

No. 26-4

In the Supreme Court of the United States

SAMSUNG ELECTRONICS AMERICA, INC.,
Petitioner,

v.

JORDAN BREWER,
Respondent.

**On Petition for Writ of Certiorari to the
Court of Appeals of Georgia**

**REPLY BRIEF
IN SUPPORT OF CERTIORARI**

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REPLY BRIEF

“Samsung acknowledges that its personal jurisdiction argument is foreclosed by Supreme Court of Georgia precedent. It appears that Samsung is simply preserving this argument for a possible appeal to the Supreme Court of the United States.” Br. of Cross-Appellee, No. A25A0292, Nov. 4, 2024, at 32.

That is what Brewer told the Georgia Court of Appeals about the argument he now insists Samsung failed to preserve. Having acknowledged preservation of the constitutional question below, Brewer stakes his opposition to certiorari on waiver. That argument fails: Samsung preserved the question in a proper cross-appeal, as Brewer contemporaneously admitted.

Brewer’s remaining vehicle arguments fare no better. He asserts Samsung somehow “waived” the question presented by informing the lower court that the then-pending *Mallory* decision may resolve the jurisdictional issue. Ultimately, it did not: this Court declined to rule on any statutory scheme besides Pennsylvania’s, which unlike Georgia’s provides explicit notice of the jurisdictional consequences of registration. Samsung’s inability to predict the contours of *Mallory* is not waiver. Brewer also asserts that this Court lacks jurisdiction under Section 1257(a) despite decades of caselaw permitting review of an intermediate appellate court’s judgment when it is the “highest court of a State in which a decision

could be had.” And he asserts that Samsung’s deemed admissions foreclose review although no court has held that those admissions establish specific jurisdiction.

After belaboring purported vehicle problems for the better part of its brief in opposition, Brewer responds to the question presented by mischaracterizing *Mallory* and the resulting division among the lower courts. Only 13 States have business-registration statutes that explicitly state the jurisdictional consequences of registration. Courts in the other 37 States are reaching conflicting conclusions about whether registration without explicit statutory notice constitutes consent to general jurisdiction—and whether federal due process permits that result. These courts are assessing state business-registration statutes within the parameters of constitutional due process, and they are reaching opposite conclusions.

That disagreement warrants this Court’s review, particularly where Georgia’s judicially created jurisdictional rule—announced after Samsung first registered to do business there—has subjected a company that neither manufactured nor sold the product at issue to an eight-figure default judgment.

The Petition should be granted.

I. *Mallory* Did Not Resolve the Constitutional Question Presented.

The *Mallory* decision was self-consciously narrow: “To decide this case, we need not speculate whether

any other statutory scheme and set of facts would suffice to establish consent to suit.” *Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 135 (2023). The majority opinion relied on Pennsylvania’s “explicit” statutory warning that “‘qualification as a foreign corporation’ shall permit state courts to ‘exercise general personal jurisdiction’ over a registered foreign corporation.” *Id.* at 134–35. The Court ruled that Pennsylvania’s specific and uncommonly clear notice “suffice[d] to establish consent to suit.” *Ibid.* Justices Alito and Jackson confirmed the point in separate concurring opinions. See *id.* at 148 (Jackson, J., concurring) (“[W]hen Norfolk Southern made that decision [to register], the jurisdictional consequences of registration were clear.”); *id.* at 153 (Alito, J., concurring) (“The company . . . had clear notice that Pennsylvania considered its registration as consent to general jurisdiction.”).

Despite all that, Brewer proclaims that *Mallory* resolved the question presented here and “sided with Georgia.” BIO at 26. Baloney. As Brewer concedes, “Georgia’s statute doesn’t mention ‘consent,’” nor any functionally equivalent language apprising foreign corporations of registration’s jurisdictional consequences. *Ibid.* That concession dooms Brewer’s claim that *Mallory* resolved the question presented: Georgia’s jurisdictional rule arises not from explicit statutory language, but from judicial decisions construing an ordinary business-registration requirement. As Justice Barrett observed, in Georgia, “a judicial precedent, not a long-arm statute, maintained that registration justified general jurisdiction.” *Id.*

at 172 n.2 (Barrett, J., dissenting). The Court reserved the question whether such a regime satisfies due process. And the consequences of that reservation are apparent: courts confronting registration statutes without explicit jurisdictional language continue to reach conflicting conclusions about whether registration constitutes constitutionally sufficient consent to general jurisdiction.

II. *Pennsylvania Fire* and Its Progeny Do Not Resolve the Question Presented.

Unable to establish that *Mallory* resolved the question presented, Brewer retreats to century-old precedents that did not resolve the constitutional question this Court expressly reserved.

In *Pennsylvania Fire Ins. Co. of Philadelphia v. Gold Issue Min. & Mill. Co.*, 243 U.S. 93, 94–95 (1917), Missouri law required the defendant to execute a power of attorney reciting statutory language authorizing service on a state official in “all proceedings.” The Court upheld a judicial construction extending that authorization to unrelated claims, emphasizing that a party executing such an instrument assumes the risk of its interpretation. *Id.* at 96. Samsung executed no comparable instrument. Its purported “consent” rests solely on a judicial construction of registration statutes silent on general jurisdiction—and announced years after Samsung first registered.

Nor does the century-old decision in *Robert Mitchell Furniture Co. v. Selden Breck Construction*

Co., 257 U.S. 213 (1921), establish otherwise. Although that case recognized that corporations assume some risk concerning judicial interpretations of registration requirements, it cautioned against broadly construing such “compulsory assent” and declined to infer consent to jurisdiction over claims arising from out-of-state business merely from the appointment of an agent. *Id.* at 215–216.

More fundamentally, these decisions antedate *International Shoe* and the modern framework governing personal jurisdiction, which *Mallory* did not displace. Although *Mallory* reaffirmed *Pennsylvania Fire*, it did so in a case involving explicit statutory notice and reserved the question presented here. Brewer cannot extract broad language from those earlier decisions and apply it to circumstances they never addressed. As this Court recently reiterated, “general language in judicial opinions should be read as referring in context to circumstances similar to the circumstances then before the Court.” *Olivier v. City of Brandon*, 607 U.S. ___, slip op. at 10 (2026). Indeed, Justice Holmes cautioned in *Robert Mitchell* that there are substantial reasons to construe “compulsory assent” narrowly. 257 U.S. at 216. That caution has particular force where the “consent” rests on neither an express statutory warning nor an executed authorization.

Nor can Brewer manufacture the requisite consent from Samsung’s periodic renewals of its Georgia registration. The Georgia Supreme Court infers consent from the one-time event of registration alone.

Cooper Tire & Rubber Co. v. McCall, 863 S.E.2d 81, 90 (2021). Additionally, nothing in the statute would alert a renewing—as opposed to registering—party that transacting business constitutes a surrender of their due process protections. Under Brewer’s theory, corporations must continually survey the decisional law of 37 States to assess whether routine registrations and renewals constitute consent to general jurisdiction. That is a far cry from the “explicit” statutory notice on which *Mallory* rested.

III. Lower Courts Remain Deeply Divided over Consent-by-Registration.

Brewer does not dispute that the business-registration statutes of 37 States are silent on the jurisdictional consequences of registration, or that courts construing similar statutes have reached opposite conclusions both before and after *Mallory*. Instead, he dismisses this disagreement as state-specific statutory interpretation. BIO at 28–32. But federal due process both informs the analysis and limits the permissible exercise of personal jurisdiction. Properly understood, the division among the lower courts is real, substantial, and continuing after *Mallory*.

Courts in at least eight States—Colorado, Illinois, Iowa, Nebraska, New Mexico, New York, Texas, and Wisconsin—have rejected consent to general jurisdiction based on ordinary business registration under statutes lacking express jurisdictional language. See *Lumen Techs. Serv. Grp., LLC v. CEC Grp., LLC*,

691 F. Supp. 3d 1282, 1291–96 (D. Colo. 2023); *Aspen Am. Ins. Co. v. Interstate Warehousing, Inc.*, 90 N.E.3d 440, 446–47 (Ill. 2017); *Kelchner v. CRST Expedited, Inc.*, 29 N.W.3d 315, 323–325 (Iowa 2025); *Lanham v. BNSF Ry. Co.*, 939 N.W.2d 363, 370–71 (Neb. 2020); *Chavez v. Bridgestone Ams. Tire Operations, LLC*, 503 P.3d 332, 345–346 (N.M. 2021); *Aybar v. Aybar*, 177 N.E.3d 1257, 1260 (N.Y. 2021); *Certain Underwriters at Lloyd’s, London v. Henry Vogt Mach. Co.*, 712 S.W.3d 909, 923–924 (Tex. App. 2025); *Segregated Acct. of Ambac Assurance Corp. v. Countrywide Home Loans, Inc.*, 898 N.W.2d 70, 73 (Wis. 2017). Six of those decisions come from state courts of last resort. By contrast, courts in Georgia, Connecticut, and North Carolina have recognized consent under similarly silent statutes, relying at least in part on judicial precedent. See *Cooper Tire*, 863 S.E.2d at 90; *Talenti v. Morgan & Bro. Manhattan Storage Co.*, 968 A.2d 933, 940–41 (Conn. App. Ct. 2009); *PDII, LLC v. Sky Aircraft Maint., LLC*, 925 S.E.2d 28, 35–36 (N.C. Ct. App. 2025), *stayed*, 924 S.E.2d 34 (N.C. 2026). Indeed, the Iowa Supreme Court recently catalogued decisions rejecting implied consent and identified Georgia’s *Cooper Tire* decision as contrary authority. *Kelchner*, 29 N.W.3d at 326.

That disagreement cannot be dismissed as a product of differing statutory language or state-specific interpretive principles, as Brewer suggests. BIO at 30. In fact, many state long-arm statutes are expressly tied to the Due Process Clause. In *Lanham*, for example, the Nebraska Supreme Court con-

sidered a registration statute that extends jurisdiction to the constitutional limit and, like Georgia's, contains no express jurisdictional waiver. 939 N.W.2d at 368–371. But, because the court “need only look to the Due Process Clause when determining personal jurisdiction,” it rejected consent-by-registration on federal constitutional grounds. *Id.* at 368. It then held that absent “explicit[]” statutory language, “treating BNSF's registration to do business in Nebraska as implied consent to personal jurisdiction would exceed the due process limits” prescribed by this Court. *Id.* at 371. Georgia reached the opposite conclusion in *Cooper Tire*, holding that judicial precedent supplied constitutionally sufficient notice despite the statute's silence. 863 S.E.2d at 90.

The disagreement persists after *Mallory*. In *Lumen*, a federal district court rejected consent-by-registration under Colorado's Model Business Corporation Act provisions because they lacked express notice of the jurisdictional consequences of registration. 691 F. Supp. 3d at 1291–1296. Applying this Court's due process precedents, including *Mallory*, the court declined to infer consent. *Id.* at 1288–1291. Yet the North Carolina Court of Appeals, “[g]uided by *Mallory*,” reached the opposite conclusion under substantially identical Model Act language, expressly relying on Georgia's *Klein* decision. *PDII*, 925 S.E.2d at 35–36. Both courts thus invoked federal constitutional jurisprudence in reaching conflicting conclusions under materially identical statutory provisions.

The Texas Court of Appeals likewise rejected Brewer's reading of *Mallory*. In *Certain Underwriters*, the plaintiff argued that *Mallory* established implied consent to general jurisdiction through business registration. 712 S.W.3d at 923–924. The court responded: “That is not correct.” *Id.* at 923. Distinguishing Pennsylvania's express jurisdictional notice from Texas's silent statute, the court quoted *Mallory*'s reservation of other statutory schemes to conclude: “*Mallory* is not on point.” *Id.* at 924. That holding contradicts Brewer's assertion that *Mallory* resolved the question presented and “sided with Georgia.” BIO at 26. The Texas Court of Appeals disagrees.

Brewer cannot dismiss this disagreement as mere statutory interpretation. The lower courts remain divided over whether registration under statutes lacking express jurisdictional notice constitutes consent to general jurisdiction, including whether federal due process permits such consent to be inferred. That is the question *Mallory* left unresolved and the one Samsung urges the Court to resolve here.

IV. Brewer's Procedural Objections Present No Obstacle to Review.

Brewer devotes the bulk of his BIO to purported vehicle problems, none of which foreclose review. See BIO at 14–24.

1. Samsung did not “waive” its constitutional objection by acknowledging the potential effect of pending litigation.

Brewer asserts that Samsung “waived” or “forfeited” its constitutional challenge by acknowledging that the then-pending *Cooper Tire* and *Mallory* decisions might resolve the jurisdictional issue. BIO at 19–21. But anticipating the effect of pending decisions is not waiver. Indeed, Samsung qualified its acknowledgment that *Cooper Tire* would establish general jurisdiction under Georgia law: jurisdiction would be proper “at least until the U.S. Supreme Court has an opportunity to consider the matter.” Resp. App. 12a. Far from relinquishing its constitutional objection, Samsung expressly contemplated the review it now seeks.

Nor did Samsung waive its objection by noting that *Mallory* might have resolved the question. It did not; the Court ultimately reserved the question whether statutory schemes other than Pennsylvania’s suffice to establish consent. 600 U.S. at 135. Waiver requires the intentional relinquishment of a known right; forfeiture requires failure to timely assert it. *United States v. Olano*, 507 U.S. 725, 733 (1993). Samsung did neither. As explained below, it preserved its constitutional objection while candidly acknowledging that pending decisions *might* affect its disposition.

2. Samsung properly presented the federal question to the Georgia Court of Appeals.

Brewer insists that this Court lacks jurisdiction under 28 U.S.C. § 1257(a). BIO at 2, 14–19. He is mistaken. That statute authorizes review of judgments rendered by “the highest court of a State in which a decision could be had,” including intermediate appellate courts where the state supreme court denies discretionary review. See *Michigan-Wisconsin Pipe Line Co. v. Calvert*, 347 U.S. 157, 159–160 (1954). That is what occurred here, leaving the Georgia Court of Appeals as the highest court in which a decision could be had.

Brewer next contends that Samsung “did not properly present the issue to the Court of Appeals” because it raised the question in the “wrong appeal.” BIO at 12, 18–19. But from its initial motion to set aside the default judgment through the appeal below, Samsung challenged Georgia’s exercise of personal jurisdiction. And in that appeal, Samsung expressly presented the constitutional objection now before this Court.¹ As Brewer observed: Samsung was “preserving this argument for a possible appeal

¹ Brewer spills much ink concerning Samsung’s briefing in *Brewer I*, but that earlier appeal is not the judgment under review. BIO at 10–11, 15. *Brewer I* vacated the trial court’s set-aside order on state-law grounds and dismissed Samsung’s appeal as premature; it did not adjudicate the federal question Samsung presented in *Brewer II*. See *Samsung Elecs. Am., Inc. v. Brewer*, 368 Ga. App. 608, 616 (2023).

to the Supreme Court of the United States.” Brewer Br. 32, No. A25A0292 (Nov. 4, 2024).

Nor was there anything improper about the manner in which Samsung preserved that objection. Georgia law authorizes cross-appeals challenging adverse rulings, O.C.G.A. § 5-6-38(a), including conditional challenges if the opposing party’s appeal succeeds. *SAKS Assocs., LLC v. Se. Culvert, Inc.*, 282 Ga. App. 359, 366 (2006). Samsung accordingly opposed Brewer’s challenge to the set-aside order and challenged the Georgia court’s jurisdiction as an alternative ground for relief. Samsung Br. 3, 36, No. A25A0292 (Oct. 15, 2024). Brewer attempts to manufacture a procedural defect from Samsung’s acknowledgment that it lacked standing to appeal the set-aside order *directly*. BIO at 12–13, 18–19. But that acknowledgment simply explains why Samsung’s challenge was conditional on the Court of Appeals siding with Brewer. Nothing about that is improper.

Nor does the Court of Appeals’ failure to address the constitutional question foreclose review. The inquiry is whether the question was “either addressed by, or properly presented to, the state court that rendered the decision [this Court has] been asked to review.” *Adams v. Robertson*, 520 U.S. 83, 86 (1997). The rule is “pressed or passed upon,” not “pressed and passed upon”; it “operates (as it is phrased) in the disjunctive.” *United States v. Williams*, 504 U.S. 36, 41 (1992). Samsung pressed the question, and Brewer responded. And the Court of Appeals’ silence

is unsurprising: it was bound by the Georgia Supreme Court’s recent decision in *Cooper Tire*, which is why Brewer himself argued that Samsung presented the question solely to preserve it for this Court’s review.

Brewer next insists that Samsung forfeited review by omitting the question from its petition for discretionary review to the Georgia Supreme Court. BIO at 14–17. But Brewer identifies no decision in which this Court declined jurisdiction over an intermediate appellate judgment based on the contents of an unsuccessful petition for discretionary state-court review. Section 1257(a) authorizes review of the judgment of the highest state court “in which a decision could be had”—here, the Court of Appeals—not merely questions repeated in an unsuccessful petition for discretionary review. And there is no prudential reason to require such repetition here, where the Georgia Supreme Court had recently rejected Samsung’s constitutional objection in *Cooper Tire*.²

3. Samsung’s deemed admissions do not foreclose review.

Finally, Brewer asserts that Samsung’s deemed admissions “conclusively” establish *specific* personal jurisdiction, mooting the issue of *general* jurisdiction. BIO at 21–23. He again misstates the record. The trial court relied on *Cooper Tire* to find general

² Nor does *Zekser v. Zekser*, 293 Ga. 366, 369–370 (2013), help Brewer: it concerns the scope of the Georgia Supreme Court’s review after a grant of discretionary review, not this Court’s jurisdiction after review was denied. BIO at 17 n.4.

jurisdiction and declined to “consider or rule on issues of specific jurisdiction.” Pet. App. 68a. A later order opined that Samsung “*likely* has admitted the necessary facts required in order to establish personal jurisdiction,” Resp. App. 50a, but the court did not decide the issue, and it would have been incorrect if it had ruled as Brewer suggests. BIO at 23–24. Undeterred, Brewer omits the word “likely” and pretends that the non-decision on specific personal jurisdiction renders this case a poor vehicle. That is about as honest as seeking a default judgment against a company that he knew had nothing to do with his alleged injury.

Whether Samsung’s deemed admissions independently establish specific jurisdiction is a question for the Georgia courts on remand, not an obstacle to this Court’s review of the federal question presented below. Nor would a favorable ruling be advisory. Georgia law permits a judgment void for lack of jurisdiction to be challenged “at any time.” O.C.G.A. § 9-11-60(d)(1), (f). Notwithstanding Brewer’s efforts to avoid review on “vehicle” grounds, this case presents the very question left open in *Mallory* and implicated by every state long-arm statute that is coextensive with federal due process.

CONCLUSION

The Court should grant the Petition.

Respectfully submitted.

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