No. 26-4

IN THE

Supreme Court of the United States

SAMSUNG ELECTRONICS AMERICA, INC.

Petitioner,

v.

JORDAN BREWER

Respondent.

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

BRIEF OF ATLANTIC LEGAL FOUNDATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF THE *AMICUS CURIAE* [1]

Established in 1977, the Atlantic Legal Foundation (ALF) is a national, nonprofit, nonpartisan, public interest law firm. ALF's mission for the past five decades has been to advance the rule of law and civil justice by advocating for individual liberty, free enterprise, property rights, limited and responsible government, sound science in judicial and regulatory proceedings, and effective education, including parental rights and school choice. With the benefit of guidance from the distinguished legal scholars, former government officials, corporate legal officers, private practitioners, business executives, and prominent scientists who serve on its Board of Directors and Advisory Council, ALF pursues its mission by participating as *amicus curiae* in carefully selected appeals before the Supreme Court, federal courts of appeals, and state supreme courts. *See* atlanticlegal.org.

* * *

Fairness, clarity, uniformity, and predictability concerning the circumstances under which an out-of-state corporation can be haled into a state's courts are critical to civil justice. Until recently, the Court's

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[1] Petitioner's and Respondent's counsel were provided timely notice of this brief in accordance with Supreme Court Rule 37.2. No counsel for a party authored this brief in whole or in part, and no party, counsel for a party, or person other than the *amicus curiae* and its counsel made a monetary contribution intended to fund preparation or submission of this brief.

modern personal-jurisdiction jurisprudence largely achieved these objectives. But the 5 to 4 decision in *Mallory v. Norfolk Southern Railway Co.*, 600 U.S. 122 (2023), is a step backwards. It has left unanswered important constitutional questions that have produced significant uncertainty about whether or when an out-of-state corporation can be subjected to a state's general jurisdiction merely by registering to do business in the state.

One of *Mallory*'s unanswered questions is whether consent-by-registration violates the Constitution's dormant Commerce Clause. *See id.* at 127 n.3. The latest iteration of the *Mallory* suit urges the Court to answer that question. *See Norfolk S. Ry. Co. v. Mallory*, cert. petition filed, No. 25-1208 (U.S. filed Apr. 17, 2026); *see also* Br. of Atlantic Legal Foundation as *Amicus Curiae* in Support of Petitioner, *Norfolk S. Ry. Co. v. Mallory*, No. 25-1208 (filed Apr. 23, 2026).

Even if consent-by-registration does not violate the dormant Commerce Clause, *Mallory* leaves unanswered the due-process question presented by the certiorari petition here: whether consent-by-registration requires *explicit* statutory notice, *i.e.*, whether, absent explicit statutory notice, reading consent into a state's general business registration statute, such as Georgia's, denies due process to out-of-state corporations such as Petitioner Samsung Electronics America.

If inferring consent to general jurisdiction merely from the perfunctory act of registering to do business satisfies due process, then at least 37 states will become general-jurisdiction magnets for forum-shopping plaintiffs. *See* Pet. at 18, 28.

ALF is filing this brief to urge the Court to grant certiorari, reaffirm and enforce its well-established due-process principles of general and specific personal jurisdiction, and thereby deter nationwide forum shopping and protect interstate federalism.

SUMMARY OF ARGUMENT

Mallory has destabilized the Court's previously well-refined personal-jurisdiction jurisprudence. The Court's precedents on general and specific personal jurisdiction seem meaningless if a state can exercise personal jurisdiction over an out-of-state corporate defendant in any and all cases merely because it has registered to do business in the state. The Court needs to remedy this situation forthwith by addressing the dormant Commerce Clause question that *Mallory* did not answer, or at least by clarifying, as the Petitioner requests here, whether consent-by-registration requires explicit statutory notice to out-of-state corporations. Unless and until the Court does so, *Mallory* will continue to undermine the civil justice system by incentivizing forum shopping and eroding interstate federalism.

Left undisturbed, *Mallory* will enable every state to transform its corporate registration system into an all-plaintiffs-are-welcome scheme for exercising general

jurisdiction over every registered corporation—regardless of where it is "at home" or where a cause of action arose. This in turn will unleash significant forum-shopping opportunities for the plaintiffs' bar.

The Court repeatedly has expressed concern about, and sought to deter, abusive plaintiff-side forum shopping. But *Mallory*'s holding instigates rather than restrains it. This is a compelling reason why the Court should grant certiorari and decide whether to satisfy due process, state business registration statutes must explicitly notify out-of-state corporations that registering to do business will subject them to the state's general jurisdiction.

Without an out-of-state corporation's actual and knowing consent to a state's general jurisdiction, consent-by-registration also clashes with interstate federalism. The coequal status of each state is a pillar of the Constitution's federalist structure. By asserting general jurisdiction over a corporation that merely registers to do business, a state's courts extend their reach in a way that interferes with the sovereignty of other states—such as the state where a corporation is incorporated or headquartered, or the state where a cause of action arose.

This case is an ideal vehicle for clarifying *Mallory*. Indeed, the conflict between Georgia Supreme Court and Pennsylvania Supreme Court decisions on whether consent-by-registration violates due process was the basis for this Court's grant of certiorari in *Mallory*. *See Mallory*, 600 U.S. at 127; *see also id.* at

173 n.2 (Barrett, J., dissenting) (noting that "a [Georgia] judicial precedent, not a long-arm statute, maintained that registration justified general jurisdiction").

ARGUMENT

Even If Consent-By-Registration Is Constitutional, Due Process Requires Explicit Statutory Notice To Deter Nationwide Forum Shopping and Protect Interstate Federalism

"*Consent*-by-registration" not only is a misnomer, but also a violation of due process absent explicit prior notice to a corporation that it is subjecting itself to a state's general ("all-purpose") jurisdiction merely by registering to do business. The Court in *Mallory* emphasized that the Pennsylvania statute at issue provided explicit notice of the jurisdictional consequences of registering to do business. *See Mallory*, 600 U.S. at 134 ("Pennsylvania law is explicit"); *id.* at 148 (Jackson, J., concurring) ("the jurisdictional consequences of registration were clear"); *id.* at 153 (Alito, J., concurring in part and concurring in the judgment) ("The company . . . had clear notice that Pennsylvania considered its registration as consent to general jurisdiction."); *id.* at 166 (Barrett, J., dissenting) ("The Pennsylvania statute announces that registering to do business in the Commonwealth 'shall constitute a sufficient basis' for general jurisdiction.").

The petition explains that this is not the case in Georgia and most other states. *See* Pet. at 16-22. This

amicus brief focuses on the serious adverse consequences—nationwide forum shopping and erosion of interstate federalism—if registering to do business without explicit statutory notice enables a state's court to exercise general jurisdiction over out-of-state corporations.

A. Absent explicit statutory notice, consent-by-registration undermines the civil justice system by inviting nationwide forum shopping

1. Unless and until this Court installs due-process guardrails around consent-by-registration, *Mallory* will enable any state to transform itself into a haven for forum-shopping plaintiffs, including but not limited to product-liability litigation. Assuming that consent-by-registration does not violate the dormant Commerce Clause, requiring explicit statutory notice that registering to do business subjects an out-of-state corporation to the state's general jurisdiction is essential for preserving due process and deterring nationwide forum shopping.

2. Forum shopping is "[t]he practice of choosing the most favorable jurisdiction or court in which a claim may be heard." Forum Shopping, Black's Law Dictionary (12th ed. 2024). "U.S. forum shopping is broad in scope, widespread in practice, and quintessentially American in design." Scott Dodson, *Civil Procedure: The Culture of Forum Shopping in Civil Litigation*, in *The Judges' Book*, Vol. 9, Art. 5, at 34 (Berkeley Jud. Inst. ed., 2025). "Motive and

opportunity breed forum shopping, which reflects the reality that a plaintiff who must initially choose between available forums is likely to choose one favorable to the plaintiff's interests." *Id.* at 26. Going at least as far back as *International Shoe Co. v. Washington,* 326 U.S. 310 (1945), this Court has emphasized, however, that a plaintiff's choice of forum must be to a court that can exercise personal jurisdiction without depriving a corporate defendant of due process. Where, as here, a plaintiff chooses a court that cannot exercise personal jurisdiction within constitutional limits, *i.e.*, a court that actually is not an available choice, forum shopping is unfair.

State courts that tolerate, if not welcome, unfair forum-shopping defy this Court's modern personal-jurisdiction principles established in cases such as *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 592 U.S. 351 (2021); *Bristol-Myers Squibb Co. v. Super. Ct. of Cal.*, 582 U.S. 255, 262 (2017); *BNSF Ry. Co. v. Tyrrell,* 581 U.S. 402, 405-06 (2017); *Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014); and *Goodyear Dunlop Tires Ops., S.A. v. Brown*, 564 U.S. 915, 919, 924 (2011). These personal-jurisdiction principles "derive from and reflect two sets of values—treating defendants fairly and protecting 'interstate federalism.'" *Ford*, 592 U.S. at 360.

3. Forum shopping not only is unfair, but also abusive, where an out-of-state corporate defendant is confronted with product liability or other types of litigation in a demonstrably plaintiff-friendly court whose assertion of personal jurisdiction is dubious at

best. "As a rule, counsel, judges, and academicians employ the term 'forum shopping' to reproach a litigant who, in their opinion, unfairly exploits jurisdictional or venue rules to affect the outcome of a lawsuit." Friedrich K. Juenger, *Forum Shopping, Domestic and International*, 63 Tul. L. Rev. 553 (1989); *see also* Richard Maloy, *Forum Shopping – What's Wrong With That?*, 24 Quinnipiac L. Rev. 25, 28 (2005) ("[F]orum shopping is the taking of an unfair advantage of a party in litigation.").

Plaintiffs' attorneys forum shop for a variety of reasons, and it is particularly rampant in the product-liability arena. For example, they file suits in courts with—

- plaintiff-friendly judges and juries;
- long statutes of limitations;
- favorable substantive law and receptivity to novel and expansive theories of corporate liability;
- discovery and trial-court procedures slanted toward plaintiffs;
- lax standards, or enforcement of standards, for admission of expert testimony; and
- high damages caps (if any), coupled with a reputation for "nuclear verdicts" or excessive damages awards.

See Dodson, *supra*, at 30 (summarizing reasons why plaintiffs forum shop).

There is no shortage of plaintiff-friendly state courts in the United States. *See, e.g.*, Am. Tort Reform Found., *Judicial Hellholes* 2025–2026, at 87 ("Judicial Hellholes are known for being plaintiff-friendly and thus attract personal injury cases with little or no connection to the jurisdiction. Judges in these jurisdictions often refuse to stop this forum shopping.").

4. Forum shopping implicates a fundamental question: "Should plaintiffs' lawyers be permitted to file cases in states that have no connection to the dispute in order to gain the benefit of a favorable jury pool, a plaintiff-friendly judiciary, or both?" Andrew J. Pincus et al., *Personal Jurisdiction After Mallory*, ILR Briefly (U.S. Chamber of Com. Inst. for Legal Reform, Nov. 16, 2023), at 1.

> That sort of abusive forum shopping reduces respect for the judiciary, creating the appearance that outcomes are not based on the law or facts but instead result from picking a favorable decision maker. It produces overburdening, poor decision making, and increased costs in the courts that become the preferred "magnet jurisdictions," to the detriment of businesses and consumers alike. It also imposes unfair burdens on defendants and violates basic federalism principles.

Id.

In today's ultra-litigious climate, third-party litigation funding, targeted advertising to attract potential claimants and bias the jury pool, and widespread coordination within the plaintiffs' bar, facilitate forum shopping to the detriment of corporate defendants. *See* James E. Pfander & Jackie O'Brien, *Realism, Formalism, and Personal Jurisdiction: Due Process after Mallory and Ford Motor*, 103 Tex. L. Rev. 65, 100 (2024).

5. Plaintiff-side forum shopping not only is unfair to corporate defendants, but also can undermine the impartiality and credibility of a state's judiciary, especially in states such as Georgia where judges are elected. *See* Georgia Judicial Elections, Ballotpedia, https://tinyurl.com/5wkhapsh (last visited June 30, 2026). "[U]nrestricted forum shopping makes it almost impossible for defendants to get a fair trial in some of the magic jurisdictions favored by the plaintiffs' bar, where trial lawyers have established relationships with the judges that are elected." Pincus, *supra*, at 9 (internal quotation marks omitted).

The availability of forum shopping also "can lead to 'forum selling,' the creation of excessively pro-plaintiff law by judges who want to hear more cases." Daniel Klerman, *Rethinking Personal Jurisdiction*, 6 J. Legal Analysis 245, 247 (2014).

"Loose jurisdictional rules that allow plaintiffs to choose among many potential courts give judges an

incentive to be pro-plaintiff in order to attract litigation." *Id.* "Without constitutional constraints on assertions of jurisdiction, some courts are likely to be biased in favor of plaintiffs in order to attract litigation and thus benefit themselves or their communities." Daniel Klerman & Greg Reilly, *Forum Selling*, 89 S. Cal. L. Rev. 241, 243 (2016). This troubling forum-selling corollary to forum shopping "leads to inefficient distortions of substantive law, procedure, and trial management practices." *Id.* at 246.

6. At least since *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938), this Court, in many different contexts, has decried forum shopping. *See, e.g.*,

- *Berk v. Choy*, 607 U.S. 187, 191 (2026) ("A state law is substantive if . . . failing to apply it in federal court would promote forum shopping and the inequitable administration of the law.");

- *Trump v. CASA, Inc.*, 606 U.S. 831, 899-900 (2025) (Sotomayor, J., dissenting) ("[U]niversal injunctions encourage forum shopping, by allowing preferred district judges in a venue picked by one plaintiff to enjoin governmental policies nationwide."); *Labrador v. Poe*, 144 S. Ct. 921, 927 (2024) (mem.) (Gorsuch, J.) ("In universal-injunction practice. . . [j]ust do a little forum shopping for a willing judge and . . . you can win a decree barring the enforcement of a duly enacted law against anyone."); *United States v. Texas*, 599 U.S. 670, 694 (2023) ("Universal injunctions . . .

encourage parties to engage in forum shopping . . . .");

- *Great Lakes Ins. SE v. Raiders Retreat Realty Co., LLC*, 601 U.S. 65, 72 (2024) ("Choice-of-law provisions . . . discourage forum shopping, further cutting the costs of litigation.");

- *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 592 U.S. 351, 370 (2021) (observing that the plaintiffs in *Bristol-Myers Squibb Co. v. Super. Ct. of Cal.*, 582 U.S. 255 (2017) "were engaged in forum-shopping—suing in California because it was thought plaintiff-friendly, even though their cases had no tie to the State");

- *Williams-Yulee v. Florida Bar*, 575 U.S. 433, 454 (2015) (rejecting a state judge recusal rule "that would enable transparent forum shopping");

- *Petrella v. Metro-Goldwyn-Mayer, Inc.*, 572 U.S. 663, 670 (2014) ("The federal limitations prescription governing copyright suits serves . . . to prevent the forum shopping invited by disparate state limitations periods . . . .");

- *Atl. Marine Constr. Co. v. U.S. Dist. Ct.*, 571 U.S. 49, 65 (2013) (federal change-of-venue statute "should not create or multiply opportunities for forum shopping" where parties have agreed to a contractual forum-selection clause) (internal quotation marks omitted);

- *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 415 (2010) ("We must acknowledge the reality that keeping the federal-court door open to class actions that cannot proceed in state court will produce forum shopping.");

- *Southland Corp. v. Keating*, 465 U.S. 1, 15 (1984) ("The interpretation given to the Arbitration Act by the California Supreme Court would therefore encourage and reward forum shopping.");

- *Hanna v. Plumer*, 380 U.S. 460, 468 (1965) ("discouragement of forum-shopping" is one of the *Erie* rule's aims).

See also Note, *Forum Shopping Reconsidered*, 103 Harv. L. Rev. 1677, 1681 (1990) ("The Supreme Court has relied on the 'danger of forum shopping' in reaching many decisions.").

7. "[T]he *Goodyear* trilogy"—*Goodyear*, *Daimler*, and *BNSF*, "reduced forum shopping." Anthony J. Gaughan, *The Unsettled State of Corporate General Personal Jurisdiction*, 103 Neb. L. Rev. 131, 181 (2024). *Mallory* is having exactly the *opposite* effect.

"*Goodyear* and its companion cases placed plaintiffs and defendants on a level playing field. But the *Mallory* decision destroys that equilibrium and creates a new era of instability in corporate general

jurisdiction. . . . *Mallory* thus gives forum shopping special new potency." *Id.* at 136, 137.

"The plaintiffs' bar has seized on *Mallory* to press for a return to the days of abusive forum shopping when, prior to cases like *Daimler*, they could bring a case almost anywhere—even if the state lacked any connection to the parties or the dispute." Pincus, *supra*, at 9 (quoting *Mallory*, 600 U.S. at 154 (Alito, J., concurring in part and concurring in the judgment)).

The Court needs to get to "the end of the story for registration-based jurisdiction" by addressing *Mallory*'s unanswered questions and thereby restore credibility and vitality to its personal- jurisdiction precedents. *Mallory*, 600 U.S. at 154 (Alito, J., concurring in part and concurring in the judgment).

B. Absent explicit statutory notice, consent-by-registration interferes with interstate federalism by encroaching upon other states' sovereign judicial powers

Forum shopping not only is unfair to corporate defendants, but also upsets the balance of "interstate federalism."

This term "refers to the relationship between the states within our federal system, their status as coequal sovereigns, and the limits on state power that derive from that status." A. Benjamin Spencer, *Jurisdiction to Adjudicate: A Revised Analysis*, 73 U. Chi. L. Rev. 616, 624, 637 (2006). "Interstate sovereign immunity is . . . integral to the structure of the Constitution." *Franchise Tax Bd. v. Hyatt*, 587

U.S. 230, 246 (2019). The fifty States are "coequal sovereigns" within the unitary federal system. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980). "'The sovereignty of each State . . . implie[s] a limitation on the sovereignty of all its sister States.'" *Bristol-Myers Squibb*, 582 U.S. at 263 (quoting *World-Wide Volkswagen*, 444 U.S. at 293).

In her dissenting opinion in *Mallory*, Justice Barrett, joined by Chief Justice Roberts and Justices Kagan and Kavanaugh, explained that

> [t]he Due Process Clause protects more than the rights of defendants—it also protects interstate federalism. We have emphasized this principle in case after case.

600 U.S. at 169 (Barrett, J., dissenting).

"[T]his Court has considered alongside defendants' interests those of the States in relation to each other. One State's sovereign power to try a suit . . . may prevent 'sister States' from exercising their like authority." *Ford*, 592 U.S. at 360. Rather than respecting each state's role as a coequal sovereign, a state court that defies this Court's principles of general and specific jurisdiction not only impairs the due process protections afforded to out-of-state corporations, but also violates interstate federalism by encroaching upon the sovereignty of the states where exercise of personal jurisdiction may be proper.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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