No. 21-1168

IN THE

SUPREME COURT OF THE UNITED STATES

ROBERT MALLORY,

Petitioner,

v.

NORFOLK SOUTHERN RAILWAY CO.,

Respondent.

On Writ of Certiorari to the Pennsylvania Supreme Court

BRIEF OF DRI CENTER FOR LAW AND PUBLIC POLICY AND THE INTERNATIONAL ASSOCIATION OF DEFENSE COUNSEL AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT

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INTEREST OF AMICI CURIAE[1]

The DRI Center for Law and Public Policy is the public policy and advocacy voice of DRI, an international organization of approximately 14,000 attorneys involved in the defense of civil litigation. The Center addresses issues that not only are germane to defense attorneys and their clients, but also important to improvement of the civil justice system. DRI and the Center, through publications and the filing of *amicus curiae* briefs in the Supreme Court, federal courts of appeals, and state appellate courts, long have participated in the ongoing effort to make the civil justice system fairer, more consistent, and more efficient.

The International Association of Defense Counsel ("IADC") is an invitation-only, peer-reviewed membership organization of about 2,500 in-house and outside defense attorneys and insurance executives. IADC is dedicated to the just and efficient administration of civil justice and improvement of the civil justice system. IADC supports a justice system in which plaintiffs are fairly compensated for genuine injuries, responsible defendants are held liable for

[1] In accordance with Supreme Court Rule 37.6, *amici curiae* DRI-The Voice of the Defense Bar and The International Association of Defense Counsel certify that no counsel for a party authored this brief in whole or in part, and that no party or counsel other than the *amici curiae*, their members, and their counsel, made a monetary contribution intended to fund preparation or submission of this brief. Counsel of record have lodged blanket consents to the filing of *amicus* briefs.

appropriate damages, and non-responsible defendants are exonerated without unreasonable cost.

DRI and IADC participate as *amici curiae* in Supreme Court cases raising issues of exceptional importance to their membership, such as this case, which threatens to expand general personal jurisdiction over nonresident corporate defendants far beyond the limits of the Fourteenth Amendment's Due Process Clause, and "permit a State to hale an out-of-state corporation before its courts when the corporation is not 'at home' in the State and the episode-in-suit occurred elsewhere." *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 1554 (2017) (quoting *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014). Indeed, the question before the Court in this case—whether due process permits a state to assert general personal jurisdiction over a foreign corporation simply because it registers to do business there—is a subject of fundamental significance to *amici* and the civil defense bar because the resolution of this matter will directly affect the domestic and foreign business organizations represented by their members.

DRI and IADC therefore have a vital interest in the issue presented in this case, and their views can assist the Court in deciding whether the Pennsylvania Supreme Court's decision should be affirmed.

INTRODUCTION

The assertion of personal jurisdiction over nonresident corporate defendants implicates the fairness of the civil justice system. The due process

concerns raised of course involve "traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (internal quotation marks omitted); *see, e.g.*, *Ford Motor Co. v. Montana Eighth Judicial Dist. Court*, 141 S. Ct. 1017, 1024 (2021) (quoting *Int'l Shoe*); *Tyrrell*, 137 S. Ct. at 1558 (same); *Walden v. Fiore*, 571 U.S. 277, 283 (2014) (same); *Daimler*, 571 U.S. at 127 (same); *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 918–19 (2011) (same); *J. McIntyre Machinery Ltd. v. Nicastro*, 564 U.S. 863, 880 (2011) (same); *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 480, 413 (1984) (same); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980) (same). Beyond that, limits on personal jurisdiction are rooted in the liberties afforded citizens. "Due process limits on the State's adjudicative authority principally protect the liberty of the nonresident defendant—not the convenience of plaintiffs . . . ." *Walden*, 571 U.S. at 284.

General personal jurisdiction can implicate significant liberty interests, given that it "extends to any and all claims brought against a defendant," and the "claims need not relate to the forum State or the defendant's activity there" but "may concern events and conduct anywhere in the world." *Ford Motor Co.*, 141 St. Ct. at 1024 (quoting *Goodyear*, 564 U.S. at 919). The pervasive power inherent in the exercise of general jurisdiction, also known as "all-purpose" jurisdiction, thus demands a clear and demanding standard for its proper use. In a series of unanimous or nearly unanimous decisions handed down since 2011, this Court has provided exactly that, repeatedly

explaining that due process permits a state court to exercise general jurisdiction only when a defendant is "essentially at home" in the state. *E.g., id.* (quoting *Goodyear*, 564 U.S. at 919). Corporate defendants with operations in multiple states are "at home," and therefore subject to a state's plenary authority, in two paradigmatic locations—their place of incorporation or principal place of business. *Id.* (quoting *Daimler*, 571 U.S. at 137); *Tyrrell*, 137 S. Ct. at 1558 (same); *Daimler*, 571 U.S. at 137 (quoting *Goodyear*, 564 U.S. at 924); *Goodyear*, 564 U.S. at 924. The Court has thus set a "high bar . . . to a state's exercise of general jurisdiction," *Brown v. Lockheed Martin Corp.*, 814 F.3d 619, 626 (2d Cir. 2016), sending a definitive message that merely conducting business in the forum state is not a sufficient basis for subjecting a foreign company to jurisdiction over claims not connected to the company's in-state activity. *Tyrrell*, 137 S. Ct. at 1559 ("[I]n-state business, we clarified in *Daimler* and Goodyear, does not suffice to permit the assertion of general jurisdiction over claims . . . that are unrelated to any activity occurring in [the forum state].").

This case does not concern the propriety of general personal jurisdiction in one of the paradigm locations. Here, Petitioner, a Virginia resident, filed suit pursuant to the Federal Employer's Liability Act ("FELA"), 45 U.S.C. §§ 51-60, in the Philadelphia Court of Common Pleas ("PCCP") against a Virginia corporation with its principal place of business in Virginia, even though none of the alleged harm or any conduct giving rise to his claims occurred in Pennsylvania. Pet. App. 12a. Petitioner's argument

for jurisdiction turns on a Pennsylvania statute requiring an out-of-state corporation to register with the Department of State as a condition of doing business in the Commonwealth on pain of forfeiting its right to file suit there, 15 Pa. Cons. Stat. § 411(a)–(b), which Pennsylvania law deems sufficient for a court to exercise general personal jurisdiction. 42 Pa. Cons. Stat. § 5301(a)(2)(i).

Respondent's brief sets forth why Pennsylvania's statutory scheme violates due process as explained in *Goodyear* and *Daimler* and reaffirmed in *Tyrrell*, frustrates interstate federalism, does not constitute a genuine form of voluntary consent to general jurisdiction, is unfair, and imposes an unconstitutional condition. DRI and IADC will not repeat those reasons at length here. Rather, *amici* submit this brief to amplify the legal and practical effects of sanctioning the exercise of general jurisdiction via consent-by-registration statutes. Those consequences preponderate heavily in favor of affirmance.

SUMMARY OF ARGUMENT

The Pennsylvania Supreme Court correctly concluded that "the exercise of jurisdiction over [Respondent] in this case does not satisfy due process as required by *Goodyear* and *Daimler*" because the state's registration statute "affords Pennsylvania courts general personal jurisdiction over foreign corporations, regardless of whether the foreign corporation has incorporated in the Commonwealth, established its principal place of business [t]here, or is

otherwise 'at home' in Pennsylvania." Pet. App. 45a–46a. As Respondent explains, to hold otherwise would directly conflict with current personal jurisdiction jurisprudence and permit precisely what this Court flatly rejected in *Goodyear*, *Daimler*, and *Tyrrell*: foreign corporate defendants not "at home" in Pennsylvania would be subject to the Pennsylvania courts' jurisdiction to adjudicate out-of-state plaintiffs' claims that have no substantial connection with the forum. More broadly, because every state and the District of Columbia require out-of-state corporations to register and appoint an agent for service of process, Pet. App. 41a.; Tanja J. Monestier, *Registration Statutes, General Jurisdiction, and the Fallacy of Consent*, 36 Cardozo L. Rev. 1343, 1364 n.109 (2015) (listing state statutes), if this Court were to authorize consent-by-registration, companies that conduct business in multiple states would be at the mercy of the plenary power of state courts in every state in which they have registered.

It would be difficult to overstate the disruption that would result from reversal here, not just to defendants but courts as well. Business entities throughout the country have come to rely upon the familiar, bright-line "at home" test limiting the exercise of general jurisdiction to a company's place of incorporation or principal place of business in nearly all circumstances. *E.g., Genuine Parts Co. v. Cepec*, 137 A.3d 123, 127 (Del. 2016) ("Businesses select their states of incorporation and principal places of business with care, because they know that those jurisdictions are in fact 'home' and places where they can be sued

generally." (quoting *Daimler*, 571 U.S. at 136–39)). Under the existing framework, businesses can effectively plan and execute their contracts and carry on their affairs in a particular forum with the assurance that they will not be amenable to general jurisdiction there. Undercutting the "at-home" test by elevating consent-by-registration would erode that confidence and cause other undesirable results.

Corporations operating in multiple states would be compelled to assess the newly created risk of allocating significant resources to meet the threat of litigation in any state in which they had registered—a consideration they would not have thought possible under *Daimler*. This burden would be compounded by the fact that multi-state corporations and their attorneys would have difficulty predicting where among the many states in which they are registered they may expect to be sued, and what law would apply to their business relationships.

Courts grappling with a pivot from *Daimler* would face more than just a redistribution of where cases are filed. In practice, consent-by-registration would foster confusion in the law, harkening back to the pre-*Goodyear*/*Daimler*/*Tyrrell* era when state and federal courts struggled to determine whether a company's business contacts were sufficiently "continuous and systematic" to justify general jurisdiction, just as corporate defendants (and their counsel) would be left guessing how a court might rule. Moreover, even a bright-line ruling allowing the approach taken by the Pennsylvania statute at issue

here would not necessarily answer the Due Process questions presented by similar statutes in other jurisdictions, both existing and anticipated. Courts would be saddled with adjudicating cases bearing little to no relationship to the forum, under any ruling that expands general jurisdiction.

A return to a more nebulous personal jurisdiction landscape will cause significant real-world effects. When businesses and their lawyers cannot predict what conduct or contacts with a forum state will subject them to general jurisdiction, our economic and judicial systems suffer. Not least of all, uncertainty fosters unnecessary, expensive, and time-consuming litigation over personal jurisdiction in even the most straightforward of cases. It also promotes forum shopping, the proliferation of forum-selection clauses, and the attendant disputes over both.

This Court has repeatedly recognized the importance of predictable and efficient jurisdictional rules and denounced forum shopping in various contexts. Closing the door on consent-by-registration statutes would further both of those goals and avoid disruptive impacts on the business community and the conduct of litigation throughout the country. The decision of the Pennsylvania Supreme Court should be affirmed.

ARGUMENT

I. REVERSAL WOULD UNNECESSARILY COMPLICATE THE DETERMINATION OF GENERAL JURISDICTION AND CAUSE SIGNIFICANT LEGAL UNCERTAINTY IN THE BUSINESS COMMUNITY.

The certainty provided by a clear general-jurisdiction standard that courts can consistently apply advances the fairness, efficiency, and due process concerns that underlie the law of jurisdiction. The Court's "at-home" test satisfies these important interests by establishing a coherent rule governing whether a nonresident entity's relationship with a forum will subject it to unlimited jurisdiction there. In contrast, consent-by-registration nullifies the "at-home" test, at the expense of a company's right to engage in business in multiple states free from the fear of being forced to contend with lawsuits that have nothing to do with a particular forum.

Predictability has long been desirable in the law. Oliver Wendell Holmes, *The Path of the Law*, 10 Harv. L. Rev. 457, 457 (1897) ("When we study law . . . . [w]e are studying what we shall want in order to appear before judges, or to advise people in such a way as to keep them out of court . . . . The object of our study, then, is prediction, the prediction of the incidence of the public force through the instrumentality of the courts."). That is especially true when it comes to personal jurisdiction. *E.g., RAR, Inc. v. Turner Diesel, Ltd.*, 107 F.3d 1272, 1280 (7th

Cir. 1997) ("[D]ue process requires that potential defendants have some measure of control and warning regarding where they may be haled into court, and the clearer and more predictable we can make jurisdictional rules, the better that interest is served."). Indeed, the need for efficiency and predictability lies at the core of the Court's rationale behind the "at home" test. *Daimler*, 571 U.S. at 137 ("Simple jurisdictional rules . . . promote greater predictability." (quoting *Hertz. Corp. v. Friend*, 559 U.S. 77, 94 (2010))).

As stated in *Daimler*, the recognized bases for "at home" status aid plaintiffs as well as defendants, because they "have the virtue of being unique—that is, each ordinarily indicates only one place—as well as ascertainable," thus "afford[ing] plaintiffs recourse to at least one clear and certain forum in which a corporate defendant may be sued on any and all claims." 571 U.S. at 137. Likewise, the "at home" test allows corporate defendants "to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *Id.* at 139 (quoting *Burger King Corp.*, 471 U.S. 462, 472 (1985)); *Frank v. P N K (Lake Charles) L.L.C.*, 947 F.3d 331, 341 (5th Cir. 2020) ("The objective [of the "at home" test] is to promote predictability, not impede it."); *Williams v. Yamaha Motor Co. Ltd.*, 851 F.3d 1015, 1021 (9th Cir. 2017) (noting the Court's "at home" test for corporations "illustrate[s] the need for predictability in jurisdiction").

Determining general jurisdiction was not always so straightforward. In *International Shoe*, the Court considered whether a defendant engaged in "continuous corporate operations within [the] state [that is] . . . so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities." 326 U.S. at 318. Prior to the establishment of the "at home" test, the Court elaborated on the type of activity that would be sufficient to authorize general jurisdiction over a nonresident corporation under the standard articulated in *International Shoe* in only two cases: *Perkins v. Benguet Consolidated Mining Co.*, and *Helicopteros*. *Goodyear*, 564 U.S. at 925. Those decisions instructed that the analysis should be focused on the degree to which the out-of-state corporation conducted business in the forum state. *See Helicopteros*, 466 U.S. at 416 (holding Texas could not exercise general jurisdiction over Colombian helicopter transportation company in wrongful death case arising from helicopter crash in Peru based upon the corporation's in-state purchases of helicopters and spare parts, in-state training of pilots and personnel, and acceptance of payments from a Texas bank); *see also Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437, 447–49 (1952) (holding Ohio's exercise of general jurisdiction over Philippine corporation was consistent with due process where the general manager and principal stockholder essentially ran every aspect of the company's business from his home in Ohio during World War II).

Following *Perkins* and *Helicopteros*, courts struggled to apply the "doing business" test and frequently reached disparate results. *See generally* Charles W. "Rocky" Rhodes, *Clarifying General Jurisdiction*, 34 Seton Hall L. Rev. 807 (2004) (discussing the different approaches employed by thousands of federal and state courts considering the exercise of general jurisdiction over foreign corporations whose forum activities were not related to the litigation in the wake of *Perkins* and *Helicopteros*,); *see also* Mary Twitchell, *Why We Keep Doing Business with Doing-Business Jurisdiction*, 2001 U. Chi. Legal. F. 171, 171–94 (2001) (discussing the lack of clear guidance from the Court concerning general jurisdiction over foreign corporations and "how this lack of theoretical coherence has led to serious problems in the application of the doctrine" among federal and state courts); Friedrich K. Juenger, *The American Law of General Jurisdiction*, 2001 U. Chi. Legal. F. 141, 156 (2001) (noting that at the time of publication courts and scholars "still d[id] not know when states may assert dispute-blind jurisdiction over nonresident corporations"). This inconsistency had a significant impact on companies doing business in numerous states, forcing the expenditure of significant time and resources litigating personal jurisdiction disputes.

The consent-by-registration approach to general jurisdiction threatens a return to those days of uncertainty for a specific, but populous, subset of defendants: out-of-state companies. If this Court were to accept that concept, thousands of foreign companies

registered to conduct business in Pennsylvania would immediately face potential exposure to general jurisdiction in the state,[2] which they rightly would not have thought possible under *Goodyear* and *Daimler*. Of course, the destructive impact of such a ruling would not be limited to Pennsylvania.[3]

Following the consent-by-registration theory to its logical conclusion, foreign entities could be subject to general jurisdiction in every forum in which they complied with mandatory registration statutes, erasing any meaningful expectation that any claim will be related to the forum in which it was filed, and otherwise making it exceedingly difficult to plan and carry out their affairs. *E.g., Cepec*, 137 A.3d at 127–28 (noting "[a]n incentive scheme where every state can claim general jurisdiction over every business that does any business within its borders for any claim would reduce the certainty of the law and subject businesses to capricious litigation treatment as a cost of operating on a national scale or entering any state market."). For businesses operating in many (or all)

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[2] Foreign Owned Companies in PA: International businesses from around the world have chosen to locate and do business all over PA, Pennsylvania Department of Community and Economic Development, https://tinyurl.com/mtbryzya (noting that as of July 2018 there were at least 6,549 foreign country business operating in the state of Pennsylvania, employing more than 335,530 people) (last visited Aug. 19, 2022).

[3] While Pennsylvania's statute is unique in expressly stating that registering with the Commonwealth amounts to consent to personal jurisdiction, Monestier, 36 Cardozo L. Rev. at 1366–68; Pet. App. 40a–41a, there is nothing preventing other states from adding similar provisions to their registration statutes if this Court were to endorse consent-by-registration.

states, the knowledge that they *could* be sued in any one of them for any claim would hardly be comforting. Besides the heavy—and potentially ruinous—burden of allocating resources to contend with litigating claims all over the country, out-of-state corporations would have no way of predicting with any degree of confidence *where* a lawsuit would be filed, or what law(s) would apply.[4] In effect, for business operating in multiple states, consent-by-registration would abrogate the core principles of efficiency and predictability upon which the "at home" test is founded. *Daimler*, 571 U.S. at 138 (rejecting the argument that general jurisdiction is proper "in every State in which a corporation engages in a substantial, continuous, and systematic course of business" as "unacceptably grasping." (internal quotation marks omitted)); *Brown*, 814 F.3d at 640 (noting that "[i]f mere registration and the accompanying appointment of an in-state agent—without an express consent to general jurisdiction—nonetheless sufficed to confer general jurisdiction by implicit consent, every corporation would be subject to general jurisdiction in every state in which it registered, and *Daimler's* ruling would be robbed of meaning by a back-door thief.").

In *Daimler*, this Court explicitly rejected the invitation to make the standard governing the exercise of general jurisdiction over a foreign

[4] Defense counsel representing corporate clients operating in many states would also be unable to accurately predict the likelihood of suit in any particular forum, thereby hampering their ability to provide sound advice aimed at reducing risk and promoting compliance with applicable laws.

corporation more complicated than the straightforward "at home" test. 571 U.S. at 139 n.20 (declining the concurrence's suggestion to limit the holding to the facts of the case and rejecting a "multipronged reasonableness test" for general jurisdiction in favor of the two paradigm locations, on the grounds that such a reasonableness test "would hardly promote the efficient disposition of an issue that should be resolved expeditiously at the outset of litigation"). The Court should do the same here and hold consent-by-registration violates due process.

II. REVERSAL WOULD PRESENT AN OPEN INVITATION TO FORUM SHOPPERS.

Reversing the Pennsylvania Supreme Court will promote procedural gerrymandering in the Commonwealth by providing plaintiffs' attorneys with the ability to sidestep the "at-home" test and "choos[e] the most favorable jurisdiction or court in which a claim might be heard," *Forum-Shopping*, Black's Law Dictionary (11th ed. 2019), without regard for due process.

There are various reasons a plaintiff might believe a particular forum is more favorable, including the law, the tendency of juries to award higher verdicts, or a perceived bias on the part of the judiciary. Kimberly J. Norwood, *Shopping for a Venue: The Need for More Limits on Choice*, 50 U. Miami L. Rev. 267, 268–69 (1996). Whatever the motive, forum shopping is detrimental to the administration of justice. *Id.* at 300–01 (noting the different types of

forum shopping "invite public skepticism of the ability to receive justice in our system and . . . cheapen the judicial process," as well as "undermine[] state substantive law; overburden[] the courts, disrupt[] efficiency, and cause[] unnecessary expense; manipulate[] the court system's loopholes and create[] public doubt about the fairness in the system; and highlight[] differences and inconsistencies among the states"); Friedrich K. Juenger, *Forum Shopping, Domestic and International*, 63 Tul. L. Rev. 553, 553 (1989) ("[A]cademics employ the term 'forum' shopping' to reproach a litigant who, in their opinion, unfairly exploits jurisdictional or venue rules to affect the outcome of a lawsuit.").

As early as *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938), this Court, in many different contexts, has decried various forms of "forum shopping" and sought to deter the practice. *See, e.g.*, *Williams-Yulee v. Fla. Bar*, 575 U.S. 433, 455 (2015) (rejecting rule requiring state judges to recuse themselves because it "would enable transparent forum shopping"); *Petrella v. Metro-Goldwyn-Mayer, Inc.*, 572 U.S. 663, 670 (2014) ("The federal limitations prescription governing copyright suits serves . . . to prevent the forum shopping invited by disparate state limitations period . . . ."); *Atl. Marine Constr. Co., Inc. v. U.S. Dist. Ct.*, 571 U.S. 49, 65 (2013) (noting federal change-of-venue statute "should not create or multiply opportunities for forum shopping" when the parties have agreed to a contractual forum-selection clause) (citation and internal quotation marks omitted); *Shady Grove Orthopedic Assoc., P.A. v. Allstate Ins.*

Co., 559 U.S. 393, 415 (2010) ("We must acknowledge the reality that keeping the federal court-door open to class actions that cannot proceed in state court will produce forum shopping."); *Rumsfeld v. Padilla*, 542 U.S. 426, 428 (2004) (holding rule requiring a habeas petitioner seeking "to challenge his present physical custody within the United States" to "name his warden as respondent and file the petition in the district of confinement," furthered "the important purpose of preventing forum shopping by habeas petitioners"); *Agency Holding Corp. v. Malley-Duff & Assocs., Inc.*, 483 U.S. 143, 154 (1987) (holding statute of limitations applicable to the Clayton Act applied to civil RICO claims in part due to the "multistate nature of RICO," noting that "[w]ith the possibility of multiple state limitations, the use of state statutes would present the danger of forum shopping"); *Southland Corp. v. Keating*, 465 U.S. 1, 15 (1984) ("The interpretation give to the Arbitration Act by the California Supreme Court would . . . encourage and reward forum shopping."); *Hanna v. Plumer*, 380 U.S. 460, 468 (1965) (holding the "outcome-determination" test for applying state law in federal diversity cases "cannot be read without reference to the twin aims of the *Erie* rule: discouragement of forum-shopping and avoidance of inequitable administration of the laws"); see also Note, *Forum Shopping Reconsidered*, 103 Harv. L. Rev. 1677, 1681 (1990) ("The Supreme Court has relied on the 'danger of forum shopping' in reaching many decisions.").

The Pennsylvania Supreme Court's decision striking down the state's consent-by-registration

statute similarly discourages forum shopping by closing the courthouse doors to multitudes of out-of-state plaintiffs in search of favorable law, enormous damages awards, or lucrative settlements from corporate defendants that are not "at home" in the Commonwealth, *Daimler*, 571 U.S. at 119, taking a positive step towards remedying a known problem in Pennsylvania and the PCCP. Indeed, the reputation of the PCCP as a friendly venue for plaintiffs is the most likely explanation for why this nonresident Petitioner—with no injuries in or traceable to the state—decided to pursue his FELA action against Respondent in a Philadelphia court in the first place.

Pennsylvania's litigation environment is widely perceived by the business community as unfairly skewed in favor of plaintiffs. The U.S. Chamber of Commerce's Institute for Legal Reform most recently ranked the state's liability system thirty-ninth in the nation. *See Ranking the States, A Survey of the Fairness and Reasonableness of State Liability Systems*, U.S. Chamber Inst. for Legal Reform (2019).[5] Participants in the Institute's "Lawsuit Climate Survey" included a national sample of 1,307 knowledgeable senior executives, in-house general counsel, and senior litigators. *Id.* at 3. The survey considers factors such as enforcement of venue requirements, treatment of class action and mass consolidation suits, discovery, admissibility of scientific and technical evidence, damages, judges'

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[5] Available at https://tinyurl.com/2p969f5r (last visited Aug. 2, 2022).

impartiality, competence, fairness, and quality of appellate review. *Id.* at 5. From the viewpoint of providing a fair judicial forum, Pennsylvania ranked in the bottom ten states. *Id.* at 13.

Similarly, the American Tort Reform Foundation ("ATRF") consistently ranks the PCCP at the top of its list of "Judicial Hellholes," defined as "places where judges in civil cases systematically apply laws and court procedures in an unfair and unbalanced manner, generally to the disadvantage of defendants." 2021–2022 Judicial Hellhole Report, Am. Tort Reform Found., 3 (2021).[6] The PCCP took the top spot in the country in 2019–2020, with the ATRF noting 86% of new pharmaceutical cases in Philadelphia were filed by out-of-state plaintiffs, an $8 billion punitive damage verdict in one such case (after which the presiding judge reportedly high-fived jurors and posed for photos with plaintiff's counsel), and a $775 million settlement in another (which was agreed to in order to resolve 25,000 pending cases). 2019–2020 Judicial Hellhole Report, Am. Tort Reform Found., 10–11 (2019).[7]

The PCCP and the Pennsylvania Supreme Court tied for first in 2020–2021 due to large verdicts (including $346 million in total damages imposed against Ethicon and a $70 million verdict in favor of a Tennessee plaintiff against a Johnson & Johnson subsidiary) and plaintiff-friendly high court decisions

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[6] Available at https://tinyurl.com/22fxm4n3.
[7] Available at https://tinyurl.com/3f5uzw9d.

that affirmed a lower standard for expert testimony,[8] arguably misapplied the specific jurisdiction standard,[9] and chipped away at comparative fault.[10] 2020–2021 Judicial Hellhole Report, Am. Tort Reform Found., 9–13 (2020).[11] And, most recently, the PCCP and the Pennsylvania Supreme Court came in fourth, with the ATRF reporting high numbers of mass tort and asbestos cases filed in the PCCP, and appellate court decisions affirming PCCP judges' refusal to transfer cases to other counties despite the tiny amount of revenue the foreign defendants derived from their business in Philadelphia.[12] 2021–2022 Judicial Hellhole Report, Am. Tort Reform Found., 33–35 (2021).

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[8] *Walsh Estate of Walsh v. BASF Corp.*, 234 A.3d 446, 458 (Pa. 2020) (holding trial court may only consider whether an expert's methodologies are generally accepted in the relevant field, but not "whether it agrees with the expert's application of those methodologies or whether the expert's conclusions have sufficient factual support").

[9] *Hammons v. Ethicon, Inc.*, 240 A.3d 537, 560 (Pa. 2020) (considering "whether the case as a whole establishes ties between the defendant's actions in the forum and the litigation").

[10] *Roverano v. John Crane, Inc.*, 226 A.3d 526 (Pa. 2020) (holding that under Pennsylvania's Fair Share Act liability is apportioned equally among strictly liable tortfeasors in asbestos cases).

[11] Available at https://tinyurl.com/2p9e4yxd.

[12] *Hall v. Husqvarna Pro. Prods., N.A., Inc.*, No. 1026 EDA 2021, 2022 WL 2287020 (Pa. Super. Ct. June 24, 2022) (holding foreign company's contacts with Philadelphia County—0.010% of multi-billion dollar national sales and four Philadelphia-based dealers—was sufficient to justify venue); *Hangey v. Husqvarna Pro. Prods., Inc.*, 247 A.3d 1136 (Pa. Super. Ct. 2021) (holding foreign company's contacts with Philadelphia County—0.005% of multi-billion dollar national sales, one dealer, and total revenue of $75,310.00 in 2016—was sufficient to justify venue).

Consistent with this, nearly 30% of the civil action cases docketed in the Commonwealth in 2020 were filed in the PCCP, even though Philadelphia County accounts for only about 12% of the state's population.[13] Authorizing vast numbers of nonresident plaintiffs (and their forum-shopping attorneys) to hale nonresident corporate defendants into the state's courts by greenlighting all-purpose jurisdiction pursuant to Pennsylvania's consent-by-registration statute will only exacerbate the perception of pro-plaintiff bias in the PCCP and the state. The added caseload will only further reduce the amount of judicial scrutiny these cases invite.

There is no reason to expect the impact of reversal to be limited to Pennsylvania. Other courts throughout the country are known targets for forum-shopping, and, absent clear direction from this Court foreclosing general jurisdiction via compliance with mandatory registration statutes, plaintiffs will continue to search for jurisdictions that are receptive to that consent-by-registration theory. *See* Monestier, 36 Cardozo L. Rev. at 1412 (stating "[n]ow that doing business jurisdiction has been wiped off the map, plaintiffs will increasingly rely on registration as a

[13] According to the Unified Judicial System of Pennsylvania, Pennsylvania recorded a 2020 population of 13,002,700 and 76,617 docketed civil cases, *see* Pennsylvania Statewide Common Pleas Case Load Statistics at 3, https://tinyurl.com/3xxxet7h (last modified October 5, 2021), while Philadelphia County had a 2020 population of 1,603,797 and the PCCP accounted for 21,138 docketed civil cases. *See* Philadelphia County Common Pleas Case Load Statistics at 3, https://tinyurl.com/y4e2ezbx (last modified October 5, 2021).

basis for general jurisdiction. A plaintiff who is unable or unwilling to bring suit in an appropriate forum (where the underlying cause of action arose, the corporation's place of incorporation, or the corporation's principal place of business) will certainly seek out those jurisdictions with very liberal interpretations of their registration statutes.") And if the plaintiff-friendly jurisdictions do not already have consent-by-registration statutes, one can expect the inevitable lobbying for them to be swift and extensive, especially given the stakes for the plaintiffs' bar.

While forum-shopping presents unnecessary expense to defendants, the practice is, at its core, more than that. It is an attack on due process. Because forum shopping to "sue defendants in fora that ha[ve] no rational relation to the causes of action" violates the due process limits on general jurisdiction established under *Goodyear*, *Daimler*, and *Tyrrell*, *see Cepec*, 137 A.3d at 146 n.122, the practice should not be allowed to continue.

CONCLUSION

The judgment of the Pennsylvania Supreme Court should be affirmed.

Respectfully submitted,

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