C) any activity involving officials of the United States that the Secretary of State determines is in the national interest of the United States if the Secretary reports to the appropriate congressional committees annually on the use of the authority under this subparagraph;

(D) any activity undertaken exclusively for the purpose of meetings with officials of the United States or other foreign governments, or participation in training and related activities funded or arranged by the United States Government;

(E) any activity related to legal representation—

(i) for matters related to activities described in this paragraph;

(ii) for the purpose of adjudicating or resolving claims filed in courts of the United States; or

(iii) to comply with this subsection; or

(F) any personal or official activities conducted ancillary to activities listed under this paragraph.

(4) RULE OF CONSTRUCTION.—Notwithstanding any other law (including any treaty), any office, headquarters, premises, or other facility or establishment within the territory of the United States that is not specifically exempted by paragraph (3)(A) shall be considered to be in the United States for purposes of paragraph (1)(B).

(5) DEFINED TERM.—In this subsection, the term "defendant" means—

(A) the Palestinian Authority;

(B) the Palestine Liberation Organization;

(C) any organization or other entity that is a successor to or affiliated with the Palestinian Authority or the Palestine Liberation Organization; or

(D) any organization or other entity that—

(i) is identified in subparagraph (A), (B), or (C); and

(ii) self identifies as, holds itself out to be, or carries out conduct in the name of, the "State of Palestine" or "Palestine" in connection with official business of the United Nations.