No. S20G1368

IN THE
Supreme Court of Georgia

COOPER TIRE & RUBBER COMPANY,

Appellant,

v.

TYRANCE MCCALL,

Appellee.

Court of Appeals of Georgia, No. A20A0933
State Court of Gwinnett County, No. 18C2598

BRIEF OF AMICI CURIAE GEORGIA TRIAL LAWYERS ASSOCIATION AND AMERICAN ASSOCIATION FOR JUSTICE

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March 25, 2021

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I. IDENTITY AND INTEREST OF AMICI CURIAE

The Georgia Trial Lawyers Association ("GTLA") is a voluntary organization of approximately 2000 trial lawyers throughout Georgia whose practices primarily focus on representing individuals injured by the wrongdoing of others. GTLA's mission is to protect the constitutional promise of justice for all by guaranteeing the right to trial by jury, preserving an independent judiciary, and providing access to the courts for all Georgians.

The American Association for Justice ("AAJ") is a national, voluntary bar association established in 1946 to strengthen the civil justice system, preserve the right to trial by jury, and protect access to the courts for those wrongfully injured. With members in the United States, Canada, and abroad, AAJ is the world's largest plaintiffs trial bar. AAJ's members primarily represent plaintiffs in personal injury actions, employment rights cases, consumer cases, and other civil actions, including in Georgia. Throughout its 75-year history, AAJ has served as a leading advocate for the right of all Americans to seek legal recourse for wrongful conduct.

II. INTRODUCTION & SUMMARY

GTLA and AAJ file this brief in support of Tyrance McCall. GTLA and AAJ respectfully submit that this Court should affirm the decision of the Court of Appeals. The Court of Appeals rightfully reversed the trial court's dismissal of Cooper Tire on personal jurisdiction grounds because longstanding Georgia law

provides that foreign corporations that register to transact business in this state are Georgia residents for jurisdictional purposes. *Allstate Ins. Co. v. Klein*, 262 Ga. 599, 601 & n.3 (1992). As the record shows, Cooper Tire, a foreign corporation, registered to transact business in this state a long time ago. So it is subject to personal jurisdiction in Georgia's courts under *Klein* and other longstanding principles of Georgia law.

The primary issue before this Court and addressed in this brief is whether this Court should overrule *Klein*. GTLA and AAJ encourage the Court to reaffirm *Klein*. *First*, this Court correctly decided *Klein* based on longstanding Georgia law. *Second*, in the twenty-nine years since, no decision of this Court or the U.S. Supreme Court casts any doubt on *Klein*'s correctness. *Klein*'s holding is as consistent with the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution today as it was in 1992.

None of the U.S. Supreme Court's recent personal jurisdiction decisions have considered, much less decided, whether the Fourteenth Amendment's Due Process Clause deprives states like Georgia of the authority to enter *in personam* judgments against foreign corporations that voluntarily register to transact business in the state. Instead, the U.S. Supreme Court has held for over 100 years that a state court's exercise of general personal jurisdiction based on consent through registration does not offend due process.

On top of being unnecessary, overruling *Klein* would prejudice plaintiffs whose claims arise out of complex fact patterns involving multiple defendants with different "home" states.

This case illustrates the point. Mr. McCall, a Florida resident, was injured in a wreck in Florida when a defective Cooper tire suffered catastrophic failure. He asserted claims against the Georgia resident driver who caused the crash, the Georgia corporation that sold and serviced the subject Cooper tire and vehicle, and Cooper Tire, the Delaware/Ohio corporation that manufactured the subject tire and registered to do business in Georgia. *McCall v. Cooper Tire*, 355 Ga. App. 273, 273-74 (2020). Georgia has a connection with this case and an interest in resolving the issues raised. *Contra* Br. of Chamber of Com. at 27 ("None of the parties is a resident of Georgia, and none of the alleged misconduct occurred in Georgia.").

Georgia was the only forum where Mr. McCall could bring an action in which all his claims could be heard together, at the same time. There was no acceptable alternative. Bringing one action in Georgia against the Georgia defendants and another action in a state where Cooper Tire agrees that it can be "found" (presumably either Ohio or Delaware) would have created the empty chair defense in *both* actions, where the present defendants blame whatever defendant is

not part of the action.[1] That defeats justice. It is also a waste of judicial resources, and it can lead to inconsistent results. There's no reason to force Mr. McCall to file two lawsuits, with the one against Cooper far from the state where the defective Cooper tire was sold. Neither the U.S. Constitution nor Georgia law requires a plaintiff to do such a thing.

By registering to transact business in Georgia, Cooper Tire purposefully availed itself of all the rights and privileges of Georgia law. Cooper Tire earns revenue in Georgia, has a large tire facility in Albany, Georgia from which it distributes 2,500,000 tires per year,[2] and employs many Georgia residents. Cooper Tire also enjoys the right of access to Georgia's courts. It is not unfair that in exchange for receiving the same rights as a Georgia corporation under Georgia law, Cooper Tire is subject to general personal jurisdiction here—just like a Georgia corporation. Nor is it any surprise to Cooper Tire. This had been the law in Georgia long before Cooper Tire first registered to do business here. Cooper Tire deliberately consented to general personal jurisdiction in Georgia based on known-to-Cooper Georgia law. Cooper Tire has presented no compelling argument that this Court should deviate from that longstanding law.

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[1] There would be no basis for jurisdiction over the Georgia defendants in either Ohio or Delaware.

[2] *See* Br. of Appellant Tyrance McCall at 5-6 (Ga. Ct. App. Jan. 21, 2020).

Over 115 years ago, this Court held that the expansive benefits foreign corporations enjoy under Georgia law empower Georgia courts to exercise personal jurisdiction over foreign corporations:

> The state of Georgia either expressly grants to these foreign corporations the right to do business within its limits, or tacitly permits them to transact business here. They are allowed to open offices in this state, and here deal with our citizens and others who may be temporarily within its limits. The state protects them in the property which they hold. The courts of Georgia are open to them for the enforcement of any claim of any character which they may have against her citizens or citizens of other states passing through this state, subject only to the qualification above referred to. Can it be said that it is a hard rule, or a violation of any sound principle, that they should be put upon the same footing as to causes of action against them as our own corporations are placed upon by the law of the land?

Reeves v. S. Ry. Co., 121 Ga. 561, 566 (1905).

There is no reason to abandon those sound principles. The Court of Appeals decision should be affirmed.

III. ARGUMENT AND CITATION OF AUTHORITY

A. U.S. Supreme Court precedent has long held that general jurisdiction could be based on consent through registration.

Georgia law treats registered foreign corporations as "residents" for personal jurisdiction purposes. *Klein*, 262 Ga. at 601. That conclusion is "consistent with the statutory effect of a certificate of authority" in that a registered foreign corporation "has the same but no greater rights" and "has the same but no greater privileges" and is generally "subject to the same duties, restrictions, penalties, and

liabilities now or later imposed" as a similar Georgia corporation. *Id*. at 601 n.2 (quoting O.C.G.A. § 14-2-1505(b)).

This Court's decision in *Klein* and interpretation of the Georgia statutes themselves adhere to longstanding U.S. Supreme Court precedent holding that by registering to do business in a state and appointing an agent for service of process, a foreign corporation has consented to general personal jurisdiction in that state's courts. Consent to personal jurisdiction has long meant waiver of any argument that defending a suit in that forum offends federal due process.

"The foundation of jurisdiction is physical power." *McDonald v. Mabee*, 243 U.S. 90, 91 (1917). Courts acquire jurisdiction over defendants by proper service of process. *St. Clair v. Cox*, 106 U.S. 350, 353 (1882). Corporations, as first conceived, were "artificial persons" that existed only within the territorial borders of the sovereign that created them; corporations could not "migrate to another sovereignty." *Bank of Augusta v. Earle*, 38 U.S. (13 Pet.) 519, 588 (1839). Because corporations act through their agents, service at common law was only possible on their principal corporate officers in their state of incorporation. *City Fire Ins. Co. of Hartford v. Carrugi*, 41 Ga. 660, 670 (1871). This was because the functions and authority of corporate officers were thought to cease at the territorial border of the state of incorporation. *E.g.*, *McQueen v. Middletown Mfg. Co.*, 16 Johns. 5, 7 (N.Y. Sup. Ct. 1819). Corporations were therefore subject to personal

jurisdiction only in their state of incorporation because foreign corporations could not be compelled to appear in another state's courts. *See St. Clair*, 106 U.S. at 354.

During the nineteenth century, corporations increasingly began transacting business beyond their state of incorporation. As interstate commerce increased, the unfairness and injustice of exempting corporations from lawsuits outside their states of incorporation became even more obvious. In 1855, the U.S. Supreme Court recognized that corporations could transact business outside their chartering state only with the express or implied consent of the foreign state. *Lafayette Ins. Co. v. French*, 59 U.S. (18 How.) 404, 407 (1855). In exchange for that consent, states could impose conditions on foreign corporations so long as they were not "repugnant to the [C]onstitution or the laws of the United States or inconsistent with those rules of public law which secure the jurisdiction and authority of each state from encroachment by all others, or that principle of natural justice which forbids condemnation without opportunity for defen[s]e." *Id., quoted with approval in St. Clair*, 106 U.S. at 359.

Both before and after the Fourteenth Amendment's ratification in 1868, states required foreign corporations "transacting business" within their borders to appoint an agent for service or found service proper when it was made on a designated public official or an in-state agent of the corporation. *See, e.g., Conn. Mut. Life Ins. Co. v. Spratley*, 172 U.S. 602, 605 & n.1 (1899) (discussing 1877

Tennessee statute); *Lafayette Ins.*, 59 U.S. at 406 (discussing 1851 Ohio statute). As discussed below, Georgia did something similar.

Following passage of the Fourteenth Amendment, the U.S. Supreme Court held that a nonresident is subject to personal jurisdiction within a state only if personally served with process there. *See Pennoyer v. Neff*, 95 U.S. 714, 733 (1877) ("[I]f [the suit] involves . . . a determination of the personal liability of the defendant, he must be brought within its jurisdiction by service of process within the State, **or his voluntary appearance**." (emphasis added)).

The *Pennoyer* Court then observed, in dicta but in keeping with *Lafayette Insurance Co.*, that without violating federal due process, a state may "require a non-resident entering into a partnership or association within its limits . . . to appoint an agent or representative in the State to receive service of process and notice in legal proceedings instituted with respect to such partnership [or] association" and that "judgments rendered upon such service" are "binding upon the non-residents both within and without the State." *Id*. at 735.

Later that same year, the U.S. Supreme Court reaffirmed that if a state legislature "requires a foreign corporation to consent to be 'found' within its territory" for purposes of service of process "as a condition to doing business in the State," the corporation's consent to be "found gives the [state's courts] jurisdiction" if proper service is made. *Ex parte Schollenberger*, 96 U.S. 369, 377

(1887). By the close of the nineteenth century, the law was clear that "[t]he liability of a foreign corporation to be sued in a particular jurisdiction need not be distinctly expressed in the statutes of that jurisdiction, but may be implied from a grant of authority in those statutes to carry on its business there." *Barrow S.S. Co. v. Kane*, 170 U.S. 100, 107-08 (1898).

Following these decisions, states enacted statutes that required foreign corporations transacting business within their borders to register with the state and appoint an agent for service. New York was one such state, and that law's validity faced an early challenge. After suffering injuries working in a Pennsylvania mine, two plaintiffs sued the Pennsylvania mining corporation in New York, where it was registered and had appointed an agent on whom all process could be served—as New York law required. *Smolik v. Phila. & Reading Coal & Iron Co.*, 222 F. 148, 148 (S.D.N.Y. 1915). The Pennsylvania corporation moved to dismiss, arguing that its registration under New York law did not act as the corporation's consent to the state's jurisdiction for all claims wherever arising. *Id.* at 150. Relying on the U.S. Supreme Court's decision in *Lafayette Insurance*, *Judge Learned Hand* rejected the defendant's argument for two reasons. *First*, "there is no constitutional objection to a state's exacting a consent from foreign corporations to any jurisdiction which it may please, as a condition of doing business." *Id.* at 150-51. *Second*, where a state has created a statute that requires a foreign

corporation to register and appoint and agent for service, the extent of the foreign corporation's consent to jurisdiction "must be measured by the proper meaning to be attributed to the words used" in the statute, and "where that meaning calls for wide application, such must be given." *Id.* at 151. Thus, because the New York statute did not limit a foreign corporation's amenability to suit based on where the claim accrued or the residency of the plaintiff, Judge Hand held that the Pennsylvania corporation was subject to personal jurisdiction for a claim arising from its Pennsylvania mine. *Id*. at 151.[3]

The U.S. Supreme Court later ratified Judge Hand's reasoning in *Pennsylvania Fire Ins. Co. of Philadelphia v. Gold Issue Mining & Milling Co.*, 243 U.S. 93 (1917). There, an Arizona corporation sued its insurer Pennsylvania Fire, a Pennsylvania corporation, in Missouri for claims arising out of a casualty loss in Colorado. *Id*. at 94. Pennsylvania Fire had registered to do business in Missouri, but Missouri had no other connection to the case. Pennsylvania Fire had also, as Missouri required, filed with the insurance department superintendent a form granting the superintendent power of attorney and consenting that service on the superintendent would be deemed personal service on the company. *Id*.

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[3] *See also Bagdon v. Phila. & Reading Coal & Iron Co.*, 111 N.E. 1075, 1076 (N.Y. 1916) (Cardozo, J.) (interpreting New York law and holding that foreign corporation registered to do business in New York is subject to personal jurisdiction of New York's courts because registration amounts to consent (citing, among others, *St. Clair*, 106 U.S. 350, and *Smolik*, 222 F. at 148)).

Rejecting Pennsylvania Fire's argument that the company's consent extended only to suits on Missouri contracts, the Missouri Supreme Court held that service on the superintendent gave the Missouri courts personal jurisdiction. *Id.*

Writing for a *unanimous* U.S. Supreme Court, Justice *Oliver Wendell Holmes, Jr.* concluded that the Missouri Supreme Court's "construction of the Missouri statute . . . hardly leaves a constitutional question open." *Id.* He then approved Judge Hand's "brief and pointed statement" in *Smolik* distinguishing personal jurisdiction based on a foreign corporation's doing business in a state without authority from a foreign corporation's registration and voluntary appointment of an agent for service. Justice Holmes held that the Missouri court's assertion of personal jurisdiction over Philadelphia Fire did not violate federal due process because it reflected "the defendant's voluntary act"—registering to do business and appointing the insurance superintendent as an agent for service. *Id*. at 95-96.[4]

The foregoing review of U.S. Supreme Court precedent makes two things clear. *One*, states can require foreign corporations to consent to personal

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[4] *See also Neirbo Co. v. Bethlehem Shipbuilding Corp.*, 308 U.S. 165 (1939) (holding that registration and appointment of registered agent under New York law subjected foreign corporation to general personal jurisdiction in New York's courts as part of its "bargain" with New York in return for privilege of doing business there (citing *Bagdon* and *Pennsylvania Fire*)); *see generally* Restatement (First) of Judgments § 29 & cmts. a, b (1942); Restatement (First) of Conflict of Laws § 91 & cmts. b, c (1934).

jurisdiction for causes of action arising in another state and brought by nonresidents in exchange for allowing those foreign corporations to transact business within their borders. *Two*, after *Pennsylvania Fire*, a state's exercise of personal jurisdiction over registered foreign corporations that had appointed an agent for service of all process does not violate federal due process—even for causes of action arising in another state and brought by nonresidents.

B. Foreign corporations transacting business in this state and having an agent on whom service may be made have long been subject to general personal jurisdiction in Georgia's courts whether or not they register to do business.

This Court's holding in *Klein* also is consistent with and supported by over a hundred years of Georgia law. 262 Ga. at 601. Both the text of the long-arm statute and "the legal context in which this statutory text was enacted" reaffirms *Klein*'s holding. *Coen v. Aptean, Inc.*, 307 Ga. 826, 832 (2020).

At common law, corporations could only be served through their president or principal corporate officer. In 1845, the Georgia General Assembly made it easier to serve corporations by providing that original process could be served on "any officer or agent" of the corporation. Service of Original Process upon Corporations, 1845 Ga. Laws 40.[5]

Then in 1871, this Court held that the general corporate service rules applied

[5] This Act was later codified in the Code of 1860, §§ 3279 to 3288.

to foreign corporations transacting business in Georgia. *Carrugi*, 41 Ga. at 671 (applying Code of 1868, § 3293). This Court explained that Georgia has granted "foreign corporations the right to do business here," allowed "them to open offices here," protected "the property they hold here," and opened its "Courts to them for the enforcement of the claims they have upon [Georgia] citizens." *Id.* Thus, it was not "a violation of principle" for Georgia to put these foreign corporations "upon the same footing, as to actions *against* them, as [Georgia] corporations." *Id.* (emphasis in original). By at least 1871, Georgia law firmly established that foreign corporations were subject to service of process to the same extent as domestic corporations. Georgia corporations are, and have always been, subject to personal jurisdiction in Georgia courts for any cause of action arising anywhere in the world.

In 1905, this Court held that foreign corporations transacting business and subject to service of process in this state may be sued in Georgia for causes of actions arising outside Georgia—just like Georgia corporations. *Reeves v. S. Ry. Co.*, 121 Ga. 561, 564-65 (1905). In *Reeves*, this Court described how in the twenty-four years since *Carrugi*, "many cases" had "expressly or tacitly recognized that a foreign corporation may be sued in this State *in personam* if lawful service can be perfected upon it." *Id.* at 564 (collecting Georgia Supreme Court cases). Those cases did not treat as "material" the facts that (1) the cause of

arose in Georgia and (2) the plaintiff was a Georgia resident. *Id.* at 564. In *Reeves*, this Court also highlighted that those cases matched the "weight of modern authority," which focused on whether the foreign corporation was subject to service in state to determine its amenability to suit. *Id.* at 565. Other than a "foreign cause of action" that is "against the policy of the State," which cannot proceed, the Court held that "foreign corporations may sue in this State on any cause of action, and may likewise be sued, provided they are found and duly served according to law." *Id.*

This Court reaffirmed its holding in *Reeves* in *Southern Railway Co. v. Parker*, 194 Ga. 94 (1942).[6] In *Parker*, this Court held that a foreign corporation transacting business in Georgia and having an agent who had been lawfully served was subject to personal jurisdiction on a cause of action arising in another state and brought by a nonresident of Georgia.[7] Importantly, in both *Reeves* and *Parker* this Court treated a foreign corporation that transacted business in this state and had an

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[6] The Court also decided a similar case the same day and upheld the trial court's exercise of personal jurisdiction over the foreign corporation under *Parker*. *Louisville & Nashville R.R. Co. v. Meredith*, 194 Ga. 106, 107-08 (1942).

[7] In *Parker*, this Court considered the precedential value of *Reeves* given that the plaintiff's residency in that case was unclear. This Court held that it was unnecessary to decide whether *Reeves* "is absolutely binding as a precedent" because the Court had "carefully re-examined the questions considered in that case" and concluded that *Reeves* "correctly states the Georgia law as applied to the present situation." 194 Ga. at 102.

agent who could be served as if they were residents. *Reeves* and *Parker* have never been overruled and remain binding Georgia precedent.

Despite *Reeves* and *Parker*, it was still unclear whether Georgia courts could exercise personal jurisdiction over foreign corporations that transact business in the state but do not have a place of business or agent on whom service can be made.[8] The General Assembly resolved that question in 1946, enacting the state's first general registration statute for foreign corporations and general long-arm statute. Foreign Corporations, 1946 Ga. Laws 687. That Act required all foreign corporations doing business in Georgia to register with the Secretary of State, unless Georgia law already required registration. 1946 Ga. Laws at 687, §§ 1, 6. That Act did not require registered foreign corporations to keep an office and a registered agent for service in the state. But if a foreign corporation doing business in Georgia did not "maintain a place of business and agent" for service in Georgia, then it was "deemed to have consented" to service of all process on the Secretary of State for "any action or proceedings" in Georgia courts "growing out of or based

[8] There was one limited exception: collisions involving nonresident motorists traveling in Georgia. In 1937, the General Assembly passed the Nonresident Motorists Act, 1937 Ga. Laws 732. Under that Act, "any nonresident of this State, whether a person, firm, or corporation" that used Georgia roads were "deemed" to have appointed the "Secretary of the State of Georgia" to accept service of "all summons or other lawful processes" related to any collisions in Georgia and that service had "the same legal force and validity as if served on [the nonresident motorist] personally." *Id.*

upon any business done in this State." 1946 Ga. Laws at 688, § 2.

With the 1946 Act Georgia established a two-tier approach to personal jurisdiction over foreign corporations transacting business in this state. If the foreign corporation had an office and agent who could be served, then it could be sued in Georgia for causes of action arising outside Georgia and brought by nonresidents (i.e., what would later be called "general jurisdiction"). If the foreign corporation did not have a place of business and agent who could be served, then it could be sued in Georgia for causes of action "growing out of or based upon" its Georgia business (i.e., what would later be called "specific jurisdiction"). *Cf. Rossville Crushed Stone, Inc. v. Massey*, 219 Ga. 467, 467-69 (1963) (holding that 1946 Act's service rules did not apply to registered foreign corporations with place of business and agent who could be served in Georgia because such foreign corporations were "amenable" to service "in the same manner as an ordinary domestic corporation").

That was the clear law in Georgia when Cooper Tire decided in 1949 to register with the Secretary of State, establish a place of business, and designate a registered agent for service. Then (as now), under *Reeves* and *Parker*, a Georgia court would have had personal jurisdiction over Cooper Tire on claims identical to Mr. McCall's claims, even though he is a Florida resident and was injured in a wreck in Florida, and that exercise of personal jurisdiction would not have violated

the Fourteenth Amendment. That's because Cooper Tire agreed to be subject to suit through its voluntary acts of transacting business in Georgia, registering with the Secretary of State, and appointing a registered agent. *See Pa. Fire. Ins.*, 243 U.S. at 94-96.

Since 1949 when Cooper Tire voluntarily registered to transact business and appointed a registered agent in Georgia, the General Assembly has revised the law about the registration of and service of process on foreign corporations several times. But each time, the General Assembly has preserved the two-tiered approach to personal jurisdiction over foreign corporations established in 1946.

In 1968, for example, the General Assembly overhauled the Georgia Business Corporation Code, replacing the entirety of Title 22 of the Code of 1933. For the first time, foreign corporations had not only to register with the Secretary of State but also to keep and designate a registered office and registered agent. 1968 Ga. Laws 565, 707, 713, §§ 22-1401, 22-1408.[9] The Business Corporation Code explicitly provided that the registered agent "shall be an agent of such corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served." *Id.* at 715, § 22-1410.

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[9] This Act also defined 11 categories of business activities that did not constitute "transacting business in this State" for purposes of the registration requirement. 1968 Ga. Laws at 707-08. Thus, by registering, a foreign corporation concedes that its contacts with Georgia exceed those that do not count as "transacting business."

In exchange for registering, establishing an office, and designating an agent for service of process, the General Assembly not only expressly guaranteed foreign corporations "the same, but no greater, rights and privileges" as Georgia corporations organized for similar purposes but also expressly declared that foreign corporations were "subject to the same duties, restrictions, penalties and liabilities now or hereafter imposed upon a domestic corporation of like character." 1968 Ga. Laws at 709, § 22-1402.[10]

The General Assembly is presumed to enact law with full knowledge of the then-existing law, including the decisions of the courts. In 1968, it had been the law in Georgia for at least sixty years that a foreign corporation transacting business in Georgia with an office and agent who could be served in this state was subject to personal jurisdiction even if the cause of action arose in another state and was brought by a nonresident. By requiring foreign corporations transacting business in Georgia to register, establish an office, and designate a registered agent for service—who had to accept all process "required or permitted by law"—the General Assembly knew that it had empowered Georgia courts to exercise general personal jurisdiction over registered foreign corporations.

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[10] Foreign corporations transacting business in Georgia that had registered with the Secretary of State under the 1946 Act, such as Cooper Tire, were "entitled to all the rights and privileges" of foreign corporations registering under the 1968 Act, but they were also "subject to all the limitations, restrictions, liabilities, and duties." 1968 Ga. Laws at 721-22, § 22-1419.

In the same 1968 session, the General Assembly also amended the long-arm statute to clarify the "nonresidents" to which that statute applied. Originally passed in 1966, the long-arm statute empowered Georgia courts to "exercise personal jurisdiction over any non-resident, or his executor or administrator" for causes of action arising from certain specified acts, ownership, use, or possession "within this State," including "[t]ransact[ing] any business." Practice and Procedure—Personal Jurisdiction over Persons Doing Business in Georgia, 1966 Ga. Laws 343, § 1. By focusing on causes of actions arising from conduct "within this State," the long-arm statute subjected "any non-resident" to only specific jurisdiction. While the 1966 Act did not define "non-resident" for purposes of the long-arm statute, the General Assembly did so in 1968.

As part of that 1968 Amendment—and particularly relevant to this Court's decision in *Klein*—the General Assembly expressly defined a "nonresident" corporation, for purposes of the long-arm statute, as ***both*** "organized and existing" under the laws of another state ***and*** "not authorized to do or transact business" in Georgia when the "claim or cause of action" under the long-arm statute arises. Practice and Procedure—Personal Jurisdiction over Persons Doing Business in Georgia, 1968 Ga. Laws 1419, 1420, § 2 (now codified at O.C.G.A. § 9-10-90). By using this specific definition, the General Assembly preserved the two-tiered approach to personal jurisdiction over foreign corporations transacting business in

Georgia that had been in place since the 1946 Act: (1) general personal jurisdiction for registered foreign corporations with an office and designated agent who can be served, and (2) specific personal jurisdiction for unregistered foreign corporations. As a result, the long-arm statute simply does not apply to foreign corporations, like Cooper Tire, that have registered to do business in this state.

Twenty years later, the General Assembly again overhauled the Georgia Business Corporation Code. 1988 Ga. Laws 1070. That Act did not substantively change Georgia law regarding the registration of foreign corporations, or the requirements of having a place of business and designating a registered agent in Georgia to accept service of all process. *Id.* at 1224, 1229, 1230-31, §§ 14-2-1501(a), 14-2-1507, 14-2-1510(a). Having left the relevant parts of the 1968 Act in place, the General Assembly did not change the definition of "nonresident" corporation in the long-arm statute. As a result, the General Assembly continued the longstanding, two-tiered system of personal jurisdiction over foreign corporations transacting business in this state.

It is against that background that this Court decided *Klein* in 1992. In *Klein*, this Court merely applied the law of Georgia as it had long existed. Foreign corporations like Cooper Tire have long had notice of the consequences of registering to do business and appointing an agent for service: namely, they are subject to general personal jurisdiction in Georgia's courts. Given such notice,

there can be no fundamental unfairness as a result of subjecting a foreign corporation like Cooper Tire to general personal jurisdiction in a state in which it affirmatively chose to register to do business and appoint an agent for service. That is even truer here since Cooper Tire also sells its products in Georgia, makes money from doing business in Georgia, has built facilities in Georgia, and employs Georgia citizens.

A corporation can choose not to do business in a particular state and instead to confine its business to the states in which it wants to be "found" and subject to suit. But when a corporation chooses to register to do business in this state and appoints an agent for service in this state, that purposeful decision has consequences—it is subject to general personal jurisdiction in Georgia's courts as both this Court and the U.S. Supreme Court have long held.

C. Recent Supreme Court opinions addressing personal jurisdiction and due process have not abrogated consent through registration as a basis for general personal jurisdiction.

This Court's holding in *Klein* that registered foreign corporations stand on the same footing as Georgia corporations in terms of being subject to general personal jurisdiction rested on the twin pillars of Georgia and U.S. Supreme Court precedent. Since *Klein*, this Court has never so much as questioned its holding in that case. There is no reason now for this Court to overrule *Klein*—unless the pillar of U.S. Supreme Court precedent that supported it has collapsed. It has not.

Contrary to the argument made by Cooper Tire, the U.S. Supreme Court has never held that the Fourteenth Amendment's Due Process Clause prohibits states from exercising general personal jurisdiction over foreign corporations that have made the decision to register to transact business and to appoint an agent for service of all process.

Part III.A of this brief traced the U.S. Supreme Court precedent from *Lafayette Insurance* in 1855, which held that states could impose conditions on foreign corporations in exchange for allowing them to transact business, to *Pennsylvania Fire* in 1917, which held that a state's exercise of personal jurisdiction over registered foreign corporations did not offend federal due process even though the claim arose in another state and was brought by a nonresident. *See supra* 5-11. That line of U.S. Supreme Court authority was left untouched by *International Shoe Co. v. Washington*, 326 U.S. 310 (1945).

In *International Shoe*, the U.S. Supreme Court generally departed from *Pennoyer*'s limited rule that physical presence was required for personal jurisdiction in favor of the "minimum contacts" standard. *See id*. at 316. But *International Shoe* did not (and could not) overrule *Pennsylvania Fire* because the facts of those cases are different. *See Cohens v. Virginia*, 19 U.S. 264, 399 (1821) (Marshall, C.J.) ("It is a maxim not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which those

expressions are used."). The defendant in *International Shoe* had "no office," made "no contracts either for sale or purchase," kept "no stock of merchandise," and delivered no "goods in intrastate commerce" in the State of Washington. That defendant was also not a registered foreign corporation with an agent appointed to accept service of process. 326 U.S. at 313. Thus, in *International Shoe*, the U.S. Supreme Court did not abandon the concept of acquiring personal jurisdiction over a foreign corporation through consent. It did not even consider that question.

U.S. Supreme Court decisions since *International Shoe* have reaffirmed the principles underlying the concept that a foreign corporation may consent to personal jurisdiction by registering to do business in a state. In *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, the U.S. Supreme Court held that "[b]ecause the requirement of personal jurisdiction represents first of all an individual right, it can, like other such rights, be waived." 456 U.S. 694, 703 (1982). And in *Burger King Corp. v. Rudzewicz*, the U.S. Supreme Court affirmed that when "a forum seeks to assert specific jurisdiction over an out-of-state defendant **who has not consented to suit there**," federal due process's "'fair warning' requirement is satisfied if the defendant has 'purposefully directed' his activities at residents of the forum" and noted that "because the personal jurisdiction requirement is a waivable right, there are a 'variety of legal arrangements' by which a litigant may give 'express or implied consent to the

personal jurisdiction of the court.'" 471 U.S. 462, 472 & n.14 (1985) (emphasis added) (citing *Ins. Corp. of Ir*.).

Cooper Tire argues that recent U.S. Supreme Court cases mandate that this Court's *Klein* holding be overruled. But no U.S. Supreme Court case Cooper Tire cited addressed—much less overruled—the *Lafayette Insurance–Pennsylvania Fire* line of precedent that holds foreign corporations can consent to general personal jurisdiction by registering and appointing an agent for service. So none of those cases mandate that *Klein* must be overruled or suggest that the exercise of personal jurisdiction over Cooper Tire because of its registration to do business in Georgia violates federal due process. *See generally Acorda Therapeutics Inc. v. Mylan Pharms. Inc.*, 817 F.3d 755, 764-73 (Fed. Cir. 2016) (O'Malley, J., concurring) (reviewing U.S. Supreme Court precedent on consent to personal jurisdiction through registration).

In *Goodyear Dunlop Tires Operations, S.A. v. Brown*, cited by Cooper Tire, the Supreme Court addressed whether North Carolina courts had personal jurisdiction over three of Goodyear USA's foreign subsidiaries (operating in Turkey, France, and Luxembourg) in connection with claims arising out of a bus crash in France. 564 U.S. 915, 918 (2011). The foreign subsidiaries, unlike Goodyear USA, which did "not contest the North Carolina courts' personal jurisdiction over it," were not registered to do business in North Carolina. They

had almost zero connection to the state. They had no office, agents, or bank accounts there. They did not design, manufacture, or advertise their tires there; nor did they solicit business or directly sell or ship any tires there. Even so, between 2004 and 2007 "tens of thousands out of tens of millions" of tires from these foreign subsidiaries made their way into North Carolina via other Goodyear affiliates. *Id.* at 921. Under these facts, the U.S. Supreme Court held that North Carolina courts could not exercise general personal jurisdiction over the foreign subsidiaries. *Id.* at 920. But nowhere in *Goodyear* did the U.S. Supreme Court address the rule that foreign corporations can consent to general personal jurisdiction by registering and appointing an agent for service.[11]

Cooper tire also cited *Daimler AG v. Bauman*. In that decision, the U.S. Supreme Court addressed whether California's courts had general jurisdiction over Daimler, a German company that *had not registered to do business or appointed*

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[11] Between *International Shoe* and *Goodyear*, the U.S. Supreme Court decided two general personal jurisdiction cases. Neither involved claims against registered foreign corporations. In *Goodyear*, Justice Ginsburg described the first decision, *Perkins v. Benguet Consolidated Mining Co*., 342 U.S. 437 (1952), as "[t]he textbook case of general jurisdiction appropriately exercised over a foreign corporation **that has not consented to suit in the forum**." *Goodyear*, 564 at 927-28 (emphasis added). The mining company had not registered or appointed an agent for service of process. *Perkins*, 342 U.S. at 439 n.2. In *Goodyear*, Justice Ginsburg described the second decision, *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408 (1984), as one in which the "[defendant] Colombian corporation had no place of business in Texas **and was not licensed to do business there**." *Goodyear*, 564 U.S. at 928 (emphasis added).

an agent in California,[12] for claims *by Argentinian citizens* arising out of war crimes that *occurred in Argentina* in which Daimler was allegedly complicit. 571 U.S. 117, 120-21 (2014). The Court held that Daimler was not subject to general personal jurisdiction in California. *See id*. at 136-38. Like *Goodyear*, *Daimler* does not address the rule of consent to personal jurisdiction through registration.

Cooper Tire also cited *BNSF Railway Co. v. Tyrrell*. In that case, the U.S. Supreme Court addressed whether Montana courts could exercise general jurisdiction over a railroad company regarding Federal Employers' Liability Act claims made by injured employees just because the railroad had tracks and employees in Montana. 137 S. Ct. 1549 (2017). Ruling that Montana courts did not have general personal jurisdiction over the railroad, the U.S. Supreme Court *explicitly declined to decide* whether the railroad had "consented to personal jurisdiction in Montana." *Id.* at 1559.

Cooper Tire also cited *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco County*. In that case, the U.S. Supreme Court addressed whether California courts could exercise specific (not general) personal jurisdiction over a drug manufacturer for claims of consumers who were not California residents. 137 S. Ct. 1773 (2017). Holding that there was no personal jurisdiction

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[12] *Bauman v. DaimlerChrysler AG*, No. 04-cv-194, 2005 WL 3157472, at *1 (N.D. Cal. Nov. 22, 2005).

on these facts, the U.S. Supreme Court held that "[o]ur settled principles regarding ***specific*** jurisdiction control this case." *Id*. at 1781. Thus, *Bristol-Myers Squibb did not even consider much less decide* anything about general personal jurisdiction or consent to personal jurisdiction through registration.

In sum, none of the cases upon which Cooper Tire attempted to rely addressed, let alone abrogated or abandoned, the *Lafayette Insurance–Pennsylvania Fire* line of authority upholding the rule of consent to personal jurisdiction through registration. Instead, each such case dealt only with the exercise of jurisdiction over a corporation that had *not* consented to suit in the forum state. Thus, no recent U.S. Supreme Court case supports an argument that this Court must overrule its holding in *Klein* or an argument that allowing Georgia courts to exercise general personal jurisdiction over Cooper Tire violates federal due process. The cases cited by Cooper Tire simply have nothing to do with the issue before this Court now.[13]

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[13] Indeed, the Supreme Court's recent cases underscore the constitutionality of consent based on registration. The court has identified a corporation's state of incorporation, along with its principal place of business, as the "paradigm forum for the exercise of general jurisdiction." *Goodyear*, 564 U.S. at 924; *see also Daimler*, 571 U.S. at 137. By incorporating in a state, the corporation consents to that state's substantive law. The same fundamental logic underscores the registration-consent rationale for general personal jurisdiction.

D. Upholding *Klein* ensures that foreign corporations registered to do business in this state will remain accountable in Georgia's courts.

Several important policy considerations support affirming the Court of Appeals and reaffirming this Court's holding in *Klein*.

First, overruling *Klein* would deprive individuals and corporations of the ability to hold foreign corporations accountable and to seek complete justice in Georgia's courts. At the same time, foreign corporations would continue to enjoy unlimited access to Georgia's courts, the protections of its laws, and the benefits of doing business in Georgia as if they were incorporated in this state.

Overruling *Klein* would be especially detrimental to plaintiffs with claims against multiple defendants arising out of the same incident, one or more of whom is a foreign corporation. Plaintiffs like Mr. McCall would be forced to deal with the powerful empty chair defense, where present defendants all heap blame on the absent defendant, compelling the plaintiff to defend the absent defendant. Because a Georgia jury can apportion fault, if Cooper Tire were a nonparty, the Georgia defendants would demand that the jury place most of the fault on Cooper Tire for manufacturing a defective tire. Such a verdict would be unenforceable against Cooper Tire as a nonparty. *See* O.C.G.A. § 51-12-33(f).[14]

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[14] The same aberrant result would ensue were Mr. McCall required to sue only Cooper Tire in either Delaware or Ohio. The risk of such inconsistent results should not be placed on plaintiffs like Mr. McCall. Instead, the ability to pursue

Overruling *Klein* will in fact weaken the ability of *Georgia citizens* to bring suits in this state against foreign corporations that injure them. If Cooper Tire wins, even a Georgia resident injured in Florida by a defective Cooper tire would be barred from suit in this state. Georgia's courts should remain open to Georgia residents to sue foreign corporations that, like Cooper Tire, voluntarily register to do business here, profit from the sale of products to Georgia residents, and benefit from the same protections afforded to Georgia corporations.

Second, foreign corporations registered to do business here have a procedural mechanism available to them in those cases in which the factual nexus with Georgia is not as strong as another forum. Using the *forum non conveniens* statute, a foreign corporation may move to have a case dismissed and refiled in another forum with a closer factual nexus to the case. O.C.G.A. § 9-10-31.1. The *forum non conveniens* statute acts as a check on the concern that plaintiffs will bring actions in Georgia where the foreign corporation is registered but the facts giving rise to the claims share a closer factual nexus with another state. Abolishing longstanding Georgia law by overruling *Klein* is not the answer to the potential problem of a case without a factual nexus with Georgia even though the parties and subject matter are within Georgia's jurisdiction.

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complete justice should be preserved, and foreign corporations that register to do business here should not be given a get-out-of-jail-free card.

Third, the "sky is falling" arguments about *Klein* driving business away from Georgia and hurting Georgia's economy are pure hyperbole and find no basis in fact. *E.g.*, Br. of Chamber of Com. at 21. This Court decided *Klein* twenty-nine years ago; Georgia's economy has not suffered since then. To the contrary, Georgia has been rated the "top state to do business" for the last seven years in a row.[15]

IV. CONCLUSION

For these reasons, GTLA and AAJ respectfully submit that this Court should affirm the Court of Appeals ruling and reaffirm its holding in *Klein*. Georgia public policy and the interests of full justice promote the ability to hold registered foreign corporations accountable in Georgia's courts.

Respectfully submitted, this 25th day of March, 2021.

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[15] Press Release, Brian Kemp, Georgia Named "Top State for Doing Business" for Seventh Consecutive Year (Sept. 2, 2020), https://gov.georgia.gov/press-releases/2020-09-02/georgia-named-top-state-doing-business-7th-consecutive-year. Eighteen Fortune 500 companies have established their worldwide headquarters in Georgia; thirty-two Fortune 1000 companies have established their base of operations in Georgia; and four hundred and fifty Fortune 500 companies have chosen to do business in Georgia. Headquarters, Ga. Dep't of Econ. Dev., https://www.georgia.org/industries/headquarters (last visited Mar. 24, 2021).

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