RETHINKING JURISDICTIONAL MAXIMALISM IN THE WAKE OF *MALLORY*

*Sayer Paige**

Jurisdiction-by-registration is the idea that by virtue of registering to do business in a state, corporations prospectively consent to jurisdiction on claims made against them in that state. For decades, this concept has stagnated behind the minimum contacts analysis developed by International Shoe Co. v. Washington *and its progeny. Among other reasons, plaintiffs and states were not sure whether jurisdiction-by-registration withstood the Due Process Clause. But as the U.S. Supreme Court continued to narrow the limits of contacts-based jurisdiction, plaintiffs returned to registration-based jurisdiction to recapture corporate defendants. Courts largely rejected these assertions. Then, in* Mallory v. Norfolk Southern Railway Co.*, the Supreme Court reversed course, holding that jurisdiction-by-registration, specifically general jurisdiction-by-registration, still passes due process muster.*

This Note focuses on the curious trend that Mallory *raises: although states have increasingly extended their apparent contacts-based jurisdiction to the constitutional limit, they have also rejected registration-based general jurisdiction. Now that* Mallory *is on the table, however, two paths appear viable: maximalist states will either (1) continue to discard jurisdiction-by-registration or (2) assume at least some version of jurisdiction-by-registration to reassert jurisdictional control. This Note argues that whether a state falls into the first or second category depends on the state's corporate incentives. It further argues that states should refine their registration statutes to clarify their jurisdictional impact, if any. Finally, this Note provides an overview of states' current jurisdiction-by-registration statuses.*

* J.D. Candidate, 2025, Fordham University School of Law; B.A., 2019, University of Virginia. I would like to thank Professor Sepehr Shahshahani, my editor Anthony Petrosino, and the staff of the *Fordham Law Review* for their guidance. I would also like to thank my family and friends for their continuous support.

INTRODUCTION

One Thursday, Zina Robinson went shopping at a HomeGoods store in Cherry Hill, New Jersey.[1] The store was just across the Delaware River from her Philadelphia home.[2] At one point, Ms. Robinson attempted to sit on a bench that was for sale, but it collapsed, allegedly causing her severe and permanent injury.[3] Consequently, she brought suit in Pennsylvania state court against HomeGoods and TJX Companies, HomeGoods's parent company.[4]

Unfortunately, thousands of personal injury stories like Ms. Robinson's play out across the country every year. What is somewhat unique about this set of facts, however, is its jurisdictional disposition. Specifically, even though Ms. Robinson's injury occurred in New Jersey, she filed suit in Pennsylvania. This can make the personal jurisdiction analysis a bit trickier.

Personal jurisdiction concerns a court's authority to enter a judgment that is binding on the defendant.[5] To establish this authority, there must be a

1. *See* Notice for Removal at 2, Robinson v. Home Goods, Inc., No. 23-CV-01945 (E.D. Pa. May 23, 2023), ECF No. 1.

2. Driving Directions from Phila. to Cherry Hill, N.J., GOOGLE MAPS, http://maps.google.com (follow "Directions" button; then search starting point field for "Philadelphia, PA" and search destination field for "Cherry Hill, NJ").

3. Notice for Removal, *supra* note 1, at 2.

4. *Id.* at 1, 16–17.

5. 16 DANIEL R. COQUILLETTE, GREGORY P. JOSEPH, GEORGENE M. VAIRO & CHILTON DAVIS VARNER, MOORE'S FEDERAL PRACTICE § 108.02 (3d ed. 2023).

sufficient relationship between the defendant and the state.[6] Courts often evaluate this question by considering whether the defendant's "contacts" with the state provide an adequate basis for jurisdiction.[7] Notably, a court's authority can extend to nonresident defendants when the underlying cause of action and suit arise in the same state.[8] This is called specific or case-linked jurisdiction.[9] A potentially more difficult issue arises when, as in Ms. Robinson's case, the cause of action and suit arise in separate states.[10] In this context, general or all-purpose jurisdiction may provide the basis.[11]

Apart from contacts, consent is a separate avenue that resolves the personal jurisdiction question.[12] Here, the defendant has agreed or submitted to the jurisdiction of a court, or it has waived the requirement, notwithstanding any contacts-related issues.[13] Returning to Pennsylvania, the state uses consent to ground jurisdiction over corporate defendants.[14] It does this by requiring companies that register to do business in the state to consent to jurisdiction on all claims made against them in Pennsylvania.[15] In other words, Pennsylvania employs a statutory regime conferring "jurisdiction-by-registration."[16] For this reason, a Pennsylvania district court found that its jurisdiction over Ms. Robinson's matter was proper, even though the activating event occurred elsewhere.[17]

Over the last century, jurisdiction-by-registration has stood at the periphery of the jurisdictional framework.[18] For a variety of reasons—including constitutional concerns[19] and other doctrinal developments[20]—the contacts analysis has become central instead.[21] At the very least, courts became hesitant to allow plaintiffs to derive consent-based *general*

6. *See* Bristol-Myers Squibb Co. v. Superior Ct., 137 S. Ct. 1773, 1779–81 (2017).
7. *See* Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945).
8. *See Bristol-Myers Squibb*, 137 S. Ct. at 1179–80.
9. *See id.*
10. *See id.*; *see also* Lea Brilmayer, *How Contacts Count: Due Process Limitations on State Court Jurisdiction*, 1980 SUP. CT. REV. 77, 85–87 (discussing how "unrelated" claims require greater justification).
11. *See Bristol-Myers Squibb*, 137 S. Ct. at 1179–80.
12. *See* Ins. Corp. of Ir., Ltd. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 703–04 (1982).
13. *See id.*
14. *See* Mallory v. Norfolk S. Ry. Co., 143 S. Ct. 2028, 2033 (2023).
15. *See id.*
16. Courts have referred to this concept as "consent-by-registration." *See, e.g.*, Aybar v. Aybar, 177 N.E.3d 1257, 1266 (N.Y. 2021).
17. Memorandum Op. at 1–2, Robinson v. Home Goods, Inc., No. 23-CV-01945 (E.D. Pa. Aug. 22, 2023), ECF No. 16 (citing *Mallory* in upholding jurisdiction). The district court also rejected HomeGoods's motion to transfer venue. *Id.* at 1–3. In doing so, it considered the plaintiff's choice of forum and various public interests, such as the congestion of court dockets, among other factors. *Id.* at 3.
18. *See* Tanya J. Monestier, *Registration Statutes, General Jurisdiction, and the Fallacy of Consent*, 36 CARDOZO L. REV. 1343, 1346 (2015).
19. *See, e.g.*, Mallory v. Norfolk S. Ry. Co., 266 A.3d 542, 566 (Pa. 2021), *vacated*, 143 S. Ct. 2028 (2023).
20. *See, e.g.*, Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945).
21. *See id.*

jurisdiction based on relatively mundane registration laws.[22] To do so, the argument proceeded, would invite unlimited potential for litigation.[23] But then, in *Mallory v. Norfolk Southern Railway Co.*,[24] the U.S. Supreme Court reversed course, holding that Pennsylvania's explicit statute conferring registration-based general jurisdiction survived a due process challenge.[25] This decision, made in June 2023,[26] could mark a seismic shift in state jurisdictional approaches.

Interestingly, the demise of jurisdiction-by-registration does not imply that states have taken more tempered approaches to exerting jurisdiction. In fact, just the opposite has happened: states have increasingly extended contacts-based jurisdiction to the full extent of due process.[27] By one way or another, around thirty-two states fall into this "to-the-limits" category.[28] This stands in stark contrast to the many states that reject consent-based general jurisdiction-by-registration.[29] Taken together, these trends identify a puzzle: why have many states with otherwise maximalist jurisdictional agendas been hesitant to accept jurisdiction-by-registration?

In the first instance, *Mallory* itself could help resolve this question. Consider the facts of Ms. Robinson's case as applied to other states. What if, for example, Ms. Robinson lived in Connecticut rather than Pennsylvania? Although the U.S. Court of Appeals for the Second Circuit recently overturned a statutory reading conferring general jurisdiction over registered corporations to Connecticut courts,[30] might *Mallory* challenge that decision?[31] Does it matter that Connecticut's contacts-based regime is not coextensive with due process?[32] What about the fact that the state has nineteen HomeGoods stores?[33] Compare these issues to a state like Rhode

22. *See, e.g.*, Brown v. Lockheed Martin Corp., 814 F.3d 619, 623 (2d Cir. 2016).

23. *See id.* at 640.

24. 143 S. Ct. 2028 (2023).

25. *Id.* at 2038.

26. *See generally id.*

27. *See* 1 ROBERT C. CASAD, WILLIAM M. RICHMAN & STANLEY E. COX, JURISDICTION IN CIVIL ACTIONS § 4.02 (4th ed. 2024); Douglas D. McFarland, *Dictum Run Wild: How Long-Arm Statutes Extended to the Limits of Due Process*, 84 B.U. L. REV. 491, 525–31 (2004).

28. *See* 1 CASAD ET AL., *supra* note 27; McFarland, *supra* note 27, at 525, 528.

29. James M. Beck & Kevin Hara, *Quasi Guest Post – 50 State Survey on General Jurisdiction Through Consent by Registration to Do Business: Putting* Bauman *and Baseball Back Together*, DRUG & DEVICE L. (Dec. 18, 2017), https://www.druganddevicelawblog.com/2017/12/quasi-guest-post-50-state-survey-on-general-jurisdiction-through-consent-by-registration-to-do-business-putting-bauman-and-baseball-back-together.html [https://perma.cc/7FXJ-AHNS].

30. *See* Brown v. Lockheed Martin Corp., 814 F.3d 619, 623 (2d Cir. 2016).

31. *Cf.* Thomas P. Kurland & Dakotah M. Burns, *'Mallory' Decision Could Have Profound Implications for Out-of-State Companies Registered to Do Business in NY*, N.Y. L.J. (July 10, 2023, 10:48 AM), https://www.law.com/newyorklawjournal/2023/07/10/mallory-decision-could-have-profound-implications-for-out-of-state-companies-registered-to-do-business-in-ny/ [https://perma.cc/9RPK-8YJJ] (discussing a comparable situation in New York).

32. *See* CONN. GEN. STAT. §§ 33-929, 52-59b (2023).

33. *All HomeGoods Stores*, HOMEGOODS, https://www.homegoods.com/all-stores [https://perma.cc/C678-HUXH] (last visited Apr. 3, 2024).

Island, which has not taken a decisive stance on the jurisdiction-by-registration question but that enjoys to-the-limits contacts jurisdiction.[34] It also has six HomeGoods stores.[35] Would the analysis change at all?

Second, and more importantly, *should* maximalist states—states that extend contacts-based jurisdiction to the full extent of the Due Process Clause—pass jurisdiction-by-registration statutes? These states must weigh corporate incentives when making this decision because registration-based jurisdiction may deter business activity.[36] But when would this issue of incentives outweigh these states' desire to maximize their jurisdictional reach? Moreover, what are the predictability concerns for corporate defendants?

This Note examines why apparent maximalist states have looked past jurisdiction-by-registration and whether that trend will continue. Part I provides background on the relevant personal jurisdiction doctrine, spanning from the creation of registration-based jurisdiction to the *Mallory* decision. Part II reviews various approaches and issues arising from this jurisdictional puzzle. Part III argues that maximalist states must weigh their business and jurisdictional interests alongside each other. Part III further encourages the adoption of statutes prescribing the state's exact position on the jurisdiction-by-registration question.

I. THE CHANGING TIDES OF PERSONAL JURISDICTION

To begin to understand the conflict between registration-based jurisdiction and jurisdictional maximalism, it is important to know the relevant historical background.[37] Accordingly, Part I.A will first explain the three basic ways that courts obtain personal jurisdiction over defendants. This will orient jurisdiction-by-registration within the personal jurisdiction jurisprudence. Next, Part I.B chronicles the methodical rise of registration-based jurisdiction. Part I.C will then turn to contacts-based general jurisdiction, paying particular attention to how the Supreme Court hollowed out this jurisdictional basis. From there, Part I.D will situate, discuss, and evaluate the *Mallory* decision.

A. Specific Jurisdiction, General Jurisdiction, and Beyond

Courts derive their personal jurisdiction authority by analyzing whether the defendant has a legitimate connection to the forum.[38] Guided by the

34. *See* 9 R.I. GEN. LAWS § 9-5-33 (2024); Kevin N. Rolando, *Express Consent by Registration: A Personal Jurisdiction Reminder*, R.I. BAR J., Sept./Oct. 2011, at 13, 36 (noting that the Rhode Island Supreme Court has not decided the general jurisdiction-by-registration issue).

35. *See All HomeGoods Stores*, *supra* note 33.

36. *See* Transcript of Oral Argument at 35–36, Mallory v. Norfolk S. Ry. Co., 143 S. Ct. 2028 (2023) (No. 21-1168) (highlighting the potential wide-ranging effects of general jurisdiction-by-registration).

37. *See* Monestier, *supra* note 18, at 1349.

38. *See* 4 CHARLES ALAN WRIGHT, ARTHUR R. MILLER & ADAM N. STEINMAN, FEDERAL PRACTICE AND PROCEDURE § 1064 (4th ed. 2015).

Fourteenth Amendment's Due Process Clause, Congress and courts have tinkered with the intensity that this connection demands as it pertains to out-of-state defendants.[39] States have then tailored this requisite connection further through so-called "long-arm" statutes, which narrow state courts' jurisdictional reach according to state preference.[40]

Under the current jurisprudence, personal jurisdiction over out-of-state defendants generally falls into two categories: specific jurisdiction and general jurisdiction.[41] A foreign defendant satisfies the standard for specific jurisdiction when certain elements are present: (1) the defendant's activity achieves "certain minimum contacts";[42] (2) the suit arises out of or relates to the defendant's contacts with the forum;[43] and (3) exercising jurisdiction is reasonable based on several factors, such as the burden on the defendant and the interests of the plaintiff and the state.[44] Because of these variables, specific jurisdiction merely attaches to the particular case at issue.[45] For this reason, it is sometimes referred to as "case-linked" jurisdiction.[46]

General jurisdiction, by contrast, carries much broader consequences.[47] Defendants subject to general jurisdiction must have a sufficiently strong relationship with the forum state.[48] A person's domicile is a paradigmatic example.[49] Unlike specific jurisdiction, defendants subject to general jurisdiction may be sued in that state's courts for any claim, whether it relates to the defendant's underlying contacts or not.[50] Accordingly, scholars sometimes refer to this form of jurisdiction as "all-purpose" jurisdiction.[51]

Critical here, personal jurisdiction also exists outside of this dichotomy—when a defendant consents to jurisdiction.[52] Specifically, defendants may

---

39. *See generally* FED. R. CIV. P. 4 (exemplifying the complexity behind proper service of process).

40. *See* 4 WRIGHT ET AL., *supra* note 38, § 1068; *infra* Part II.A.

41. Mallory v. Norfolk S. Ry. Co., 143 S. Ct. 2028, 2038–39 (2023).

42. Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945).

43. Bristol-Myers Squibb Co. v. Superior Ct., 137 S. Ct. 1773, 1780 (2017); Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct., 141 S. Ct. 1017, 1024–25 (2021).

44. Asahi Metal Indus. Co. v. Superior Ct., 480 U.S. 102, 113 (1987); World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 292 (1980).

45. *Bristol-Myers Squibb*, 137 S. Ct. at 1780.

46. *See* Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 919 (2011).

47. *See* Charles W. "Rocky" Rhodes & Cassandra Burke Robertson, *A New State Registration Act: Legislating a Longer Arm for Personal Jurisdiction*, 57 HARV. J. ON LEGIS. 377, 384–85 (2020) (discussing the potentially expansive nature of general jurisdiction).

48. *See* Lea Brilmayer, Jennifer Haverkamp, Buck Logan, Loretta Lynch, Steve Neuwirth & Jim O'Brien, *A General Look at General Jurisdiction*, 66 TEX. L. REV. 721, 727 (1988); *see also* Arthur T. von Mehren & Donald T. Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 HARV. L. REV. 1121, 1178–79 (1966).

49. *See* Brilmayer et al., *supra* note 48, at 730.

50. *Goodyear*, 564 U.S. at 919.

51. *See id.*

52. Mallory v. Norfolk S. Ry. Co., 143 S. Ct. 2028, 2039 (2023). A court may also exercise personal jurisdiction over a defendant that is served with process in the state. *See* Burnham v. Superior Ct., 495 U.S. 604, 628 (1990). This theory typically does not extend to corporate "agents." *See* Monestier, *supra* note 18, at 1373–74; *infra* Part I.B.

consent to, or "waive" any objection to,[53] jurisdiction in an explicit, implicit, or implied manner.[54] This jurisdictional basis derives from what personal jurisdiction represents: an individual right.[55] Generally, personal jurisdiction must contemplate the adequacy of a defendant's protections, as derived from the Due Process Clause.[56] But when a defendant accepts suit on its own terms, this concern fades.[57] By exercising its right to appear in a given forum, a defendant removes the bite of the jurisdictional safeguards in place.[58]

B. Pennoyer*'s Roots: The Rise of Jurisdiction-by-Registration*

Through the nineteenth century, notions of territorial sovereignty dominated the personal jurisdiction landscape.[59] In *Pennoyer v. Neff*,[60] the Supreme Court spelled out this formalist regime, dictating that courts lacked jurisdiction over defendants unless they were present within the state or consented to jurisdiction.[61] Though this mapped somewhat easily onto individual defendants, *Pennoyer*'s rigidity was difficult to square with corporations,[62] which, under the traditional view, did not exist outside of their state of incorporation.[63] This meant that corporations operating in multiple states could avoid liability for their out-of-state actions.[64] To alleviate this concern, states manufactured a "fiction"[65]: they imputed jurisdiction on foreign corporations by requiring them, as a condition of

53. Among other instances, a waiver may occur when a defendant fails to follow certain procedural rules. *See* Ins. Corp. of Ir., Ltd. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 704–05 (1982).

54. In *Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, the U.S. Supreme Court provided a "variety of legal arrangements" representing different forms of consent to personal jurisdiction. *Id.* at 703–04. Parties may (1) agree in advance to submit to the jurisdiction of a given court, (2) stipulate to jurisdiction, (3) agree to arbitrate, (4) voluntarily use certain state procedures, (5) waive jurisdiction by failing to timely raise the issue in the answer or other responsive pleading, or (6) submit to a court's jurisdiction. *Id.*

55. *Id.* at 703 ("Because the requirement of personal jurisdiction represents first of all an individual right, it can, like other such rights, be waived."). Increasingly, the Supreme Court has also noted that personal jurisdiction implicates federalism concerns. *See* J. McIntyre Mach., Ltd. v. Nicastro, 564 U.S. 873, 884 (2011) (discussing the role that state sovereignty plays in the personal jurisdiction analysis); *infra* Part II.D.

56. *See Ins. Corp.*, 456 U.S. at 703–04.

57. *See id.*

58. *See* Monestier, *supra* note 18, at 1378 ("Since consent is an independent basis for jurisdiction, no due process/minimum contacts analysis is required.").

59. *See* 4 WRIGHT ET AL., *supra* note 38, § 1064.

60. 95 U.S. 714 (1878).

61. *Id.* at 720, 729; *see also* Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945).

62. *See, e.g.*, Bank of Augusta v. Earle, 38 U.S. (13 Pet.) 519, 587–89 (1839) (holding that although a corporation does not exist outside of the sovereignty where it was created, it may exercise power in other states through contract).

63. *Id.* at 520.

64. *See* St. Clair v. Cox, 106 U.S. 350, 355 (1882) ("[E]xemption of a corporation from suit in a state other than that of its creation, was the cause of much inconvenience, and often of manifest injustice."); *see also* Peckham v. Inhabitants of N. Par., 33 Mass. (16 Pick.) 274, 275 (1834).

65. Smolik v. Phila. & Reading Coal & Iron Co., 222 F. 148, 151 (S.D.N.Y. 1915).

doing business in the state, to register with state authorities and appoint an agent for accepting service of process.[66]

Gradually, the Supreme Court upheld this business registration scheme as a valid jurisdictional basis.[67] States first scored a major victory in 1855 in *Lafayette Insurance Co. v. French*,[68] when the Court upheld an Ohio law that obliged nonresident insurers with resident insurance agents to appear for suits related to in-state insurance contracts.[69] In other words, it allowed Ohio to attach specific jurisdiction to insurers by virtue of them registering to do business there. Later, in *St. Clair v. Cox*,[70] the Supreme Court went further, finding that by merely "engag[ing] in business" in a forum state, a corporation may impliedly consent to claims arising within that state, even without their business registration.[71]

By the end of the 1910s, courts blew the jurisdictional doors open with a series of decisions that ultimately laid the foundation for today's controversy.[72] Judge Learned Hand first set the stage in *Smolik v. Philadelphia & Reading Coal & Iron Co.*[73] The issue in *Smolik* was whether a state business registration statute subjected a nonresident defendant to a suit in New York for damages caused in another state.[74] These facts represented the novel question of whether registration laws could establish jurisdiction in actions occurring beyond state borders.[75] Holding that they could, Judge Hand highlighted the relevant New York statute's intention to confer jurisdiction over all causes of action.[76] He also noted that the defendant had given "actual consent" to those terms.[77] Accordingly, exacting such consent did not give rise to any "constitutional objection."[78]

Smolik gave way to *Bagdon v. Philadelphia & Reading Coal & Iron Co.*[79] less than one year later.[80] Faced with near-identical facts and the same defendant, Judge Benjamin N. Cardozo held that the purpose of New York's appointment statute was to ground jurisdiction by facilitating a stable corporate "presence."[81] He also emphasized the defendant's voluntary

66. *See* Rhodes & Robertson, *supra* note 47, at 401.
67. *See* Lafayette Ins. Co. v. French, 59 U.S. (18 How.) 404, 408–09 (1855).
68. 59 U.S. (18 How.) 404 (1855).
69. *Id.* at 408–09.
70. 106 U.S. 350 (1882).
71. *See id.* at 359–60 (finding that service on a corporate agent in the forum state constitutes prima facie evidence supporting jurisdiction); *see also* Pennoyer v. Neff, 95 U.S. 714, 735–36 (1878) (implying that registration-based jurisdiction survived adoption of the Fourteenth Amendment).
72. *See* Kevin D. Benish, Note, Pennoyer*'s Ghost: Consent, Registration Statutes, and General Jurisdiction After* Daimler AG v. Bauman, 90 N.Y.U. L. REV. 1609, 1634–35 (2015).
73. 222 F. 148 (S.D.N.Y. 1915).
74. *See id.* at 150.
75. *Id.*
76. *Id.* at 151.
77. *Id.*
78. *Id.* at 150–51.
79. 111 N.E. 1075 (N.Y. 1916).
80. *Id.* at 1076.
81. *Id.* at 1077. Notably, Judge Cardozo's theoretical basis—corporate presence—conflicts with contemporary jurisprudence. *See* Benish, *supra* note 72, at 1636 n.164;

consent to this jurisdictional regime, in return for the privilege to enforce contracts using New York courts.[82] Consequently, service on the defendant's agent was both effective and consistent with the Due Process Clause.[83]

With Judges Hand and Cardozo having weighed in on this issue in New York, the Supreme Court finally addressed the problem in *Pennsylvania Fire Insurance Co. of Philadelphia v. Gold Issue Mining & Milling Co.*[84] Pennsylvania Fire was an insurance company incorporated in Pennsylvania.[85] In 1909, the company insured a Colorado smelter owned by the Gold Issue Mining & Milling Company, an Arizona corporation.[86] After a lightning strike destroyed the insured facility, Gold Issue Mining sued to collect on its policy—not where the contract was formed (Colorado) or in the parties' home states (Arizona and Pennsylvania), but in Missouri state court.[87] The Supreme Court of Missouri held that the state's relevant registration statute permitted actions made by out-of-state plaintiffs over out-of-state contracts.[88] It then held that the law passed constitutional muster.[89] In a unanimous opinion, the Supreme Court affirmed, largely deferring to the lower court's construction of the statute as a "rational" interpretation.[90] Citing both *Smolik* and *Bagdon*, among others, it then held that "[t]he construction of the Missouri statute thus adopted hardly leaves a constitutional question open."[91]

Altogether, the *Smolik-Bagdon-Pennsylvania Fire* trilogy represented the breadth of consent-based jurisdiction.[92] In its wake, states could bind foreign corporations to not only causes of actions arising within the state, but even causes of action arising elsewhere.[93] Suddenly, business registration statutes had become conduits for conferring general jurisdiction.[94]

Monestier, *supra* note 18, at 1372; *see also* Burnham v. Superior Ct., 495 U.S. 604, 610 n.1 (1990) (noting the difficulty of charting corporate jurisdiction onto a jurisdictional regime that relies on the "de facto power over the defendant's person" (quoting Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945))).

82. *Bagdon*, 111 N.E. at 1076–77.

83. *See id.* at 1077.

84. 243 U.S. 93 (1917).

85. Gold Issue Mining & Milling Co. v. Pa. Fire Ins. Co., 184 S.W. 999, 1000 (Mo. 1916), *aff'd*, 243 U.S. 93 (1917).

86. *See id.*

87. *See id.*

88. *See id.* at 1003–05.

89. *See id.* at 1013, 1016.

90. Pa. Fire Ins. Co. v. Gold Issue Mining & Milling Co., 243 U.S. 93, 95 (1917). Notably, the Missouri statute in question was not explicit as to its jurisdictional effect. *See id.* at 94; *infra* note 306 and accompanying text.

91. *Pa. Fire*, 243 U.S. at 95–96.

92. *See* Benish, *supra* note 72, at 1635.

93. *See Pa. Fire*, 243 U.S. at 95.

94. *See infra* Part I.D.

C. Cabining General "Doing Business" Jurisdiction

Although the Court continued to uphold *Pennsylvania Fire* as good law through the 1930s,[95] its ruling in *International Shoe Co. v. Washington*[96] recalibrated the traditional approach to personal jurisdiction.[97] In a functionalist turn, "minimum contacts" now defined the personal jurisdiction inquiry.[98] Though this technically did not overrule registration-based jurisdiction, courts became increasingly wary of how it could sit alongside the contacts analysis.[99] At the very least, many courts were hesitant to follow in *Pennsylvania Fire*'s footsteps because of its potential to contradict *International Shoe* and its progeny.[100]

Under its new minimum contacts approach, the Supreme Court elaborated primarily on specific jurisdiction.[101] Between 1945 and 2011, the Supreme Court heard just two general jurisdiction cases[102]: *Perkins v. Benguet Consolidating Mining Co.*[103] and *Helicopteros Nacionales de Colombia, S.A. v. Hall*.[104] In *Perkins*, the Court found that the defendant maintained sufficient contacts as to permit general jurisdiction, despite the fact that the forum state was neither the company's state of incorporation nor home to its principle place of business.[105] By contrast, in *Helicopteros*, the defendant's more limited forum activities did not satisfy the general jurisdiction threshold.[106] Read together, *Perkins* and *Helicopteros* attempted to clarify the loose rubric of contacts-based general jurisdiction, which simply asked

95. *See, e.g.*, Neirbo Co. v. Bethlehem Shipbuilding Corp., 308 U.S. 165, 167–68, 175 (1939) (holding that, in addition to providing jurisdictional consent, appointment of an agent for service of process constitutes a waiver of venue).

96. 326 U.S. 310 (1945).

97. *See id.* at 316.

98. *See id.*; *supra* Part I.A.

99. *See* Brilmayer et al., *supra* note 48, at 757–60.

100. *See, e.g.*, Siemer v. Learjet Acquisition Corp., 966 F.2d 179, 183 (5th Cir. 1992) (holding that merely serving a corporate agent cannot confer general jurisdiction because that is "directly contrary to the historical rationale of *International Shoe* and subsequent Supreme Court decisions"); *see also* Shaffer v. Heitner, 433 U.S. 186, 212 (1977) ("[A]ll assertions of state-court jurisdiction must be evaluated according to the standards set forth in *International Shoe* and its progeny.").

101. *See* Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 924 (2011).

102. *See id.* at 925.

103. 342 U.S. 437 (1952).

104. 466 U.S. 408 (1984).

105. *Perkins*, 342 U.S. at 447–48. The defendant in *Perkins* was a mining corporation based in the Philippines that had ceased operating there during Japan's occupation of the country. *Id.* at 447. To facilitate its "necessarily limited wartime activities," the corporation's president started running the business from his office in Ohio, where the plaintiff brought suit. *Id.* at 447–48. Although the claim did not arise in Ohio, the Court ruled that adjudicating the controversy there would not violate due process. *Id.* at 448.

106. *Helicopteros*, 466 U.S. at 418–19. The plaintiffs in *Helicopteros*, survivors of U.S. citizens who died in a helicopter crash in Peru, filed wrongful-death actions in Texas against the defendant, a Colombian corporation. *Id.* at 409, 412. The plaintiffs argued that Texas maintained general jurisdiction over the defendant because of its contacts with the state, which included contract negotiations, equipment purchases, training programs, and accepted checks drawn on a Houston bank. *Id.* at 410–11, 416. The Court held that these contacts were too limited to satisfy due process. *Id.* at 418–19.

whether a corporation's in-state activities were of a "continuous and systematic" nature.[107] Ultimately, though, the guidance proved insufficient, yielding inconsistent jurisdictional findings across the country.[108] At the very least, this landscape caused headaches for foreign and large domestic entities alike, both of which faced litigation risk in states where they had apparently satisfied the "doing business" standard.[109]

Though registration-based jurisdiction grew increasingly obsolete in the years following *International Shoe*, a more expansive contacts-based general jurisdiction climate filled in some of the jurisdictional gaps left behind.[110] After all, defendants conceivably subjected themselves to unrelated claims in a forum by virtue of "doing business."[111] With a new series of decisions in the 2010s, however, the Supreme Court ended this dynamic abruptly, reshaping the contours of general jurisdiction back in corporations' favor.

The shift started with *Goodyear Dunlop Tires Operations, S.A. v. Brown*,[112] when the Court asked whether foreign subsidiaries of a domestic parent corporation are amenable to suit in state court for matters involving unrelated claims.[113] In *Goodyear*, the plaintiffs filed a wrongful-death suit in North Carolina against Goodyear USA, an Ohio corporation, and three of its foreign subsidiaries.[114] Unlike the parent company, which did not contest jurisdiction,[115] the subsidiaries lacked "continuous" and "systematic" contacts: they did not conduct, target, or solicit any business in the forum state.[116] Bypassing the "easy" application of established general jurisdiction jurisprudence,[117] the Court held that North Carolina lacked jurisdiction because these subsidiaries were not "at home" there.[118]

---

107. *See* Int'l Shoe Co. v. Washington, 326 U.S. 310, 317 (1945).

108. *See* Brilmayer et al., *supra* note 48, at 724 (noting general jurisdiction's "discordant results").

109. *See* Monestier, *supra* note 18, at 1353; Charles W. "Rocky" Rhodes & Cassandra Burke Robertson, *Toward a New Equilibrium in Personal Jurisdiction*, 48 U.C. DAVIS L. REV. 207, 214 (2014) (noting how corporations like McDonalds and Walmart would have likely been subject to general jurisdiction in all fifty states before the *Daimler* decision).

110. *See* Rhodes & Robertson, *supra* note 109, at 262–63.

111. *See, e.g.*, Rush v. Savchuk, 444 U.S. 320, 330 (1980) (stating in dicta that "State Farm is 'found,' in the sense of doing business, in all 50 States and the District of Columbia"); *see also* Rhodes & Robertson, *supra* note 109, at 214.

112. 564 U.S. 915 (2011).

113. *Id.* at 918.

114. *Id.* Goodyear USA's subsidiaries operated exclusively in France, Luxembourg, and Turkey, respectively. *Id.*

115. *Id.* at 918. Considering the result in *Goodyear*, Goodyear USA's decision not to challenge jurisdiction might have been a mistake. Presumably, the company assumed that it was "doing business" in North Carolina and therefore subjected itself to general jurisdiction. *See* Tanya J. Monestier, *Where Is Home Depot "At Home"?:* Daimler v. Bauman *and the End of Doing Business Jurisdiction*, 66 HASTINGS L.J. 233, 243 n.54 (2014). The Court's new framework, however, challenged this understanding. *See id.*; *infra* note 123 and accompanying text.

116. *Goodyear*, 564 U.S. at 918, 920–21.

117. *See* Linda J. Silberman, Goodyear *and* Nicastro*: Observations from a Transnational and Comparative Perspective*, 63 S.C. L. REV. 591, 611–12 (2012).

118. *Goodyear*, 564 U.S. at 929.

Exactly what "at home" meant confounded courts[119] until the Court decided *Daimler AG v. Bauman*[120] three years after *Goodyear*. *Daimler* involved a suit brought by twenty-two Argentinian residents against DaimlerChrysler AG ("Daimler"), a German company, in California district court.[121] Jurisdiction was predicated on a Daimler subsidiary, Mercedes-Benz USA (MBUSA), which distributed Daimler cars to all fifty states and ran various business operations in California.[122] In other words, California did not have specific or general jurisdiction over Daimler but maintained general jurisdiction over MBUSA.[123]

Writing for the majority, Justice Ruth Bader Ginsburg teed up the ultimate question: whether Daimler's contacts were "so 'continuous and systematic' as to render [it] essentially at home in the forum State."[124] Finding that they were not, the Court clarified that general jurisdiction, operating under its new "at home" model, existed only in the corporation's state of incorporation and principal place of business, with rare exception.[125] Accordingly, because neither Daimler nor MBUSA were incorporated in California or had their principal place of businesses there, the state could not exercise general jurisdiction.[126]

This framing made sense to the Court, in part, for two reasons.[127] First, it found an expansive reading of the words "continuous and systematic" to be "unacceptably grasping."[128] In fact, the Court stated, the use of the phrase in *International Shoe* was never meant to suggest that general jurisdiction existed wherever "continuous and systematic" contacts were found.[129] Instead, it had always implied something closer to a two-state paradigm.[130]

---

119. *See* Rhodes & Robertson, *supra* note 109, at 217–19.

120. 571 U.S. 117 (2014).

121. *Id.* at 120–21.

122. *Id.* at 121, 123. Of note, MBUSA's sales in California accounted for 2.4 percent of Daimler's worldwide sales. *Id.* at 123.

123. *Id.* at 133–34. As in *Goodyear*, Daimler did not object to the plaintiffs' assertion that California could exercise general jurisdiction over MBUSA. *See* Monestier, *supra* note 115, at 247. Although over 10 percent of Daimler's U.S. sales of new vehicles occurred in California, the Court's holding suggests that this number was probably insufficient. *Daimler*, 571 U.S. at 123, 139; *see also* Monestier, *supra* note 115, at 247 n.91; *supra* note 115 and accompanying text.

124. *Daimler*, 571 U.S. at 139 (alteration in original) (quoting Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 919 (2011)).

125. *See id.* at 139 n.19 ("We do not foreclose the possibility that in an exceptional case . . . a corporation's operations in a forum other than its formal place of incorporation or principal place of business may be so substantial and of such a nature as to render the corporation at home in that State."). The Court noted that the facts of *Perkins* may present one of these rare exceptions. *See supra* note 105 and accompanying text.

126. *Daimler*, 571 U.S. at 139.

127. *Id.* at 138–41.

128. *Id.* at 138.

129. *Id.* at 138–39.

130. *See id.* Whether such an interpretation aligned with the general jurisdiction jurisprudence to that point is, of course, debatable. *See* Rhodes & Robertson, *supra* note 109, at 228.

Second, the Court noted policy considerations that weighed in favor of a narrower test.[131] In limiting general jurisdiction, corporate defendants would enjoy greater predictability.[132] A more lenient threshold, by contrast, would open the United States as a forum for grievances from all over the world.[133]

Undoubtedly, *Daimler* upended general jurisdiction by "doing business."[134] Consequently, corporate defendants appeared to face a much more limited menu of potential forums for litigation.[135] Decisions since, including one from the Supreme Court itself,[136] have all but confirmed that reality.[137] To compensate for this perceived inequity, plaintiffs needed to identify a separate jurisdictional hook to keep more courthouse doors open.[138] One solution came from an old friend: state registration statutes.[139]

D. The Mallory *Decision: Answering the Century-Old Question*

All fifty states have registration statutes that require a corporation doing business in the state to register with the state and appoint an agent for service of process.[140] These statutes provide that a foreign corporation may not transact business in the state until it has registered there.[141] Notably, many states delineate what forms of business activities do *not* require registration.[142] States have also codified the penalties for corporations that should have registered but failed to do so.[143] Generally, these penalties preclude corporations from suing in the state's courts and require payment of a fine.[144]

State interpretations of their respective business registration statutes yield three basic outcomes: compliance with the statute (1) confers general

131. *Daimler*, 571 U.S. at 139–41.
132. *Id.* at 139.
133. *Id.* at 140–42 (discussing the global implications that an expansive view of general jurisdiction entails).
134. *See* Monestier, *supra* note 18, at 1357–58; Rhodes & Robertson, *supra* note 109, at 228.
135. *See* Rhodes & Robertson, *supra* note 109, at 228.
136. *See* BNSF Ry. Co. v. Tyrrell, 137 S. Ct. 1549, 1559 (2017). Notably, the Court declined to address the jurisdiction-by-registration question in this case. *Id.* at 1559.
137. *See, e.g.*, Chufen Chen v. Dunkin' Brands, Inc., 954 F.3d 492, 500 (2d Cir. 2020) (withholding general jurisdiction from Dunkin' Donuts in New York because it is neither incorporated nor headquartered there).
138. *See* Rhodes & Robertson, *supra* note 109, at 228.
139. *Id.* at 259–60.
140. Monestier, *supra* note 18, at 1363 n.109 (listing the registration statutes for each state plus Washington, D.C.).
141. *See, e.g.*, N.J. STAT. ANN. § 14A:13-3 (West 2023); *see* Monestier, *supra* note 18, at 1364 n.111 (referencing many statutes that require a corporation to register before doing in-state business).
142. *See, e.g.*, N.Y. BUS. CORP. LAW § 1301(a) (McKinney 2024); GA. CODE ANN. § 14-2-1501(b) (2023).
143. *See* Monestier, *supra* note 18, at 1366 n.116 (listing every state's penalties for non-registration).
144. *See* Benish, *supra* note 72, at 1647–61 (describing the ramifications in each state for non-registration).

jurisdiction,[145] (2) confers specific jurisdiction,[146] or (3) has no jurisdictional effect.[147] Courts that fall into the first category generally rationalize the result by finding that registration and appointment of a service agent demonstrates "consent" to jurisdiction.[148] Because consent provides an independent basis for jurisdiction, the argument proceeds, no additional due process analysis is necessary.[149]

Just one state, Pennsylvania, has a statute that explicitly provides that registering to do business there gives its state courts general jurisdiction over a corporation.[150] Accordingly, Pennsylvania courts have traditionally followed the statute's lead: compliance with the state statute provides consent to general jurisdiction.[151] Apart from its language, however, the more difficult question asks whether the statute comports with due process generally.[152] This is the issue that the Supreme Court had to address in *Mallory*.[153]

Mallory concerned a freight car mechanic, Robert Mallory, who worked for Norfolk Southern, the defendant, for nearly two decades.[154] He worked in Ohio and then in Virginia.[155] After Mallory left the company, he moved to Pennsylvania for some time before returning to Virginia.[156] During this period, he was diagnosed with cancer.[157] Mallory attributed his illness to his exposure to asbestos, chemicals, and carcinogens while working for Norfolk Southern.[158] Consequently, he brought suit against his former employer under the Federal Employers' Liability Act.[159] This law "creates a workers' compensation scheme permitting railroad employees to recover damages for their employers' negligence."[160] Although the alleged exposures occurred in

145. *See, e.g.*, Knowlton v. Allied Van Lines, Inc., 900 F.2d 1196, 1200 (8th Cir. 1990).

146. *See, e.g.*, Grice v. VIM Holdings Grp., LLC, 280 F. Supp. 3d 258, 277 (D. Mass. 2017).

147. *See, e.g.*, Oversen v. Kelle's Transp. Serv., Inc., No. 15-CV-00535, 2016 WL 8711343, at *3 (D. Utah May 12, 2016).

148. *See* Monestier, *supra* note 18, at 1369.

149. *See id.*; *supra* Part I.A.

150. The relevant Pennsylvania statutes provide: "(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." 15 PA. CONS. STAT. § 411(a) (2024). "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 . . . . Incorporation under or qualification as a foreign corporation under the laws of this Commonwealth." 42 PA. CONS. STAT. § 5301 (2024).

151. *See, e.g.*, Bane v. Netlink, Inc., 925 F.2d 637, 641 (3d Cir. 1991).

152. Mallory v. Norfolk S. Ry. Co., 266 A.3d 542, 547, 564 (Pa. 2021) ("[This] precise issue . . . may be peculiar to Pennsylvania."), *vacated*, 143 S. Ct. 2028 (2023).

153. 143 S. Ct. 2028 (2023).

154. *Id.* at 2032.

155. *Id.*

156. *Id.*

157. *Id.*

158. *See id.*

159. 45 U.S.C. §§ 51–60; *Mallory*, 143 S. Ct. at 2032.

160. *Mallory*, 143 S. Ct. at 2032.

Ohio and Virginia, Mallory chose to sue in Pennsylvania state court.[161] The company, incorporated and headquartered in Virginia, challenged this jurisdictional basis on due process grounds.[162]

Finding that the law did not violate due process, a majority of the Justices agreed that *Pennsylvania Fire* had settled this question over one hundred years earlier.[163] Though limited as a matter of stare decisis, the majority opinion nevertheless confirmed that states may require companies, as a condition of doing business, to consent to *all* suits there.[164] Moreover, a state does not even need to impose "magic words" to exact general jurisdiction from registered corporations.[165] That said, the Court chose not to "speculate [as to] whether any other statutory scheme [besides Pennsylvania's] and set of facts would suffice to establish consent to suit."[166]

An important consequence of this decision is that it demonstrably severs consent from the contacts analysis.[167] In other words, *International Shoe* and jurisdiction-by-registration statutes continue to "sit comfortably side-by-side."[168] Under Pennsylvania's law, then, the *Daimler* "at home" test becomes meaningless, at least for the initial jurisdictional inquiry.[169] Accordingly, the fact that Norfolk Southern has registered to do business in Pennsylvania is dispositive, regardless of its predominant ties to Virginia.[170] As the dissent argued, the state "defeat[s] the Due Process Clause by adopting a law at odds with the Due Process Clause."[171]

Still, this apparent jurisdictional circumvention faces other points of contention. First, Justice Gorsuch, writing for the plurality, responded to arguments of fairness—ostensibly only a part of the contacts analysis—by noting Norfolk Southern's significant activity in Pennsylvania.[172] Among other things, the company managed more miles of train tracks there than in any other state.[173] Second, Justice Alito's concurrence focused in large part on the dormant commerce clause, an issue that the lower court will

161. *Id.*
162. *Id.* at 2033.
163. *Id.* at 2037.
164. *See id.*
165. *See id.* at 2038 n.5.
166. *Id.* at 2038.
167. *See id.* at 2055 (Barrett, J., dissenting) (discussing how the consent model "does not formally overrule [the] traditional contacts-based approach").
168. *Id.* at 2038 (plurality opinion).
169. *See id.* Under the doctrine of forum non conveniens, a court has the discretionary power to decline to exercise its jurisdiction if it is a seriously inconvenient forum and a more appropriate forum for the plaintiff exists. *See* RESTATEMENT (SECOND) OF CONFLICT OF L. § 84 (AM. L. INST. 1971); Piper Aircraft Co. v. Reyno, 454 U.S. 235, 249 (1981). Defendants can also try to remove the case to federal court under 28 U.S.C. § 1441 and then move to transfer under 28 U.S.C. § 1404(a). That path was not available in the *Mallory* case, however, because Congress expressly excluded Federal Employers' Liability Act matters from removal. *See* 28 U.S.C. § 1445.
170. *See Mallory*, 143 S. Ct. at 2037.
171. *Id.* at 2057 (Barrett, J., dissenting).
172. *Id.* at 2041 (plurality opinion).
173. *Id.* at 2042–43.

presumably address on remand.[174] The dormant commerce clause mediates competing assertions of state sovereignty, in part, by preventing the unreasonable obstruction of interstate commerce.[175] In doing so, it may provide an important countermeasure for smaller companies that are unable to afford or manage a patchwork of liability regimes.[176] Third, the unconstitutional conditions doctrine prohibits states from requiring the exchange of a constitutional right, such as the right to due process, for an unrelated discretionary benefit.[177] Although the Justices did not address this doctrine directly, it counts as yet another viable attack on general jurisdiction-by-registration.[178]

Regardless of these concerns, the *Mallory* decision breathes life back into the *Pennoyer*-era creation of jurisdiction-by-registration.[179] Consequently, the general jurisdictional tide may begin shifting against corporate defendants once again.[180]

II. KEEPING THE DOOR TO JURISDICTION-BY-REGISTRATION AJAR

Apparently, no amount of Tylenol can save the Supreme Court from its personal jurisdiction headache. In just over ten years, the Court has heard at least eight personal jurisdiction cases.[181] In part, this difficulty derives from the ever-changing nature of the global economy.[182] Long gone are the years when businesses only conducted activities in physical proximity to each other, making the question of personal jurisdiction as simple as coloring in the lines.[183] Achievable or not, the Court has struggled to keep its jurisprudence on pace with the modern flow of commerce.[184] This carries potential consequences for state jurisdictional philosophies, which often depend on crafty interpretations of the Court's precedent.[185] The repercussions that flow from the *Mallory* decision, for example, are illustrative: the Court has signaled at least temporary acceptance of significant state jurisdictional reach, providing states with an opportunity to

174. *See id.* at 2047, 2051–52 (Alito, J., concurring in part).
175. *See id.*
176. *See id.* at 2054.
177. *See* Transcript of Oral Argument, *supra* note 36, at 25.
178. *See id.*
179. *See Mallory*, 143 S. Ct. at 2062–63 (Barrett, J., dissenting).
180. *See id.* at 2064–65.
181. *See* Rhodes & Robertson, *supra* note 47, at 379; Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct., 141 S. Ct. 1017 (2021); *Mallory*, 143 S. Ct. at 2028. Before 2011, the Supreme Court had not made a personal jurisdiction decision in twenty years. *See* Rhodes & Robertson, *supra* note 47, at 383 n.31.
182. *See Ford Motor*, 141 S. Ct. at 1032 (Alito, J., concurring) ("[T]here are also reasons to wonder whether the case law we have developed since [*International Shoe*] is well suited for the way in which business is now conducted.").
183. *See* Rhodes & Robertson, *supra* note 47, at 409.
184. *See Ford Motor*, 141 S. Ct. at 1039 (Gorsuch, J., concurring) (describing a desire for future litigants and lower courts to untangle the personal jurisdictional mess in light of the changing economy, the Constitution's text, and other historical lessons).
185. *See id.*

exercise jurisdiction over more claims.[186] Now, states striving for maximalist jurisdictional regimes must consider whether it makes sense to have a long-arm statute coextensive with the Constitution while simultaneously disfavoring jurisdiction-by-registration. In a similar vein, they must ask if *Mallory*, and the potential rise of registration-based jurisdiction, will demand that legislators act to reclaim their state's jurisdictional guidelines.

Part II.A surveys state long-arm statutes, identifying the trend toward jurisdictional maximalism. In contrast, Part II.B discusses the more recent development of jurisdiction-by-registration through the lens of judicial interpretation and legislative action. This part will demonstrate states' increasing tendency toward construing their business registration laws narrowly. Part II.C then considers the impact that *Mallory* may have on court approaches. Next, Part II.D examines what the revitalization of *Pennsylvania Fire* might mean for registration-based jurisdiction. Finally, Part II.E describes the general corporate incentives at stake.

A. Surveying Maximalist Long-Arm Statutes

In the wake of *International Shoe*, many states worked to conform their jurisdictional models with the Supreme Court's new contacts-focused calculation.[187] Following Illinois's lead, the first comprehensive state long-arm "statutes" started to appear, helping to create an early iteration of today's statutory landscape.[188] Since then, a critical question has arisen: does the state statute extend to the full length of the Due Process Clause?[189] In other words, do the states' statutes permit jurisdiction whenever the Supreme Court has found due process satisfied? Or is the long-arm statute more restrictive?

At least initially, most statutes simply provided a list of nonresident activities that gave birth to jurisdiction.[190] Such a framework appeared to require courts to engage in a two-step inquiry—identifying an appropriate state jurisdictional basis first before proceeding to the due process question.[191] This invoked a certain deference to legislative interests.[192] Over time, though, courts and legislators alike began interpreting and amending these statutes to allow jurisdiction whenever it comported with due process.[193] In effect, this collapsed the two-step inquiry into one.

---

186. *See Mallory*, 143 S. Ct. at 2037.

187. *See* McFarland, *supra* note 27, at 493–95.

188. *See id.*; 4 WRIGHT ET AL., *supra* note 38, § 1068. "Statutes" appears in quotations because long-arms can also be rules or statute-rule hybrids. *See* Zachary D. Clopton, *Long Arm "Statutes,"* 23 GREEN BAG 2D 89, 96 tbl.1 (2020).

189. *See* McFarland, *supra* note 27, at 524.

190. The original Illinois statute, for one, covered four general categories: the transaction of business, torts committed within the state, property ownership or use, and insurance contracting. *Id.* at 494 n.11.

191. *See id.* at 498.

192. *See* 4 WRIGHT ET AL., *supra* note 38, § 1068.

193. McFarland, *supra* note 27, at 496–97.

Ever since the first long-arm statute was passed almost seventy years ago, the trend has decidedly moved in favor of the one-step inquiry.[194] This progression stems, in part, from state policymakers' desire to give their citizens ample opportunity to seek redress for claims arising against nonresidents.[195] To say otherwise might demonstrate a preference for nonresident defendants at the expense of in-state plaintiffs.[196] Still, the exact contours of just how far this opportunity should extend is central to the state policy discussion. Hence, it is important to understand the ways in which this trend, largely curated by courts, has developed.[197]

First, the due process consideration may change based on the long-arm provision in question.[198] Whether states diverge from their more general one-step or two-step approach relates most prominently to the "transacting business"[199] and "doing business"[200] provisions of their long-arm statutes.[201] In *Ehrenfeld v. Bin Mahfouz*,[202] for example, the New York State Court of Appeals interpreted the state's transacting business provision while keeping the "U.S. Supreme Court opinions delineating proper bases for personal jurisdiction under the Federal Due Process Clause" in mind.[203] The *Ehrenfeld* court also noted that the New York state legislature similarly paid attention to these rulings when drafting this particular provision.[204] Through further scrutiny, states demonstrate additional concern—or even limited

194. *See* 1 CASAD ET AL., *supra* note 27; McFarland, *supra* note 27, at 541. *But see* Caesars Riverboat Casino, LLC v. Beach, 336 S.W.3d 51, 56 (Ky. 2011) (shifting Kentucky from a one-step inquiry to a two-step inquiry).

195. *See* Jeffrey A. Van Detta & Shiv K. Kapoor, *Extraterritorial Personal Jurisdiction for the Twenty-First Century: A Case Study Reconceptualizing the Typical Long-Arm Statute to Codify and Refine* International Shoe *After Its First Sixty Years*, 3 SETON HALL CIR. REV. 339, 345 (2007).

196. *See id.* at 347.

197. *See* Zachary D. Clopton, *Making State Civil Procedure*, 104 CORNELL L. REV. 1, 10 n.40 (2018) (discussing the lack of state legislative activity regarding pleading standards in the wake of two significant Supreme Court procedural decisions).

198. *Compare* Fam. Fed'n for World Peace v. Hyun Jin Moon, 129 A.3d 234, 242 (D.C. 2015) ("'We have repeatedly reaffirmed' that the 'transacting business provision [of the District's Long Arm Statute] is coextensive with . . . due process.'" (alteration in original) (quoting Daley v. Alpha Kappa Alpha Sorority, Inc., 26 A.3d 723, 727 (D.C. 2011))), *with* Companhia Brasileira Carbureto de Calcio v. Applied Indus. Materials Corp., 35 A.3d 1127, 1131 (D.C. 2012) (noting that although D.C.'s long-arm statute generally extends to the due process limit, there is an exception for claims predicated on certain government contacts).

199. Typically, the "transacting business" provision corresponds to a state's claim for specific jurisdiction over a nonresident. *See* 4 WRIGHT ET AL., *supra* note 38, § 1069.3.

200. The "doing business" provision, by contrast, provides general jurisdiction for states over nonresidents. *See id.* § 1069.2. This provision may also help inform the "transacting business" statutory analysis. *See id.*

201. *See, e.g.*, H2O Env't Inc. v. Proimtu MMI, LLC, 397 P.3d 398, 401 (Idaho 2017) (finding that Idaho courts have traditionally afforded the state's transacting business provision "broad application").

202. 881 N.E.2d 830 (N.Y. 2007).

203. *Id.* at 834.

204. *Id.*; *see also* Diamond Grp., Inc. v. Selective Distrib. Int'l, Inc., 998 N.E.2d 1018, 1022 (Mass. 2013) (holding that the "transacting *any* business" clause requires an expansive reading (emphasis added)).

preference—for nonresident companies escaping jurisdiction in cases in which no constitutional bar existed.

Second, state long-arm statutes that are coextensive with the Due Process Clause come in different shapes and sizes.[205] For one, not all long-arm "statutes" are statutes at all.[206] Long-arm jurisdiction sometimes derives from state rules.[207] Other states deploy a statute-rule hybrid.[208] In total, twelve states predicate their long-arm jurisdiction on at least partially non-statutory grounds.[209] More than pedantic, these patterns reveal the initial curators of a state's jurisdictional approach.[210] In addition, how states base jurisdiction over nonresidents may be difficult to change.[211] States that consider rules to supersede statutes, for example, add a layer of protection to rule-made long-arms.[212] In other words, legislators who want to redesign a state's approach to long-arm jurisdiction may face procedural roadblocks.

Third, how certain states engage in a one-step inquiry is not uniform either. Some long-arm statutes simply authorize jurisdiction whenever due process would allow.[213] California's long-arm statute, for example, says, "A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States."[214] Other "enumerated" long-arm statutes include a catch-all due process provision within a laundry list of other jurisdictional bases.[215] This catch-all provision acts as a sort of fail-safe when asserting jurisdiction would not violate the Constitution but none of the other provisions apply.[216] Further still, some courts have interpreted enumerated statutes to allow jurisdiction whenever due process permits, even though the statute does not contain such a catch-all

205. *Compare* N.J. CT. R. 4:4-4 (generally providing that jurisdiction is proper whenever due process is satisfied), *and* R.I. GEN. LAWS § 9-5-33 (2024) (same), *with* IND. R. TRIAL P. 4.4(A) (listing eight activities for which jurisdiction is proper, in addition to a "catch-all" provision), *and* TENN. CODE ANN. § 20-2-214(a) (2023) (including six specific activities and a catch-all provision).

206. *See* Clopton, *supra* note 188, at 90.

207. *See, e.g.*, ALA. R. CIV. P. 4.2.

208. *See, e.g.*, MO. REV. STAT. § 506.500 (2024); MO. R. CIV. P. 54.06.

209. *See* Clopton, *supra* note 188, at 94.

210. *See id.* at 96–97.

211. *See id.* at 97.

212. *Id.*

213. This includes Alabama, Arizona, Arkansas, California, Iowa, Nevada, New Jersey, Oklahoma, Rhode Island, Vermont, and Wyoming. *See* 1 CASAD ET AL., *supra* note 27; Clopton, *supra* note 188, at 99–102.

214. CAL. CIV. PROC. CODE § 410.10 (West 2024).

215. *See* IND. R. TRIAL P. 4.4(A); TENN. CODE ANN. § 20-2-214(a) (2023); *supra* note 205.

216. For example, Tennessee's long-arm statute contains a provision providing jurisdiction over nonresidents on "[a]ny basis not inconsistent with the constitution of this state or of the United States." TENN. CODE ANN. § 20-2-214(a)(6).

provision.[217] These variations, too, hint at subtle differences in states' jurisdictional agendas.[218]

Differences in construction aside, there are roughly thirty-two states with long-arm regimes coextensive with the Due Process Clause.[219] The other eighteen states maintain a more restrictive list of activities subjecting out-of-state defendants to jurisdiction.[220] An exact number is difficult to discern given that some states vacillate between two-step and one-step inquiries.[221] Moreover, a court ostensibly proceeding through a two-step analysis may view the statutory and constitutional questions as one and the same.[222] In general, this demonstrates many states' appetites for retaining maximalist jurisdictional regimes.[223]

B. The Demise of Jurisdiction-by-Registration: Four Judicial Camps

Although *Pennsylvania Fire* established that states could constitutionally exert general jurisdiction over defendants by virtue of their registration in a state, such regimes did not become mandatory.[224] States are left to their own devices when deciding how jurisdiction-by-registration pairs with respective

217. *See, e.g.*, Aeroflex Wichita, Inc. v. Filardo, 275 P.3d 869, 881 (Kan. 2012) ("[T]his [enumerated] statute is to be liberally construed to allow the exercise of jurisdiction to the outer limits allowed under due process.").

218. *See, e.g.*, Internet Sols. Corp. v. Marshall, 39 So. 3d 1201, 1207 (Fla. 2010) (interpreting the state's long-arm statute, in part, because the legislature has never contemplated the internet's impact on personal jurisdiction).

219. *See* 1 CASAD ET AL., *supra* note 27; McFarland, *supra* note 27, at 525–31. These two sources provide a thoughtful accounting of state approaches to the long-arm analysis. Both assert that a similar number of states have to-the-limits long-arms, though the authors characterize certain states differently. These states include Kentucky, Maryland, New Mexico, and Virginia. Some of this variation arises from state changes since Professor Douglas McFarland published his article in 2004. *See* Caesars Riverboat Casino, LLC v. Beach, 336 S.W.3d 51, 56 (Ky. 2011). The rest comes down to a matter of interpretation of state precedent. *See, e.g.*, Monks Own, Ltd. v. Monastery of Christ in the Desert, 168 P.3d 121, 128 (N.M. 2007) ("While the long-arm statute can be used as an illustration, we acknowledge that, at least hypothetically, there could be other such contacts that satisfy . . . due process, yet not [the] state's long-arm jurisdiction statute."). In particular, the treatise casts some states that purport to engage in a two-step analysis as more earnestly falling within the one-step group. *See, e.g.*, Pinner v. Pinner, 225 A.3d 433, 443 (Md. 2020) (describing how the due process and statutory inquiries effectively merge under Maryland law).

220. *See supra* note 219 and accompanying text.

221. *Compare* Zavala v. El Paso Cnty. Hosp. Dist., 172 P.3d 173, 178 (N.M. Ct. App. 2007) (holding that New Mexico's long-arm extends to the length of due process), *with* Sanchez v. Church of Scientology, 857 P.2d 771, 774 (N.M. 1993) (analyzing the pertinent provision in New Mexico's long-arm statute).

222. *See, e.g.*, *Pinner*, 225 A.3d at 443; Johnson Litho Graphics v. Sarver, 824 N.W.2d 127, 132 (Wis. Ct. App. 2012) (construing the state's long-arm statute liberally in favor of finding jurisdiction).

223. *See generally* 1 CASAD ET AL., *supra* note 27.

224. To say otherwise would implicate a variety of constitutional problems, such as the anti-commandeering doctrine. *See* New York v. United States, 505 U.S. 144, 188 (1992).

state policy concerns. In many cases, this issue has fallen to the courts, which analyze precedent and relevant statutes to reach a conclusion.[225]

Over the last decade, litigation concerning registration-based general jurisdiction has risen.[226] Undoubtedly, this came as a response to the Supreme Court's winnowing down of general jurisdiction in *Goodyear* and *Daimler*.[227] Tasked with finding a new outlet, plaintiffs found themselves circling back to registration statutes to locate a separate jurisdictional hook.[228] As a result, the pre-*Mallory* courts faced two somewhat overlapping questions: can general jurisdiction-by-registration still survive in light of (1) due process requirements or (2) common principles of statutory interpretation? Though many courts have ultimately rejected jurisdiction-by-registration, their rationales for doing so have been far from uniform. In general, roughly four judicial approaches have arisen.

First, the most assertive courts have held that registration-based general jurisdiction regimes violate the Due Process Clause outright.[229] In the years after *International Shoe*'s paradigm shift, however, few—if any—state courts felt inclined to deem this jurisdictional form unconstitutional.[230] To do so might have flown in the face of Justice Harlan Fiske Stone's opinion, which at least hinted that the ruling in *Pennsylvania Fire* survived the new contacts-based analysis.[231] Nevertheless, at least one state high court, the Supreme Court of Ohio, held that the consent arm of personal jurisdiction only extended to claims that also had minimum contacts with the forum.[232]

After the *Daimler* decision, the question became murkier.[233] Courts questioned whether jurisdiction-by-registration, which casts a potentially unlimited form of general jurisdiction, could still function alongside the "at home" test.[234] Taken to its logical extreme, the former might consume the latter, all but "rendering *Daimler* pointless."[235] For that reason, some courts

225. *See* Robert E. Pfeffer, *A 21st Century Approach to Personal Jurisdiction*, 13 U.N.H. L. REV. 65, 162–63 (2015) (encouraging states to draft new long-arm statutes).

226. *See* Matthew D. Kaminer, Note, *The Cost of Doing Business?: Corporate Registration as Valid Consent to General Personal Jurisdiction*, 78 WASH. & LEE L. REV. ONLINE 55, 61–64 (2021).

227. *See id.* at 60.

228. *See id.* at 60–61.

229. *See, e.g.*, Lanham v. BNSF Ry. Co., 939 N.W.2d 363, 371 (Neb. 2020).

230. *See* RESTATEMENT (SECOND) OF CONFLICT OF L. § 44 (AM. L. INST. 1971); *see also supra* Part I.C.

231. *See* Int'l Shoe Co. v. Washington, 326 U.S. 310, 317 (1945).

232. *See* Wainscott v. St. Louis-San Francisco Ry. Co., 351 N.E.2d 466, 473 (Ohio 1976) ("[The Due Process] [C]lause does not contemplate that a state may make binding a judgment in personam against an individual or corporate defendant with which the state has no contacts, ties, or relations.").

233. *See* Benish, *supra* note 72, at 1625 (arguing that general jurisdiction-by-registration is unconstitutional following *Daimler*).

234. *See* Kaminer, *supra* note 226, at 61–64.

235. State *ex rel.* Norfolk S. Ry. Co. v. Dolan, 512 S.W.3d 41, 51 (Mo. 2017).

held that general jurisdiction-by-registration violated due process.[236] At least two state high courts fall in this category: Nebraska[237] and Pennsylvania.[238]

Second, and more commonly, many courts interpreted a forum state's registration statute to not confer general jurisdiction.[239] An increasing number of state high courts assumed this position post-*Daimler*, including California,[240] Colorado,[241] Delaware,[242] Illinois,[243] Missouri,[244] Montana,[245] New Mexico,[246] New York,[247] Oregon,[248] and Wisconsin.[249] In doing so, the courts often overturned decades-old precedent.[250] Critically, the Supreme Court's general jurisdiction shift often helped inform these decisions, even if the larger constitutional question technically went unaddressed.[251]

---

236. *See, e.g.*, Dutch Run-Mays Draft, LLC v. Wolf Block, LLP, 164 A.3d 435, 446 (N.J. Super. Ct. App. Div. 2017) ("[T]he exercise of general jurisdiction requires satisfaction of the 'continuous and systematic contacts' to comply with due process. Mere registration to conduct some business is insufficient.").

237. Lanham v. BNSF Ry. Co., 939 N.W.2d 363, 371 (Neb. 2020) (finding that imposing general jurisdiction based on the defendant's consent to do business in the state would "exceed the due process limits prescribed by [*Goodyear*] and [*Daimler*]").

238. Mallory v. Norfolk S. Ry. Co., 266 A.3d 542, 566 (Pa. 2021) ("[T]o conclude that registering as a foreign corporation invokes all-purpose general jurisdiction . . . violates federal due process . . . ."), *vacated*, 143 S. Ct. 2028 (2023) This is the decision that the Supreme Court addressed on appeal. *See supra* Part I.D.

239. *See, e.g.*, Renfroe v. Nichols Wire & Aluminum Co., 83 N.W.2d 590, 594 (Mich. 1957) (construing the relevant registration provisions to only provide consent to in-state claims).

240. *See* Bristol-Myers Squibb Co. v. Superior Ct., 377 P.3d 874, 884 (Cal. 2016), *rev'd on other grounds*, 137 S. Ct. 1773 (2017).

241. *See* Magill v. Ford Motor Co., 379 P.3d 1033, 1040–41 (Colo. 2016).

242. *See* Genuine Parts Co. v. Cepec, 137 A.3d 123, 142 (Del. 2016).

243. *See* Aspen Am. Ins. Co. v. Interstate Warehousing, Inc., 90 N.E.3d 440, 447 (Ill. 2017).

244. *See* State *ex rel.* Norfolk S. Ry. Co. v. Dolan, 512 S.W.3d 41, 51–52 (Mo. 2017). *But see In re* Abbott Lab'ys v. Mead Johnson & Co., No. 22 C 02011, 2023 WL 4976182, at *3 (N.D. Ill. Aug. 3) ("*Mallory*, which expressly upholds *Pennsylvania Fire*, casts doubt on *Dolan*."), *opinion vacated in part on reconsideration*, No. 22 C 02011, 2023 WL 8527415 (N.D. Ill. Dec. 8, 2023).

245. *See* DeLeon v. BNSF Ry. Co., 426 P.3d 1, 4 (Mont. 2018).

246. *See* Chavez v. Bridgestone Ams. Tire Operations, LLC, 503 P.3d 332, 344, 349 (N.M. 2021).

247. *See* Aybar v. Aybar, 177 N.E.3d 1257, 1266 (N.Y. 2021).

248. *See* Figueroa v. BNSF Ry. Co., 390 P.3d 1019, 1030 (Or. 2017).

249. *See* Segregated Acct. of Ambac Assurance Corp. v. Countrywide Home Loans, Inc., 898 N.W.2d 70, 83 (Wis. 2017).

250. *See, e.g.*, Genuine Parts Co. v. Cepec, 137 A.3d 123, 126 (Del. 2016) (overturning twenty-eight-year old precedent); *Figueroa*, 390 P.3d at 1025, 1030 (finding that a 1928 ruling favoring jurisdiction-by-registration can no longer stand in the face of legislative history and statutory interpretation).

251. *See Genuine Parts Co.*, 137 A.3d at 142 (explaining that rejecting jurisdiction-by-registration "accords with *Daimler* and common sense"); Brown v. Lockheed Martin Corp., 814 F.3d 619, 622, 640 (2d Cir. 2016) (construing Connecticut's statute narrowly as to avoid the "more difficult constitutional question"); Amelius v. Grand Imperial LLC, 64 N.Y.S.3d 855, 869 (2017) (holding that registration-based general jurisdiction "is very unlikely to be a result that due process will allow in light of . . . *Daimler*"); *see also infra* Part II.D.

Third, a few states have defied the trend, abiding by registration-based general jurisdiction as a matter of stare decisis.[252] States falling into this category include Georgia, Iowa, Minnesota, and possibly Kansas.[253] For these courts, *Daimler* was inapplicable because jurisdiction there turned on *International Shoe*'s contacts-based rubric.[254] Business registration, by contrast, rests on consent.[255] Notwithstanding its larger concern for general jurisdiction, these courts found that *Daimler* had no bearing on defendants that submitted to jurisdiction.[256]

Fourth, some courts have merely followed explicit legislative direction.[257] In one camp stand eleven states and Washington, D.C., which adopted statutes clarifying that the appointment of a service agent does not imply consent to jurisdiction of that state's courts.[258] In doing so, this group largely copied the position taken in the Uniform Business Organizations Code, which provides that "[t]he designation or maintenance in this state of a registered agent does not by itself create the basis for personal jurisdiction over the represented entity in this state."[259]

Pennsylvania, of course, charts just the opposite course, plainly extracting general jurisdiction from companies registering to do business in the Commonwealth.[260] Under the statute's language, companies should be equally aware of the consequences arising from registration. Of course, this scheme has faced its own challenges,[261] with the Supreme Court of Pennsylvania initially dealing the law a fatal blow in 2021.[262] Given the Supreme Court's reversal of this ruling, however, Pennsylvania's registration-based general jurisdiction statutory construct persists.[263]

---

252. *See* Kaminer, *supra* note 226, at 62–63.

253. *See id.*; Beck & Hara, *supra* note 29 (noting the "seriously murky" situation in Kansas).

254. *See, e.g.*, Cooper Tire & Rubber Co. v. McCall, 863 S.E.2d 81, 89 (Ga. 2021), *cert. denied*, 143 S. Ct. 2689 (2023).

255. *See id.*

256. *See id.* at 89–90.

257. *See* Jeffrey L. Rensberger, *Consent to Jurisdiction Based on Registering to Do Business: A Limited Role for General Jurisdiction*, 58 SAN DIEGO L. REV. 309, 324 (2021).

258. In addition to Washington, D.C., these states are Arkansas, Idaho, Indiana, Maine, Mississippi, Montana, Nevada, North Dakota, South Dakota, Utah, and Washington. *Id.* at 324 n.86; D.C. CODE § 29-104.14 (2024).

259. UNIF. BUS. ORGS. CODE § 1-414 (NAT'L CONF. OF COMM'RS ON UNIF. STATE L. 2011). Though these statutes are seemingly impenetrable, plaintiffs could try to assert that they merely deny contacts-based jurisdiction but not jurisdiction predicated on consent. *See* Rensberger, *supra* note 257, at 324; *see also* DeLeon v. BNSF Ry. Co., 426 P.3d 1, 7 (Mont. 2018). Whether such an argument could ever prove successful, however, seems doubtful. *See infra* Part II.C.

260. *See* 15 PA. CONS. STAT. § 411(a) (2024); 42 PA. CONS. STAT. § 5301 (2024).

261. *See, e.g.*, Bane v. Netlink, Inc., 925 F.2d 637, 641 (3d Cir. 1991) (upholding the Pennsylvania statute).

262. Mallory v. Norfolk S. Ry. Co., 266 A.3d 542, 547 (Pa. 2021), *vacated*, 143 S. Ct. 2028 (2023).

263. *See* Mallory v. Norfolk S. Ry. Co., 143 S. Ct. 2028, 2037 (2023).

Outside of these four camps sit plenty more states that have yet to answer the question definitively.[264] Perhaps these states' plaintiffs have largely ignored the issue so far, or the state high court is simply waiting to see how jurisdiction-by-registration will play out in the courts below and nationwide. Regardless, *Mallory*'s constitutional rubber stamp beckons an influx of registration-dependent claims. This can even be true for states that have clearly rejected registration-based general jurisdiction, especially if *Daimler* played a role in establishing that approach. A few recent court opinions have already hinted to this reality.[265]

C. Understanding the Role of Coextensive Long-Arm Statutes

Just as courts have been increasingly willing to adopt long-arm regimes coextensive with due process, they have been even more *unwilling* to add jurisdiction-by-registration to their jurisdictional playbook.[266] Of course, a state's statutory framework is sometimes to thank. For example, when a state explicitly rejects registration-based jurisdiction, a court's hands are effectively tied under the *lex specialis* canon, which explains that a specific statute takes precedent over a more general one.[267] But when courts proceed without legislative certainty, how can they unravel this apparent contradiction?[268]

It is difficult to identify an exact number of states that maintain to-the-limits long-arm statutes but reject general jurisdiction-by-registration. Almost certainly, California,[269] Illinois,[270] Nebraska,[271] and Oregon[272] fit

264. *See infra* Part II.C.

265. *See In re* Abbott Lab'ys v. Mead Johnson & Co., No. 22 C 02011, 2023 WL 4976182, at *3 (N.D. Ill. Aug. 3) (initially finding that *Mallory* undermines the state's recent rejection of registration-based general jurisdiction), *opinion vacated in part on reconsideration*, No. 22 C 02011, 2023 WL 8527415 (N.D. Ill. Dec. 8, 2023); Espin v. Citibank, N.A., No. 22-CV-383, 2023 WL 6447231, at *4 (E.D.N.C. Sept. 29, 2023) (holding that *Mallory* supports a finding of general jurisdiction-by-registration).

266. *See supra* Parts II.A–B.

267. *See* Nitro-Lift Techs., L.L.C. v. Howard, 568 U.S. 17, 21 (2012) (noting that the "interpretive principle that the specific governs the general (*generalia specialibus non derogant*) applies . . . to conflict between laws of equivalent dignity"); *Generalia specialibus non derogant*, BALLENTINE'S LAW DICTIONARY (3d ed. 1969).

268. *See* Patrick J. Borchers, *Look Both Ways Before You Cross the Tracks:* Mallory v. Norfolk Southern Railway Co. *and the Past and Future of Personal Jurisdiction Law*, 57 CREIGHTON L. REV. 1, 10 n.97 (2023) (explaining this "jurisdictional riddle").

269. *See* CAL. CIV. PROC. CODE § 410.10 (West 2024); Bristol-Myers Squibb Co. v. Superior Ct., 377 P.3d 874, 884 (Cal. 2016), *rev'd on other grounds*, 137 S. Ct. 1773 (2017).

270. *See* 735 ILL. COMP. STAT. 5/2-209(c) (2024); Aspen Am. Ins. Co. v. Interstate Warehousing, Inc., 90 N.E.3d 440, 447 (Ill. 2017).

271. *See* NEB. REV. STAT. § 25-536(2) (2024); Lanham v. BNSF Ry. Co., 939 N.W.2d 363, 371 (Neb. 2020).

272. *See* OR. R. CIV. P. 4(L); Figueroa v. BNSF Ry. Co., 390 P.3d 1019, 1030 (Or. 2017).

the bill. Others, like Colorado,[273] New Mexico,[274] and South Carolina[275] probably do as well. Many states that appear to proceed through a single-step due process inquiry, however, have not clearly picked a side in the general jurisdiction-by-registration debate. This potentially includes Alabama,[276] Kansas,[277] Louisiana,[278] New Hampshire,[279] New Jersey,[280] and Tennessee,[281] among others.[282] The rest either (1) at least facially proceed through a two-step inquiry,[283] (2) reject general jurisdiction-by-registration *and* at least facially proceed through a two-step inquiry,[284] or (3) have an explicit statute precluding jurisdiction-by-registration.[285]

With these distinctions in mind, what does this picture reveal about state jurisdictional postures? A cursory view suggests that a state *cannot* legitimately claim to be a jurisdictional maximalist while it rejects general jurisdiction-by-registration. After all, the Supreme Court's decision in *Mallory* confirmed that Pennsylvania's statutory regime satisfies due process.[286]

---

273. *See* COLO. REV. ST. § 13-1-124 (2024); Magill v. Ford Motor Co., 379 P.3d 1033, 1035, 1037 (Colo. 2016) (rejecting the theory that a corporate registered agent's presence converts a nonresident company into a resident company).

274. *See* N.M. STAT. ANN. § 38-1-16 (2024); Chavez v. Bridgestone Ams. Tire Operations, LLC, 503 P.3d 332, 349 (N.M. 2021); Zavala v. El Paso Cnty. Hosp. Dist., 172 P.3d 173, 178 (N.M. Ct. App. 2007).

275. *See* S.C. CODE ANN. § 36-2-803 (2023); Fidrych v. Marriott Int'l, Inc., 952 F.3d 124, 138 (4th Cir. 2020); State v. NV Sumatra Tobacco Trading, Co., 666 S.E.2d 218, 222 (S.C. 2008) (explaining South Carolina's one-step approach).

276. *See* ALA. R. CIV. P. 4.2; Smith v. Avon Prods., Inc., No. 18-CV-00826, 2019 WL 921461, at *5–6 (N.D. Ala. Feb. 25, 2019).

277. *See* KAN. STAT. ANN. § 60-308 (2023). *Compare* Merriman v. Crompton Corp., 146 P.3d 162, 177, 179 (Kan. 2006), *with* Stacker v. Intellisource, LLC, No. 20-2581, 2021 WL 2646444, at *6 (D. Kan. June 28, 2021).

278. *See* LA. STAT. ANN. § 13:3201(B) (2024). *Compare* Phillips Petroleum Co. v. OKC Ltd. P'ship, 634 So. 2d 1186, 1188–89 (La. 1994), *with* Gulf Coast Bank & Tr. Co. v. Designed Conveyor Sys., L.L.C., 717 F. App'x 394, 398 (5th Cir. 2017).

279. *See* N.H. REV. STAT. ANN. § 510:4 (2023); Fellows v. Colburn, 34 A.3d 552, 558 (N.H. 2011); Holloway v. Wright & Morrissey, Inc., 739 F.2d 695, 699 (1st Cir. 1984).

280. *See* N.J. CT. R. 4:4-4(b)(1); Dutch Run-Mays Draft, LLC v. Wolf Block, LLP, 164 A.3d 435, 446 (N.J. Super. Ct. App. Div. 2017) (rejecting precedent allowing registration-based general jurisdiction in light of *Daimler*).

281. *See* TENN. CODE ANN. § 20-2-214(a) (2023). *Compare* Davenport v. State Farm Mut. Auto. Ins. Co., 756 S.W.2d 678, 679 (Tenn. 1988), *with* Ratledge v. Norfolk S. Ry. Co., 958 F. Supp. 2d 827, 838 (E.D. Tenn. 2013).

282. Alaska, Arizona, Oklahoma, Rhode Island, Texas, Vermont, and Wyoming are other one-step states without a definitive answer to the general jurisdiction-by-registration question. *See* Benish, *supra* note 72, at 1647–61; Beck & Hara, *supra* note 29; 1 CASAD ET AL., *supra* note 27; McFarland, *supra* note 27, at 525–31. Used in tandem, these sources provide helpful insights into this puzzle on a state-by-state level.

283. *See* VA. CODE ANN. § 8.01-328.1 (2023); Mercer v. MacKinnon, 823 S.E.2d 252, 254–55 (Va. 2019).

284. *See* N.Y. C.P.L.R. 301–302 (MCKINNEY 2024); Aybar v. Aybar, 177 N.E.3d 1257, 1260, 1266 (N.Y. 2021); DEL. CODE ANN. tit. 10, § 3104 (2024); Genuine Parts Co. v. Cepec, 137 A.3d 123, 127, 142 (Del. 2016).

285. *See, e.g.*, IND. CODE § 23-0.5-4-12 (2023).

286. Mallory v. Norfolk S. Ry. Co., 143 S. Ct. 2028, 2037 (2023).

What this cursory view does not account for, however, is how jurisdiction-by-registration fits into the larger personal jurisdictional framework. Unlike the contacts-based analysis, which necessarily considers jurisdiction-specific state law, defendants who consent to jurisdiction simultaneously waive their due process protections.[287] Thus, the state long-arm statutes, creatures formed with due process protections in mind, are inapplicable.[288] When consent is clear, courts can generally look past any personal jurisdiction problems.[289]

Among others, courts in Minnesota, one of the few states that has steadfastly upheld general jurisdiction-by-registration, have explained this difference.[290] In *Knowlton v. Allied Van Lines, Inc.*,[291] for example, the U.S. Court of Appeals for the Eighth Circuit held that consent precludes the "minimum-contacts or due-process analysis to justify the jurisdiction."[292] It then engaged in statutory interpretation to find that Minnesota's business registration laws did, in fact, generate general jurisdiction over registered companies.[293] Notably, the *Knowlton* court even referred to consent-by-registration as a "traditionally recognized and well-accepted species of general consent."[294]

Whether traditional or not, *Knowlton* helps place business registration statutes on a jurisdictional island. First, as discussed, registration-based assertions of jurisdiction probably do not trigger long-arm statutes like contacts-based jurisdiction does.[295] Second, consent, in this instance, does not arise from the defendant waiving or submitting to jurisdiction with respect to a particular plaintiff for a certain dispute.[296] Rather, the state extracts the consent, somewhat uniquely, through a separate statute.

Yet, even knowing that jurisdiction-by-registration hews closer to consent than contacts, it still imitates much of what long-arm statutes work to accomplish.[297] For this reason, it may be appropriate to consider a state's entire statutory web as potentially implicating jurisdiction. Consider the

287. *See supra* Part I.A.

288. *See* Monestier, *supra* note 18, at 1359.

289. *See supra* note 54 and accompanying text.

290. *See, e.g.*, Knowlton v. Allied Van Lines, Inc., 900 F.2d 1196, 1200 (8th Cir. 1990) ("[C]onsent is a valid basis of personal jurisdiction, and resort to minimum-contacts or due-process analysis to justify the jurisdiction is unnecessary."); Rykoff-Sexton, Inc. v. Am. Appraisal Assocs., Inc., 469 N.W.2d 88, 90 (Minn. 1991); Am. Dairy Queen Corp. v. W.B. Mason Co., No. 18-CV-693, 2019 WL 135699, at *6 (D. Minn. Jan. 8, 2019).

291. 900 F.2d 1196 (8th Cir. 1990).

292. *Id.* at 1200.

293. *See id.* at 1199–200.

294. *Id.* at 1200.

295. *See* Fuld v. Palestine Liberation Org., 82 F.4th 74, 86 (2d Cir. 2023) ("The Supreme Court has recognized three distinct bases for exercising personal jurisdiction over an out-of-forum defendant in accordance with the dictates of due process: general jurisdiction, specific jurisdiction, and consent.").

296. *See* Monestier, *supra* note 18, at 1383.

297. *See* Genuine Parts Co. v. Cepec, 137 A.3d 123, 127 (Del. 2016) (noting that Delaware's long-arm statute "operates smoothly in tandem" with its statute requiring registered corporations to appoint an agent for service of process).

Supreme Court of Georgia's decision in *Allstate Insurance Co. v. Klein*.[298] The *Klein* court interpreted Georgia's long-arm statute, which afforded specific jurisdiction over foreign parties, in tandem with the state's definition of "nonresident."[299] Because Georgia defines "nonresident" as including corporations "not authorized to do or transact business in this state," the court noted, it follows that corporations that *are* authorized to do business are residents.[300] Authorized foreign corporations, therefore, are subject to general jurisdiction, just like any other Georgia resident.[301]

Other state statutes may be susceptible to similar readings. For example, New Jersey, like all other states, delineates the registration and service-agent requirements for foreign corporations conducting business in the state.[302] Moreover, it describes, also like many others, the general effects of complying with those laws.[303] Specifically, New Jersey provides that authorized foreign corporations "shall . . . enjoy the same, but no greater, rights and privileges as a domestic corporation . . . [and] shall be subject to the same duties, restrictions, penalties and liabilities now or hereafter imposed upon a domestic corporation of like character."[304] Accordingly, this statute explains that registered foreign corporations exist on an even playing field with their domestic counterparts. Taken to its logical end, might this imply that foreign corporations are subject to the same general jurisdiction "duties" already owed by domestic corporations? At least one court bought an argument along similar lines.[305]

In sum, this peculiar combination—the rejection of registration-based general jurisdiction alongside a coextensive long-arm regime—attaches to many states' jurisdictional approaches. Because long-arm statutes are, at least at surface level, contacts-based, whereas corporation statutes are consent-driven, no inherent conflict necessarily arises. Yet, this issue may help redefine our understanding of jurisdictional maximalism, especially in a post-*Mallory* world.

D. Reestablishing Pennsylvania Fire

Apart from judicial interpretation, a larger problem that has stunted general jurisdiction-by-registration's use was the assumption that *Daimler*, or even

298. 422 S.E.2d 863 (Ga. 1992).
299. *Id.* at 865–66.
300. *Id.* at 865.
301. *Id.* This reading was upheld recently in *Cooper Tire & Rubber Co. v. McCall*. *See* 863 S.E.2d 81, 90 (Ga. 2021) (declining to overrule *Klein*, in part, as a matter of statutory stare decisis), *cert. denied*, 143 S. Ct. 2689 (2023).
302. *See* N.J. STAT. ANN. §§ 14A:4-1, 4-2, 13-4 (West 2023).
303. *See id.* § 14A:13-2.
304. *Id.*
305. *Compare* Espin v. Citibank, N.A., No. 22-CV-383, 2023 WL 6447231, at *4 (E.D.N.C. Sept. 29, 2023) (permitting general jurisdiction-by-registration), *with* Aspen Am. Ins. Co. v. Interstate Warehousing, Inc., 90 N.E.3d 440, 447 (Ill. 2017) (denying general jurisdiction-by-registration).

earlier case law, extinguished *Pennsylvania Fire*.[306] Of course, *Mallory* tells us that this was not the case.[307] First, this realization may encourage state legislators to reimplement registration-based general jurisdiction given its newfound constitutional security.[308] A failure to do so may suggest that maximalist states have finally reached their jurisdictional tipping point. Second, and perhaps more pressingly, *Mallory* raises serious concerns for courts that overturned long-standing precedent. After all, even if the rejection of general jurisdiction-by-registration fits alongside a to-the-limits long-arm statute, that rejection must rely on a legitimate basis.

Among the states positioned at a crossroads is New York, a two-step state[309] that had nevertheless upheld registration-based general jurisdiction for decades.[310] In fact, New York's acceptance of the theory traced all the way back to Judge Cardozo's opinion in *Bagdon*.[311] Over time, however, New York courts increasingly chipped away at this view, disputing jurisdiction-by-registration's validity following the *Daimler* decision.[312] Then, in *Aybar v. Aybar*,[313] the New York State Court of Appeals delivered a final blow, concluding that a corporation's compliance with the relevant registration provisions no longer "constitute[s] consent to general jurisdiction in New York courts."[314]

Decisions like these demonstrate the judicial policymaking embedded within jurisdiction-by-registration's demise. To sidestep *Bagdon*'s long-standing precedent, for example, the *Aybar* court grasped at a technicality—that *Bagdon* recognized the now outdated concept of consent-by-designation rather than consent-by-registration—even though the laws at issue have remained relatively unchanged.[315] By doing so, the majority arguably stood at odds with the New York legislature, which has seen wide support in its attempts to pass a bill explicitly procuring

306. *See supra* note 251. It bears noting that many state statutes are as similarly vague as the Missouri law at issue in *Pennsylvania Fire*. *See supra* note 90; TEX. BUS. ORGS. CODE ANN. § 9.001 (West 2023) ("To transact business in this state, a foreign entity must register under this chapter . . . ."); TEX. BUS. ORGS. CODE ANN. § 9.008 (West 2023) ("The registration remains in effect until the registration terminates, is withdrawn, or is revoked.").

307. Mallory v. Norfolk S. Ry. Co., 143 S. Ct. 2028, 2037 (2023).

308. *See* Letter from N.Y.C. Bar Ass'n to Governor Kathy Hochul (Aug. 26, 2021), https://documents.nycbar.org/files/2020931-GenJurisdictionOverForeignEntity RegisteredinNY.pdf [https://perma.cc/WFV7-5FQ2] (opposing New York's jurisdiction-by-registration bill, in part, because of the constitutional problems *Daimler* presents).

309. *See, e.g.*, Licci *ex rel.* Licci v. Lebanese Canadian Bank, SAL, 732 F.3d 161, 170 (2d Cir. 2013); *see also supra* Part II.A.

310. *See* Rockefeller Univ. v. Ligand Pharms. Inc., 581 F. Supp. 2d 461, 467 (S.D.N.Y. 2008).

311. *See supra* Part I.B.

312. *See, e.g.*, Chufen Chen v. Dunkin' Brands, Inc., 954 F.3d 492, 499 (2d Cir. 2020) (agreeing with other state intermediary courts that registration-based general jurisdiction is no longer tenable under *Daimler*).

313. 177 N.E.3d 1257 (N.Y. 2021).

314. *Id.* at 1258.

315. *Id.* at 1261 n.4, 1262.

registration-based general jurisdiction.[316] Currently, a version of the bill is pending in front of New York Governor Kathy Hochul.[317]

Certainly, there are practical reasons for avoiding jurisdiction-by-registration.[318] Moreover, courts must be able to adapt to these concerns within reasonable limits. But to allow courts to reinterpret the same or substantially similar statutes, even admittedly vague ones, invites its own problems.[319] To say otherwise would allow courts to have their cake, by interpreting permissive state long-arm statutes to their outer limits, and eat it too, by rejecting general jurisdiction-by-registration despite a lack of legislative guidance. In any event, if *Mallory* really does catalyze a new jurisdictional movement, state legislators may circumvent this problem altogether.

E. Considering Corporate Incentives

Beyond constitutional and practical concerns, a state's corporate interests play a significant role in the jurisdiction-by-registration debate. This follows from the idea that corporations must consider their litigation exposure when engaging in certain activities.[320] Accordingly, any form of registration-based jurisdiction may change the calculus for some corporations when deciding whether to register to do business in a state.[321]

On the one hand, these incentives could have prevented states from adopting jurisdiction-by-registration regimes.[322] Doing so may have implicitly signaled an anti-business posture, thereby prompting companies to transact elsewhere.[323] Understood in this way, registration-based jurisdiction would yield potentially devastating economic effects.[324] Consider, for

316. *See* S.B. 7253, 2021-2022 Leg., Reg. Sess. (N.Y. 2021); S.B. 7476, 2023-2024 Leg., Reg. Sess. (N.Y. 2023). Both bills passed the two arms of the state congress with relative ease, but Governor Kathy Hochul rejected the former bill on New Year's Eve in 2021. *See* Veto #79 from Governor Kathy Hochul to New York State Assemb. (Dec. 31, 2021), https://digitalcollections.archives.nysed.gov/index.php/Detail/objects/97927 [https://perma.cc/9P76-QNAF].

317. *See* S.B. 7476.

318. *See infra* Part III.

319. *See* Cooper Tire & Rubber Co. v. McCall, 863 S.E.2d 81, 93 (Ga. 2021) (Bethel, J., concurring) (recommending that the Georgia General Assembly reconsider the jurisdiction-by-registration system currently in place), *cert. denied*, 143 S. Ct. 2689 (2023); *Aybar*, 177 N.E.3d at 1267 (Wilson, J., dissenting) ("Although the majority professes to effectuate the legislature's intent, it eviscerates it.").

320. *See* Oscar G. Chase, *Consent to Judicial Jurisdiction: The Foundation of "Registration" Statutes*, 73 N.Y.U. ANN. SURV. AM. L. 159, 165–66, 181 (2018).

321. *See id.* at 165.

322. *See id.* at 195 ("Although 100 years have passed since *Pennsylvania Fire* upheld the constitutionality of general jurisdiction by registration, few states have 'grasped' it." (footnote omitted)).

323. *See* Chris Carey, Comment, *Explicit Consent-by-Registration: Plaintiffs' New Hope After the "At Home" Trilogy*, 67 KAN. L. REV. 195, 217–18 (2018).

324. *See* Brian P. Watt & W. Alex Smith, *"At Home" in Georgia: The Hidden Danger of Registering to Do Business in Georgia*, 36 GA. ST. U. L. REV. ONLINE 1, 14–15 (2019) (concluding that Georgia's general jurisdiction-by-registration regime hinders the state's pro-business labeling).

example, the related story with X (formerly Twitter), which new owner Elon Musk decided to reincorporate in Nevada, in part, because of the onslaught of litigation that he personally faced in Delaware.[325] Decisions like these cost Delaware (a state heavily dependent on corporate taxes) franchise fees, litigation expenses, and possibly even reputational damage.[326]

Moreover, though jurisdiction-by-registration promises greater jurisdictional flexibility in a vacuum, it also invites state overreaching.[327] Various judicial opinions have hinted to this "slippery slope" issue,[328] including Justice Barrett writing for the *Mallory* dissent: "If States take up the Court's invitation to manipulate registration, *Daimler* and *Goodyear* will be obsolete, and, at least for corporations, specific jurisdiction will be 'superfluous.'"[329] For this reason, seven states submitted a joint amicus brief in *Mallory*, centrally based on their desire to maintain state sovereignty.[330] Notably, among these seven states, arguably five have long-arm regimes coextensive with due process.[331]

On the other hand, many states are hesitant to allow corporations to avoid litigation.[332] States might argue that sophisticated and, oftentimes, rich companies are rightfully subject to greater scrutiny.[333] Recent Supreme Court jurisprudence, however, has limited a state's ability to do just that, at least from a contacts-based standpoint.[334] This includes both exertions of general jurisdiction, as the *Daimler* decision evidences,[335] and specific jurisdiction.[336] Consequently, jurisdiction-by-registration affords these states with a promising new opportunity.

To take advantage, states in favor of jurisdiction-by-registration can fashion a variety of new schemes. The most aggressive will simply follow Pennsylvania's lead, deriving general jurisdiction from all registered

325. *See* Alexa Corse, *Twitter Inc. Changes Its Name to X Corp. and Moves to Nevada*, WALL ST. J., https://www.wsj.com/articles/twitter-inc-changes-its-name-to-x-corp-and-moves-to-nevada-703ac892 [https://perma.cc/U4G2-ATLB] (Apr. 12, 2023, 8:38 PM).

326. *See* Diego A. Zambrano, *The States' Interest in Federal Procedure*, 70 STAN L. REV. 1805, 1847–48 (2018); Genuine Parts Co. v. Cepec, 137 A.3d 123, 142 (Del. 2016). Although registration-based jurisdiction did not prompt Musk's move, his decision offers a relevant lesson: subjection to extensive litigation may have negative consequences. *See* Corse, *supra* note 325.

327. *See* Monestier, *supra* note 18, at 1344.

328. *See, e.g.*, *Genuine Parts Co.*, 137 A.3d at 142–43; *see also* Carey, *supra* note 323, at 217–20.

329. Mallory v. Norfolk S. Ry. Co., 143 S. Ct. 2028, 2065 (2023) (Barrett, J., dissenting) (quoting Daimler AG v. Bauman, 571 U.S. 117, 140 n.20 (2014)).

330. *See* Brief for Va., Alaska, Ark., Idaho, Ind., Mont., N.H. & S.C. as Amici Curiae Supporting Respondents at 1, Mallory v. Norfolk S. Ry. Co., 143 S. Ct. 2028 (2023) (No. 21-1168), 2022 WL 4110480.

331. The five states are Alaska, Arkansas, Indiana, New Hampshire, South Carolina, and possibly Virginia. *See* 1 CASAD ET AL., *supra* note 27; McFarland, *supra* note 27, at 526–30.

332. *See* Chase, *supra* note 320, at 166.

333. *See* Rhodes & Robertson, *supra* note 109, at 263.

334. *See supra* Part I.C.

335. *See* Daimler AG v. Bauman, 571 U.S. 117, 138, 134 (2014).

336. *See* Bristol-Myers Squibb Co. v. Superior Ct., 137 S. Ct. 1773, 1781 (2017).

companies.[337] Others may limit jurisdiction-by-registration to in-state plaintiffs or to a registered company's in-state activities, thereby tempering corporate distress.[338]

At the very least, *Mallory* presses states to reconsider whether jurisdiction-by-registration's juice is worth the corporate squeeze. In other words, does the corporation (and its accompanying economic weight) or jurisdictional maximization come first? Should a decent number of states decide the latter, a race for registration-based jurisdiction may well follow.

III. HOW MAXIMALIST STATES CAN USE *MALLORY* TO THEIR ADVANTAGE

As discussed, maximalist states have often deferred to the courts to demarcate the appropriate outer boundaries of personal jurisdiction.[339] Yet, such deference does not imply that these states do not have legitimate policy concerns for exacting certain jurisdictional parameters. More importantly, *Mallory* may disrupt this unity between the courts (which have increasingly rejected registration-based general jurisdiction interpretations) and maximalist state legislatures (which, by definition, envision expansive jurisdictional regimes). Of course, whether this clash actually makes for a bad jurisdictional posture depends on the state in question.

To help resolve this debate, this Note will first explore the main ingredient to this jurisdictional puzzle: corporate interests. Through this lens, Part III.A will consider the reasons why a certain state might want to employ jurisdiction-by-registration. Part III.B will then consider why a state might do just the opposite. Finally, Part III.C will touch on the predictability that *Mallory* invites, both for those in favor of jurisdiction-by-registration and those opposed. Among other things, this will address the opportunity that consent promises for personal jurisdiction's constitutional concerns.

A. Maximizing Corporate Litigation

In her concurring opinion in *Daimler*, Justice Sotomayor expressed unease for how the two-state general jurisdiction paradigm would allow corporations, particularly large corporations, to avoid litigation.[340] She noted, among other things, how the *Daimler* test "shift[s] the risk of loss from multinational corporations to the individuals harmed by their actions."[341] Consequently, this precludes states from adjudicating disputes against

337. This may depend, in large part, on a state's economic prowess. *See GDP by State*, BUREAU ECON. ANALYSIS, https://www.bea.gov/data/gdp/gdp-state [https://perma.cc/4MYR-RS4E] (last visited Apr. 3, 2024).

338. *See* Rhodes & Robertson, *supra* note 47, at 412.

339. *See supra* Part II.A.

340. Daimler AG v. Bauman, 571 U.S. 117, 156 (2014) (Sotomayor, J., concurring) (noting that general jurisdiction should be more common now than in the era of *International Shoe* because of changes to the global economy). Justice Sotomayor discussed comparable concerns when dissenting in a case that limited the scope of specific jurisdiction. *See* Bristol-Myers Squibb Co. v. Superior Ct., 137 S. Ct. 1773, 1789 (2017) (Sotomayor, J., dissenting).

341. *Daimler*, 571 U.S. at 158–59.

corporate defendants, even if those corporations engaged in significant in-state activity.[342] This is a potentially troubling development for states seeking to maximize their jurisdictional reach.

Registration-based general jurisdiction offers a ready-made solution to Justice Sotomayor's concern.[343] Consider, for example, a company that operates extensively in Texas but is neither incorporated nor maintains a principal place of business there. Likely, *Daimler* would prevent Texas courts from exercising general jurisdiction over the company for unrelated claims. That means, under the contacts model, that in-state residents injured by the company outside of Texas probably could not sue in their home state.[344] But, were the state legislature to adopt a statute giving its courts general jurisdiction over registered corporations, Texas would effectively cure this problem.

For maximalist states like Texas and California, it may make sense to resolve this jurisdictional gap in this manner because these states enjoy greater corporate security by virtue of their economic strength.[345] Plainly, if a state of Texas's or California's stature adopts registration-based general jurisdiction, it may not affect a company's calculus significantly when deciding to register to do business there. After all, declining to register in these states could mean losing out on significant business opportunities.[346]

For industries intimately tied to a state, a state's leverage becomes even greater. For example, oil and gas companies that need to operate in Texas because of its resources cannot afford to withdraw from the state simply because of increased litigation exposure. Similarly, many media and entertainment companies would be hesitant to deregister from California, regardless of a new jurisdictional model, because of the state's power over

342. *Id.* at 157.

343. *See* Otsuka Pharm. Co. v. Mylan Inc., 106 F. Supp. 3d 456, 470 (D.N.J. 2015) (finding jurisdiction appropriate because the corporate defendants had registered to do business in the state, appointed an agent for service of process, and engaged in substantial in-state business activity).

344. A related issue would arise if, for example, this company does not engage in significant activity in Texas's neighboring states. This would implicate the, say, Oklahoma resident who buys a company product in Texas but both uses and gets injured by that product in their home state. Oklahoma would not have general jurisdiction even under the old "doing business" standard. *See* Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 418–19 (1984). More notably, Oklahoma also might not have specific jurisdiction because the sale and the injury were not adequately "related." *See* Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct., 141 S. Ct. 1017, 1028–29 (2021). Thus, like the Texas resident injured out of state, our hypothetical Oklahoman would have to litigate their claim outside of their home state. *See id.* at 1028. For more analysis on the Supreme Court's recent specific jurisdiction turn, see generally Anthony Petrosino, Note, *Rationalizing Relatedness: Understanding Personal Jurisdiction's Relatedness Prong in the Wake of* Bristol-Myers Squibb *and* Ford Motor Co., 91 FORDHAM L. REV. 1563 (2023).

345. *See GDP by State*, *supra* note 337. In 2022, California accounted for over 14 percent of the United States's gross domestic product from all industries, whereas Texas accounted for over 9 percent of it. *Id.*

346. As previously noted, the threshold for business activity requiring registration and the penalties resulting from impermissible unregistered activity vary by state. *See supra* Part I.D.

their industry. Viewed in this light, Texas and California can enjoy jurisdictional carte blanche over corporations that truly depend on them.

Still, even if they can get away with it, economic powers might be hesitant to poke the corporate bear. For one, these states may want to keep positive relations with corporations to protect future business interests. To assuage these concerns, they can create a more tempered version of jurisdiction-by-registration. This includes limiting the general jurisdictional reach of a business registration statute to certain cases.[347] States could, for example, restrict the statute's application to state residents or cases in which state law governs the claim.[348] As some courts have done, states could even require claims predicated on jurisdiction-by-registration to arise from an injury suffered in the state.[349] Specific jurisdiction, however, likely already covers most (if not all) of these sorts of claims.[350] More precisely, a state could target certain industries by crafting a business registration statute that has varying effects based on the type of registered corporation in question. Perhaps states have a particular interest in haling in insurance companies or larger-sized corporations.[351] Regardless of the construct, each of these permutations demonstrates how maximalist states can leverage their financial strength to reclaim greater jurisdictional control.

Additionally, a more nefarious advantage of registration-based jurisdiction is its potential for states to obtain greater pecuniary gain and reputational standing. First, states can use their business registration statutes to profit from more corporate defendants appearing in their courtrooms. This may come in the form of court filing fees as well as through the economic spillover of taxes, collateral business, and other fees.[352] Second, with greater jurisdictional reach, states can help shape policy.[353] This, in turn, may even give state courts a particular reputation in certain subjects, thereby encouraging further litigation.[354] Again, though, how far a state leans into

347. *See* Rhodes & Robertson, *supra* note 47, at 412–13 (suggesting a model jurisdiction-by-registration statute).

348. *See id.* at 412.

349. *See* Brown v. Lockheed Martin Corp., 814 F.3d 619, 636 (2d Cir. 2016) (surmising that the state's registration provisions may reasonably confer consent to *specific* jurisdiction).

350. This is why plaintiffs often assert registration-based jurisdiction in the general jurisdiction context. *See, e.g.*, Grice v. VIM Holdings Grp., LLC, 280 F. Supp. 3d 258, 277 (D. Mass. 2017) (noting that "registering to do business is usually relevant to the general jurisdiction analysis"); *see also* Monestier, *supra* note 18, at 1377; Rhodes & Robertson, *supra* note 109, at 259–60.

351. *See* Brilmayer, *supra* note 10, at 106 (noting how two Supreme Court opinions dealing with personal jurisdiction issues considered the states' special interests in regulating the insurance industry and trusts, respectively).

352. *See* Zambrano, *supra* note 326, at 1844–45.

353. *See id.* at 1845 ("Vibrant state institutions enhance a judge's or elected official's national standing."); *see also* Brief for Va., Alaska, Ark., Idaho, Ind., Mont., N.H. & S.C. as Amici Curiae Supporting Respondents, *supra* note 330, at 24.

354. *See* Zambrano, *supra* note 326, at 1844–45, 1849. The author discusses scholarship that has argued that the U.S. District Court for the Eastern District of Texas encouraged patent litigation, in part, because of the economic benefits it brought to the struggling local bar. *See id.* at 1849.

this type of power, if at all, depends on how it balances the corporate interests at stake.

B. Retaining a "Business-Friendly" Culture

Just as Justice Sotomayor highlighted the unfair advantage that *Daimler* gave corporations, she nevertheless predicted that many states would be reticent to pass laws comparable to Pennsylvania's.[355] To do so, she continued, would only hamper already-crowded courts further.[356] Perhaps more importantly, it might also deter business activity.

Many—if not most—maximalist states cannot afford to follow Pennsylvania's lead. Although each state, at least to some extent, depends on a foreign corporation's goods and services, a state's ability to bring in that business activity depends in large part on the corporate incentive packages that they offer.[357] To that end, maximalist states like Indiana and Nebraska do not have the same jurisdictional luxury that states like California, Illinois, and Texas have.[358] This means that the corporate incentives in Indiana and Nebraska are more likely to outweigh these states' potential preference for jurisdiction-by-registration. For these states, the costs of losing foreign corporations to the market are more distinct.[359]

A related concern that maximalist states may ponder is the issue of fairness. Specifically, they may not want to have jurisdiction over largely inactive corporate defendants that merely register to do business in their state because of the unfair burden it would impose on those corporations.[360] The same may even be true of corporations that conduct modest business activity.[361] These are likely not the types of corporate players that are central to states crafting their respective jurisdictional approaches. Compared to consent, the contacts-based analysis better accounts for these differences by

355. Transcript of Oral Argument, *supra* note 36, at 88.

356. *Id.*

357. *See* Cooper Tire & Rubber Co. v. McCall, 863 S.E.2d 81, 92 (Ga. 2021) (Bethel, J., concurring) (recognizing that "[b]ecause [general jurisdiction-by-registration] creates a disincentive for foreign corporations to register in Georgia . . . [it is] contrary to the often-expressed desire to make Georgia a 'business-friendly' state"), *cert. denied*, 143 S. Ct. 2689 (2023).

358. *See GDP by State*, *supra* note 337. In 2022, Indiana and Nebraska accounted for just over 1.8 percent and 0.6 percent of the United States's gross domestic product, respectively. *Id.* This pales in comparison to California (about 14 percent), Illinois (about 4 percent), and Texas (about 9 percent), which, by some estimates, are three of the five largest contributors to the United States's economy. *Id.*

359. *Cf.* Genuine Parts Co. v. Cepec, 137 A.3d 123, 142 (Del. 2016) (hinting that registration-based general jurisdiction is nonsensical in a state like Delaware, which is home to fewer than one million citizens).

360. Recall that the defendant in *Mallory*, Norfolk Southern, had extensive operations in Pennsylvania, the state with a general jurisdiction-by-registration regime. *See supra* Part I.D.

361. State limitations on the requirement for registration speak to this notion. For example, Georgia says the following activities do *not* constitute "transacting business" and therefore do not require registration: holding board or shareholder meetings, maintaining bank or share accounts, soliciting or procuring orders, and conducting isolated transactions, among other things. GA. CODE ANN. § 14-2-1501(b) (2023). The statute also notes that the list it provides is not exhaustive. *Id.*

applying a more flexible standard. For example, even in the specific jurisdiction context, a company's business registration filing might not satisfy the "minimum contacts" or "fairness" standards developed by *International Shoe* and its progeny.[362] Perhaps this buffer helps explain why so many states have accepted contacts-focused long-arm statutes that extend as far as due process allows. Consent, by contrast, promises no similar protection.

The next way jurisdiction-by-registration can threaten business interests is by undermining a state's sovereign authority. If New Jersey, for example, definitively accepts registration-based general jurisdiction, it will greatly expand the adjudicative scope of its courts. At least as an initial matter, this means that New Jersey would be able to take certain disputes away from other states that maintain an interest—possibly even a stronger interest—in handling a given dispute.[363] This is precisely what Pennsylvania accomplished in *Mallory*, effectively stripping away the strong adjudicatory interests of Ohio and Virginia, the states where the plaintiff's injury allegedly occurred.[364] More often, neighboring states will be the ones to bear the brunt of these laws. A state's geographical proximity all but ensures that plaintiffs will bring claims for out-of-state injuries in a forum closer to home.[365]

Along these lines, seven states cautioned the Supreme Court against permitting expansive jurisdictional regimes in their *Mallory* amicus brief: "Unrestrained general jurisdiction also allows some States—particularly large ones—to impose their legislative will on others, effectively legislating nationally by applying their own laws to the dispute, or misapplying the law of their sister States."[366] In particular, the states pointed to the policy differences in punitive damages, statutes of limitations, and juries between the states.[367] By exacting registration-based general jurisdiction, states could superimpose their own positions on matters that each state should more properly decide independently.[368] For this reason, the states wanted to limit

362. *See* Grice v. VIM Holdings Grp., LLC, 280 F. Supp. 3d 258, 277 (D. Mass. 2017).

363. *See* Brief for Va., Alaska, Ark., Idaho, Ind., Mont., N.H. & S.C. as Amici Curiae Supporting Respondents, *supra* note 330, at 23–24; *see also* Bristol-Myers Squibb Co. v. Superior Ct., 137 S. Ct. 1773, 1780 (2017) ("The sovereignty of each State . . . implie[s] a limitation on the sovereignty of all its sister States." (alterations in original) (quoting World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 293 (1980))). A court's ability to shift litigation to a different forum—by applying the doctrine of forum non conveniens or a venue statute, for example—is beyond the scope of this Note. *See supra* note 169 and accompanying text.

364. *See* Mallory v. Norfolk S. Ry. Co., 143 S. Ct. 2028, 2058 n.1 (2023) (Barrett, J., dissenting) (calling *Mallory* a "textbook example" of state overreach (quoting Mallory v. Norfolk S. Ry. Co., 255 A.3d 542, 567 (Pa. 2021)).

365. Ms. Robinson's suit, mentioned in the introduction to this Note, provides one such example. *See* Notice for Removal, *supra* note 1, at 1–2.

366. *See* Brief for Va., Alaska, Ark., Idaho, Ind., Mont., N.H. & S.C. as Amici Curiae Supporting Respondents, *supra* note 330, at 24.

367. *See id.* at 25–30. To return to this Note's theme, a state might also want to apply a more heightened scrutiny toward corporate defendants.

368. *See id.* at 25.

the effect of business registration laws to, at most, the exercise of specific jurisdiction.[369]

Perhaps a more obvious way a state can respond to this problem is by also adopting jurisdiction-by-registration.[370] The result would be a jurisdictional arms race.[371] After all, states choosing to stand firm in an era in which registration-based jurisdiction has returned to dominance would only risk losing an increasing number of corporate defendants to other states.[372] That would be a particularly hard pill for maximalist states to swallow.

At the same time, states with otherwise maximalist jurisdictional regimes may advertise a rejection of jurisdiction-by-registration to reflect a pro-business culture. Under this analysis, a state might recognize the right to adopt registration-based general jurisdiction only to take advantage of another state's jurisdictional overreach. In other words, by refusing to attach jurisdictional effect from business registration, a state creates a more attractive market for foreign corporations.[373] Simple market economics may dictate which approach is more profitable.

C. Crafting Predictability

Buried beneath the general jurisdiction-by-registration debate lies an opportunity. By focusing on consent rather than contacts, states can prescribe more exact parameters around which corporate defendants belong in their courtrooms. In signing off on Pennsylvania's registration-based jurisdictional scheme, then, *Mallory* implicitly encourages states to circumvent the Court's confusing personal jurisdiction jurisprudence on their own terms.[374]

To start, jurisdiction-by-registration helps obviate the need for courts to resolve the more complex contacts analysis, which often turns on notions of fairness.[375] Regardless of its value, this broad question that contacts-based jurisdiction poses—along with the jurisdictional discovery it entails—costs courts time and resources.[376] The consent model, by contrast, avoids this problem.

Such efficiency has become even more valuable in an increasingly complex global economy.[377] In the *International Shoe* era, contacts-driven long-arm jurisdiction was easier to apply because the flow of commerce

369. *See id.* at 15.

370. This speaks to the "slippery slope" issue. *See supra* Part II.E.

371. *See* Transcript of Oral Argument, *supra* note 36, at 47.

372. *See* Genuine Parts Co. v. Cepec, 137 A.3d 123, 142–43 (Del. 2016) ("Such an exercise of overreaching . . . will also encourage other states to do the same.").

373. *See* Chase, *supra* note 320, at 196.

374. *See* Borchers, *supra* note 268, at 17 (noting that consent-based jurisdiction could be a "happy development that promises fewer irrational denials of meaningful forums to plaintiffs").

375. *See supra* Part I.A.

376. *See* Rhodes & Robertson, *supra* note 47, at 428.

377. *See* Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct., 141 S. Ct. 1017, 1034 (2021) (Gorsuch, J., concurring).

could more easily be traced between producer and consumer.[378] The contact between these two parties was often direct.[379] Now, by contrast, many companies deal through a growing chain of intermediaries, often across state and even national borders.[380] Sometimes the task of identifying all the players in a given transaction is a chore in itself.[381]

The advent of the internet makes this problem especially pronounced.[382] Consider, for example, the manufacturer who has no brick-and-mortar presence but that has achieved some level of success by exclusively selling its products on Amazon. Further, say that the manufacturer does not necessarily target any one state; instead, it merely wants people to consume its product, wherever that may be. To be sure, courts have tried nobly to map the contacts analysis onto these sorts of issues, but it has been a trying endeavor.[383] Perhaps more importantly, it is also an inefficient one. Consent, created through registration laws, relieves some portion of that problem.

Still, states incentivized to adopt jurisdiction-by-registration, such as for the reasons mentioned above, should be careful to explicitly mention the jurisdictional effects of registering to do business. For now, many state corporation codes only stipulate that foreign corporations must register with the state and appoint a service agent, leaving courts to ponder the jurisdictional consequences, if any, for themselves.[384] New Jersey provides a representative example: "No foreign corporation shall have the right to transact business in this State until it shall have procured a certificate of authority so to do from the Secretary of State."[385] Vague statutes like these largely account for the uptick in the registration-based general jurisdiction case law over the last decade.[386]

In general, maximalist states seeking to adopt jurisdiction-by-registration should proceed with some degree of caution. By limiting the registration's effects to so-called "foreign-squared" claims—actions involving *in-state* plaintiffs, foreign defendants, and foreign causes of action—states can more fairly justify asserting jurisdiction.[387] After all, legislators have every incentive to provide their citizens with a convenient forum to seek redress.[388] This stands in contrast to Pennsylvania's "foreign-cubed" registration law, which permits actions brought by *foreign* plaintiffs against foreign

---

378. *See id.*
379. *See id.*
380. *See id.* at 1032 (Alito, J., concurring) (questioning the Court's state of personal jurisdiction jurisprudence considering how business is now conducted).
381. *See* Asahi Metal Indus. Co. v. Super. Ct., 480 U.S. 102, 106–07 (1987).
382. *See* Rhodes & Robertson, *supra* note 109, at 253–55.
383. *See id.*
384. Pennsylvania, of course, is the outlier in this regard. *See supra* note 150 and accompanying text.
385. N.J. STAT. ANN. § 14A:13-3 (West 2023). Other statutory provisions may also play into the jurisdiction-by-registration analysis. *See supra* Part II.C.
386. *See supra* Part II.B.
387. *See* Transcript of Oral Argument, *supra* note 36, at 15–16; *supra* Part III.A.
388. *See supra* Part II.A.

defendants on foreign causes of action.[389] Though it might inhibit a state's push for jurisdictional maximalism,[390] limiting a registration law's application to foreign-squared actions at least demonstrates a showing of good faith to other states by contributing to an even adjudicatory playing field.[391]

More importantly, registration laws conferring jurisdiction must squarely fit within constitutional parameters. Although *Mallory* foreclosed the due process problem, expansive use of jurisdiction-by-registration is still prone to attack.[392] Most notably, the dormant commerce clause is a significant pressure point on the viability of registration-based general jurisdiction, as Justice Alito highlighted in his *Mallory* concurring opinion.[393] Seeking to foster a more cohesive national economy, this clause "prohibits state laws that unduly restrict interstate commerce."[394] Accordingly, maximalist states should bear this in mind when deciding how to manipulate corporate registration statutes. Again, it may be best to limit actions that are dependent on registration-based jurisdiction to foreign-squared claims, especially if the registered corporation in question conducts little to no in-state business activity.[395]

A second potential constitutional problem for jurisdiction-by-registration is the unconstitutional conditions doctrine.[396] This doctrine prohibits states from requiring the exchange of a constitutional right for a largely unrelated discretionary benefit.[397] In effect, this works to restrict a state's ability to leverage their superior bargaining power to coercively extract consent.[398] Along these lines, opponents may claim that certain forms of jurisdiction-by-registration unconstitutionally inhibit a corporation's ability to conduct out-of-state commerce. To combat this claim, states must give forward notice of its terms prior to registration.[399] They also must make clear that both parties receive some benefit from the exchange.[400]

Related to this, states must delineate what conduct warrants registration. To return to the days before *Goodyear* and *Daimler*, how much "continuous

389. *See* Transcript of Oral Argument, *supra* note 36, at 15–16.

390. See Brilmayer, *supra* note 10, at 95 ("The State's incentive is always to expand jurisdiction to the detriment of out-of-state enterprises and the out-of-state consumers to whom the costs are passed.").

391. *See supra* Part III.B.

392. *See supra* Part I.D.

393. Mallory v. Norfolk S. Ry. Co., 143 S. Ct. 2028, 2051 (2023) (Alito, J., concurring in part).

394. *Id.* (quoting Tenn. Wine & Spirits Retailers Ass'n v. Thomas, 139 S. Ct. 2449, 2459 (2019)).

395. *See id.* at 141–43. Perhaps this is why the Court's plurality opinion spent so much time detailing Norfolk Southern's Pennsylvania contacts.

396. *See* Transcript of Oral Argument, *supra* note 36, at 25 ("[I]t seems to me you are in unconstitutional conditions land because here's the state saying . . . we're going to demand that you give up this [due process] right to have access to our markets.").

397. *See id.*

398. *See id.* at 97.

399. *See* Rhodes & Robertson, *supra* note 47, at 436.

400. *See id.*

and systematic" business activity is required to trigger a corporation's requirement to register?[401] Though many states have created their own lists,[402] this question takes on additional importance when there are jurisdictional consequences at stake. To that end, states might also consider more significant penalties for registration failure, such as fines proportionate to a corporation's business activity or other legal remedies.[403] The failure to do so may incentivize a wave of corporate deregistration based on a fear of exposure to more litigation. This would give rise to a black market for corporate activities.

Finally, even maximalist states inclined to reject jurisdiction-by-registration should do so explicitly. When overturning registration-based general jurisdiction, the Delaware Supreme Court encouraged its state legislature to do just that.[404] States that do so would join a group of eleven states, plus Washington, D.C., that have already enacted a law for this purpose.[405] At a minimum, this will provide some clarity to courts weighing old precedent against modern policy considerations.

CONCLUSION

Though many states have adopted long-arm statutes coextensive with due process, they have also largely rejected registration-based general jurisdiction.[406] On its face, this appears to contradict state tendencies to exert maximalist jurisdiction. Importantly, however, this issue also arose, at least in part, because states were unsure whether jurisdiction-by-registration remained a viable jurisdictional path.[407] With its decision in *Mallory*, the Supreme Court has answered a significant part of that question, holding that registration-based general jurisdiction still survives the Due Process Clause's demands.[408]

In *Mallory*'s wake, maximalist states must consider whether to assume some form of jurisdiction-by-registration. In large part, whether they do so turns on the corporate incentives at stake. This includes the size of the state's economy and other pecuniary concerns. At a minimum, though, states would be wise to refine their registration statutes to avoid other constitutional problems, support equal state sovereignty, and provide clarification to the courts.

401. *See* Rhodes & Robertson, *supra* note 109, at 214.
402. *See* Monestier, *supra* note 18, at 1365–66; Chase, *supra* note 320, at 172–73.
403. New York, for example, authorizes its attorney general to "bring an action to restrain [unregistered] foreign corporation[s]." *See* Chase, *supra* note 320, at 169.
404. *See* Genuine Parts Co. v. Cepec, 137 A.3d 123, 144 n.114 (Del. 2016).
405. *See supra* note 258 and accompanying text.
406. *See supra* Part II.C.
407. *See* Daimler AG v. Bauman, 571 U.S. 117, 139 (2014).
408. Mallory v. Norfolk S. Ry. Co., 143 S. Ct. 2028, 2032 (2023).