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Court of Appeals

STATE OF NEW YORK

ANNA AYBAR, ORLANDO GONZALEZ, JESENIA AYBAR, as legal guardian on behalf of K.C., an infant over the age of fourteen (14) years, JESENIA AYBAR, as Administratrix of the ESTATE OF NOELIA OLIVERAS, JESENIA AYBAR, as Administratrix of the ESTATE OF T.C., a deceased infant under the age of fourteen (14) years and ANNA AYBAR, as Administratrix of the ESTATE OF CRYSTAL CRUZ-AYBAR,

Plaintiffs-Appellants,

—against—

JOSE A. AYBAR, JR. and "JOHN DOES 1 THRU 30,"

Defendants,

—and—

FORD MOTOR COMPANY AND THE GOODYEAR TIRE & RUBBER CO.,

Defendants-Respondents.

U.S. TIRES AND WHEELS OF QUEENS, LLC,

Non-Party Respondent.

BRIEF FOR AMICI CURIAE THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND THE INSTITUTE OF INTERNATIONAL BANKERS IN SUPPORT OF DEFENDANTS-RESPONDENTS

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July 22, 2021

STATEMENT UNDER RULE 500.1(f)

The Chamber of Commerce of the United States of America is a nonprofit, tax-exempt organization incorporated in the District of Columbia. The Chamber has no parent corporation, and no publicly held company has 10% or greater ownership in the Chamber. The Chamber's sole affiliate is the U.S. Chamber of Commerce Foundation. The Chamber's subsidiaries are CC1, LLC; CC2, LLC; and the Madison County Record, Inc.

The Institute of International Bankers (IIB) is a nonprofit, tax-exempt organization incorporated in New York. IIB has no parent corporation, and no publicly held company has 10% or greater ownership interest in IIB.

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INTERESTS OF AMICI CURIAE

The Chamber of Commerce of the United States of America is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. Many Chamber members conduct business in States other than their States of incorporation and principal place of business. They therefore have a substantial interest in the rules governing whether, and to what extent, a nonresident corporation may be subjected to general personal jurisdiction.

To that end, the Chamber regularly files amicus briefs in cases, like this one, that raise issues of vital concern to the Nation's business community. Those cases include *Daimler AG v. Bauman*, 571 U.S. 117 (2014), the seminal U.S. Supreme Court case on the constitutional requirements for general personal jurisdiction, and several cases about whether corporations consent to general jurisdiction in a State by

registering to do business there, *see, e.g.*, *Segregated Account of Ambac Assur. Corp. v. Countrywide Home Loans, Inc.*, 376 Wis. 2d 528 (2017); *Genuine Parts Co. v. Cepec*, 137 A.3d 123 (Del. 2016).

The Institute of International Bankers is a national association devoted exclusively to representing and advancing the interests of the international banking community in the United States. Its membership comprises internationally headquartered banking and financial institutions, from over 35 countries around the world, doing business in the United States, including in New York. IIB seeks to preserve appropriate limits on the exercise of personal jurisdiction over nonresident corporations. IIB's interest in this topic stems in part from judicial decisions interpreting New York's registration statute for nonresident financial institutions in parallel with New York's registration statute for out-of-state corporations. IIB thus has a strong interest in ensuring that any exercise of jurisdiction over nonresident corporations be statutorily authorized and constitutional.

SUMMARY OF ARGUMENT

New York has long been "the preeminent commercial and financial nerve center of the Nation and the world." *Motorola Credit Corp. v. Standard Chartered Bank*, 24 N.Y.3d 149, 162 (2014) (quoting *Ehrlich-Bober & Co. v. University of Houston*, 49 N.Y.2d 574, 581 (1980)). Indeed, thousands upon thousands of out-of-state companies—including four-fifths of all non-U.S. financial institutions operating in the United States—provide goods, services, and jobs within the State.

Plaintiffs' theory of jurisdiction—that out-of-state corporations submit themselves to general jurisdiction in the State by registering to do business here—risks throwing New York's commercial system into disarray. Under Plaintiffs' theory, any registered out-of-state corporation could be sued in New York courts on any claim, including claims wholly unconnected to the State. For instance, a California raisin-growing company registered to do business in New York, but lacking any other connection to the State, could be sued in New York by a Canadian consumer who purchased the company's raisins in Canada, consumed them in Canada, and suffered an adverse reaction in Canada. This absurd result is inconsistent with the Due Process Clause of the U.S.

Constitution, flies in the face of U.S. Supreme Court precedent, creates unpredictability in the marketplace, and undermines New York's economic competitiveness. Yet for all the upheaval it would cause, Plaintiffs' theory finds no support in the text or history of New York's registration statute. And any case law that may have supported the theory has long been abrogated. This Court should reject Plaintiffs' sweeping theory and hold that foreign corporations do not subject themselves to all-purpose personal jurisdiction merely by registering to do business here.

The inquiry starts with the plain text of New York's registration and service statutes, and it should end there too. Those statutes say nothing about personal jurisdiction. Business Corporation Law (BCL) § 1304, which allows out-of-state corporations to apply to do business in New York, does not mention jurisdiction. Nor does BCL § 304, which appoints the Secretary of State as the agent for service of process for every out-of-state corporation registered to do business here. The absence of any textual reference to jurisdiction is particularly striking, given that the Legislature, at the same time it enacted §§ 304 and 1304, enacted another provision that *did* require out-of-state corporations to submit to

personal jurisdiction in limited circumstances. The Legislature was thus aware of the issue of personal jurisdiction and expressly addressed it there. Yet in the registration and service statutes, it did not do so. Instead, as the drafting history reveals, the Legislature intended for New York's long-arm statute—not the BCL—to be the sole statute governing jurisdiction over out-of-state corporations.

The legislative history of those statutes only shores up the conclusion that out-of-state corporations do not consent to personal jurisdiction when they register to do business in New York. The Legislature enacted the registration and service statutes as part of a comprehensive overhaul of New York corporate law. The years-long study that culminated in the BCL produced thousands of pages of research reports that the Legislature considered when crafting the statutory scheme. Those pages nowhere mention consent to jurisdiction. And they show that the drafting committees reviewed statutes from other States that do what Plaintiffs claim the BCL does here: condition registration on consent to jurisdiction. The Legislature could have adopted similar language in the BCL but did not. For good reason: the legislative history also shows that, in drafting the BCL, the Legislature

understood that personal jurisdiction would be assessed case by case, based on "minimum contacts" with a State.

Plaintiffs have no answer to the textual arguments and do not even mention the legislative history, retreating instead to the argument that New York common law requires out-of-state corporations to consent to general jurisdiction when they register to do business here. But the case they rely on, *Bagdon v. Philadelphia & Reading Coal & Iron Co.*, 217 N.Y. 432 (1916), was abrogated by the U.S. Supreme Court's decision in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), which did away with the legal fiction that a corporate officer's in-state presence brought the whole corporation into the State and subjected it to personal jurisdiction. *Bagdon* also is not common law. It interpreted a statutory scheme that the Legislature repealed more than a half-century ago when it enacted the CPLR. *Bagdon* thus lacks any bearing on the interpretation of the current statutory framework.

Finally, Plaintiffs' theory, if implemented, would harm New York and its corporations. Out-of-state businesses—previously drawn in by New York's commercial diversity—would be deterred from doing business here, depriving the State of jobs and tax revenue. And New York

courts would be inundated with suits lacking any connection to the State, brought against foreign corporations by foreign plaintiffs seeking U.S.-style discovery. Moreover, if New York's adoption of Plaintiffs' theory prompted other States to do the same, corporations headquartered in New York would lose predictability about where they were subject to jurisdiction. This loss of certainty could in turn lead New York corporations to relocate to States without a jurisdiction-by-registration rule. Far from achieving the State's policy objectives, Plaintiffs' rule would undermine decades of effort to maintain New York's status as a national and international commercial hub.

ARGUMENT

I. The Business Corporation Law does not provide for general jurisdiction over foreign corporations when they register to do business in New York.

Plaintiffs' jurisdictional argument finds no support in the text or history of the Business Corporation Law. Their argument rests entirely on the notion that, by registering to do business in New York and designating the Secretary of State to accept service of process, foreign corporations agree to be sued in New York on any cause of action. If that were so, one would expect to find some indication of legislative intent in

BCL article 13, which governs how out-of-state corporations conduct in-state business. Yet the statutory text is silent on the matter, and the legislative history, to the limited extent it discusses the issue at all, shows only that the Legislature decided not to condition registration to do business on consent to jurisdiction.

A. New York's registration statutes lack any language mandating general jurisdiction over registered foreign corporations.

"In interpreting a statute, the starting point in any analysis must be the plain meaning of the statutory language." *Leader v. Maroney, Ponzini & Spencer*, 97 N.Y.2d 95, 104 (2001). The relevant question, then, is whether the BCL's plain text indicates any intent to subject a foreign corporation to general jurisdiction in New York courts when it registers to do business in this State and appoints the Secretary of State to accept service of process. *See* Pls.' Br. 12–13. The answer is no.

1. Nothing in the statutory text of New York's registration statutes provides for general jurisdiction over foreign corporations. The requirement that out-of-state corporations register comes from BCL § 1301(a), which forbids "[a] foreign corporation" to "do business in this state until it has been authorized to do so as provided in this article."

Elsewhere in article 13—in § 1304—the Legislature has required foreign corporations to apply to register to do business here. Section 1304 spells out the contents of the application for registration, such as the name of the corporation, § 1304(a)(1), and the place where it is incorporated, § 1304(a)(3). Nowhere do these statutes mention "personal jurisdiction."

While the absence of any mention of personal jurisdiction over registered foreign corporations is dispositive, it is especially notable because, elsewhere in the BCL, the Legislature stated that *un*registered foreign corporations must "submit[]" to "the jurisdiction of the courts of this state." Ch. 855, 1961 N.Y. Laws 2356, 2368 (codified at BCL § 307(a)); *see infra* pp. 11–12 (discussing later amendment to § 307(a)). So "the Legislature knows how" to address personal jurisdiction for foreign corporations "when it intends to do so." *Flores v. Lower E. Side Serv. Ctr., Inc.*, 4 N.Y.3d 363, 369 (2005). Yet it did not do so for registered foreign corporations. That omission must have been "meaningful and intentional." *Commonwealth of N. Mariana Is. v. Canadian Imperial Bank of Commerce*, 21 N.Y.3d 55, 60 (2013).

2. The Legislature likewise omitted any reference to personal jurisdiction from the BCL's service-of-process provisions. Those

provisions explain that "[t]he secretary of state shall be the agent of . . . every authorized foreign corporation upon whom process against the corporation may be served," BCL § 304(a), and require foreign corporations, in their registration applications, to so "designat[e] . . . the secretary of state," § 1304(a)(6). The provisions thus speak only to service of process.

While service is one "component" of personal jurisdiction, service "by itself cannot vest a court with jurisdiction." *Keane v. Kamin*, 94 N.Y.2d 263, 265 (1999); *accord* David D. Siegel & Patrick M. Connors, *New York Practice* § 58 (Westlaw ed. June 2021 update).[1] "[I]ndependent of service of process," a court must have a "jurisdictional basis"—including statutory authorization—for jurisdiction. *Keane*, 94 N.Y.2d at 265. In other words, the Legislature must separately extend "the power, or reach," of this State's courts to registered foreign corporations. *Id.* It has not done so. The BCL's service provisions accordingly do not create jurisdiction over foreign corporations.

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[1] Although in-state service on an individual may be a proper jurisdictional basis, in-state service does not create jurisdiction over a corporation. *Infra* pp. 20–21.

That conclusion is reinforced by a different BCL provision, § 307(a). Under § 307(a) as originally enacted, unregistered foreign corporations transacting business in the State were "deemed to have designated the secretary of state as [their] agent upon whom process against [them] may be served," and separately "submit[ted]" to the jurisdiction of New York courts. 1961 N.Y. Laws at 2368; *see supra* p. 9. If foreign corporations automatically consented to jurisdiction by designating the Secretary of State, the submission-to-jurisdiction language would have been "meaningless" surplusage, contrary to the "accepted rule that all parts of a statute are intended to be given effect." *Matter of National Energy Marketers Assn. v. New York State Pub. Serv. Commn.*, 33 N.Y.3d 336, 348 (2019) (quotation marks omitted). This Court should follow ordinary rules of statutory construction and conclude that the Legislature would not have included extra language conferring personal jurisdiction if the service-of-process provision already sufficed.

The Legislature confirmed this point in 1965, when it amended § 307(a). Although the Legislature kept the provision deeming the Secretary as the agent for service of process, it deleted the provision stating that unregistered foreign corporations submit to personal

jurisdiction in New York. Ch. 803, § 4, 1965 N.Y. Laws 1895, 1897. In its place, the Legislature inserted a new jurisdictional provision, specifying that CPLR article 3—including CPLR 302, New York's long-arm statute—governs jurisdiction over unregistered foreign corporations. *Id.* The Legislature thus intended to make the long-arm statute the lone basis "for asserting jurisdiction over . . . unauthorized foreign corporations." Explanatory Mem. on Amendments to Business Corporation Law and Labor Law at 2, *reprinted in* Bill Jacket for ch. 803 (1965), at 5. In short, while § 307(a) still provides for service on the Secretary of State, service is not enough to confer jurisdiction. A plaintiff must still comply with the long-arm statute.

B. The BCL's legislative history confirms that the Legislature did not intend for the registration statutes to constitute consent to jurisdiction.

The BCL's plain language shows that the Legislature did not intend to condition registration to do business on consent to jurisdiction. And the BCL's legislative history—which the Court may consider despite the BCL's clear language, *see People v. Badji*, 36 N.Y.3d 393, 399 (2021)—only confirms that point.

The BCL was enacted after a five-year study. In 1956, recognizing a need to overhaul existing corporate laws, the Legislature established a Joint Legislative Committee to review the State's existing laws applicable to corporations. As part of that process, the Committee commissioned research reports to cover various topics for potential inclusion in what would become the BCL—including "[r]egistered office and registered agent," "[s]ervice of process on corporation[s]," "[r]egistered office and registered agent of foreign corporation[s]," "[s]ervice of process on foreign corporation[s]," and "[a]ctions by or against foreign corporations." Joint Leg. Comm. to Study Revision of Corp. L., Second Interim Rep. to 1958 Session of N.Y. State Legis., 171-23, 2d Sess., at 55, 60 (1958). These research reports—which canvassed the laws of other States, many of which had also overhauled their corporate laws—ultimately informed the five interim reports that the Committee produced between 1956 and 1961. All told, the interim reports and research reports on these relevant additional topics (each comprising a research recommendation, a summary of research recommendation, and a final research recommendation) spanned nearly a thousand pages.

This effort culminated in 1961, when the Legislature enacted the BCL. Among the BCL's many improvements was article 13, which helped clarify procedural requirements for foreign corporations. As discussed above, article 13 never mentions personal jurisdiction over foreign corporations. And the legislative history confirms that the Legislature intended this omission.

First, the Joint Legislative Committee studied and presented to the Legislature contemporaneous registration statutes from other States. While each statutory regime that the Committee reviewed required foreign corporations to designate an agent for service of process, some (but not all) also referred to general jurisdiction over foreign corporations. For instance, the Joint Legislative Committee's 1958 report included an excerpt of Ohio Revised Code Chapter 1703.19, which stated that foreign corporations submit to personal jurisdiction "where the principal office of the corporation in [Ohio] is or was located, or in any county in which the cause of action arose." Research Report RR 27 from Robert S. Lesher, Counsel, to Joint Legis. Comm. to Study Revision of Corp. L. 14 (Aug. 12, 1958). This report also included an excerpt of Pennsylvania Business Corporation Law § 1011, which purported to require out-of-state

corporations to agree that they were "doing business" in the Commonwealth, *id.* at 15—a reference to the then-prevailing legal standard for extending general jurisdiction over foreign corporations, *see, e.g.*, *Miller v. Surf Props.*, 4 N.Y.2d 475, 480 (1958).[2]

The Legislature therefore had at its disposal examples of corporate-registration statutes that addressed personal jurisdiction. Had the Legislature decided to incorporate conditions intended to establish (or limit) the scope of general jurisdiction over foreign corporations registered to transact business in New York, it could have done so, just as the Ohio and Pennsylvania legislatures had done. The absence of any such language strongly suggests that the Legislature chose not to condition personal jurisdiction on registration and appointment of the Secretary of State as an agent for service of process.

Second, the research the Legislature relied on showed a contemporaneous understanding that registering to do in-state business and designating an agent for service of process was not enough for

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[2] In *Daimler AG v. Bauman*, 571 U.S. 117 (2014), the U.S. Supreme Court held that a corporation is ordinarily subject to general jurisdiction only where it is incorporated or headquartered, "essentially . . . declar[ing] unconstitutional" the "doing business" test for general jurisdiction. Siegel & Connors, *supra*, § 82.

jurisdiction. As one report explained, courts had adopted "[m]any theories . . . to justify the acquiring of jurisdiction over foreign corporations." Research Report RR 97 from Robert S. Lesher, Counsel, to Joint Legis. Comm. to Study Revision of Corp. L. 22 (Aug. 12, 1958) (RR 97). These theories allowed courts to exercise jurisdiction over foreign corporations that "carr[ied] on business in a foreign jurisdiction" or "sent [their] agent[s] into a state." *Id.* But those theories, the report acknowledged, "were discarded in [*International Shoe Co. v. Washington*, 326 U.S. 310 (1945),] which substituted a minimum contact theory" in their place. RR 97 at 22. The Legislature thus understood that personal jurisdiction would be evaluated case by case, hinging on whether a corporation had "sufficient minimum contacts with the forum to make it reasonable to subject it to the jurisdiction of the forum." *Id.* (quotation marks omitted). That corporation-by-corporation, case-by-case approach cannot square with Plaintiffs' one-size-fits-all theory.

II. Plaintiffs misplace reliance on *Bagdon*.

Plaintiffs concede that the BCL's plain language nowhere says that authorized foreign corporations are subject to general jurisdiction, and they do not even try to engage with the BCL's legislative history. Instead,

Plaintiffs rely entirely on this Court's century-old decision in *Bagdon v. Philadelphia & Reading Coal & Iron Co.*, 217 N.Y. 432 (1916), which Plaintiffs claim reflects New York common law, left undisturbed when the Legislature enacted the BCL. *See* Reply 1.

But Plaintiffs are wrong on this score, for two related reasons. *First*, *Bagdon* was based on the pre–*International Shoe* understanding of personal jurisdiction over corporations. At that time, corporations were subject to personal jurisdiction only if they were served with process within a State. Because corporations cannot travel, courts subscribed to the fiction that corporations were present wherever their agents were present. *Bagdon* endorsed that fiction by treating a Pennsylvania corporation as present in New York when its agent for service of process was served in the State. Yet the U.S. Supreme Court demolished *Bagdon*'s framework in 1945, when it decided *International Shoe*, replacing bygone fictions with the new minimum-contacts test. So *International Shoe*, not *Bagdon*, ruled the day by the time the Legislature enacted the BCL in 1961. *Second*, *Bagdon* is not New York common law; it is a decision interpreting a since-repealed statutory regime. The Legislature replaced that regime with the CPLR, which allowed foreign

corporations to be served outside the State. *Bagdon* has nothing to say about this later-enacted regime.

A. *International Shoe* abrogated *Bagdon*.

As Defendants rightly note (Br. 26–28), *Bagdon*'s approach to general jurisdiction no longer meets the strictures of constitutional due process. Until 1945, the framework set out in *Pennoyer v. Neff*, 95 U.S. 714 (1877), dictated the constitutional due-process requirements for general jurisdiction. Under *Pennoyer*, a State could exercise general jurisdiction over only those nonresident defendants that were *physically present* in a State when served with process. *Id.* at 720. That rule barred States from "assert[ing] extraterritorial" jurisdiction, which according to *Pennoyer* "offend[ed]" due process. *Shaffer v. Heitner*, 433 U.S. 186, 197 (1977). Struggling to satisfy *Pennoyer*'s strict territorial requirement in cases involving corporate defendants, courts developed the "legal fiction that [a foreign defendant] ha[d] given its consent to service and suit, consent being implied from its presence in the state through the acts of its authorized agents." *International Shoe*, 326 U.S. at 318.

This Court followed suit in *Bagdon*. *Bagdon* held that by appointing an in-state agent to accept service of process, a foreign corporation

entered the State while "engaged in business," and its "presence" here subjected it to personal jurisdiction on any claims against it. 217 N.Y. at 438–39. *Bagdon* thus sprung from the *Pennoyer*-era understanding that a corporation made a "voluntary appearance" in the State when it appointed an in-state agent for service of process. *Pennoyer*, 95 U.S. at 733.

But *Pennoyer*'s holding that service on a corporation's in-state agent gives rise to general jurisdiction was no longer good law by 1961, when the Legislature enacted the BCL. In 1945, the Supreme Court held in *International Shoe* that a corporate defendant's relationship to the forum—not its voluntary presence within the forum—controlled whether exercising personal jurisdiction comports with due process. 326 U.S. at 316. In doing so, the Court "cast . . . aside" the "fiction[]" that a corporate officer's in-state presence brings the whole corporation into the State. *Burnham v. Superior Ct. of Cal., County of Marin*, 495 U.S. 604, 618 (1990) (plurality).[3] *International Shoe* thus undoes *Bagdon*'s holding,

[3] The U.S. Supreme Court reiterated this point earlier this year. In *Ford Motor Co. v. Montana Eighth Judicial District Court*, the majority of the Supreme Court rejected Justice Gorsuch' suggestion that the Court should return to pre–*International Shoe* jurisprudence, which would subject corporations to jurisdiction in States that they have "entered . . . through the front door" by

which grounded jurisdiction entirely on "the *presence* in this state of some one [sic] with authority [to accept] service of process," bringing "the corporation within [New York's] jurisdiction." 217 N.Y. at 438 (emphasis added).

Indeed, after *International Shoe*, service on a corporate agent present in the State no longer gives rise to general jurisdiction—even though in-state service on an *individual* can give rise to general jurisdiction. *See Martinez v. Aero Caribbean*, 764 F.3d 1062, 1067–68 (9th Cir. 2014); *Siemer v. Learjet Acquisition Corp.*, 966 F.2d 179, 182–84 (5th Cir. 1992). For individuals, in-state service satisfies due process because individuals "knowingly assume some risk that [a] State will exercise its power over" them when they voluntarily enter. *Burnham*, 495 U.S. at 637 (Brennan, J., concurring in the judgment) (quotation marks omitted); *accord id.* at 624–25 (plurality). Corporations, however, do not voluntarily enter a State whenever their agents do—at least not "in the way contemplated by *Burnham*." *Martinez*, 764 F.3d at 1068. Although

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"seeking to do business" there. 141 S. Ct. 1017, 1039 (2021) (Gorsuch, J., concurring in the judgment). The majority instead held that courts should assess personal jurisdiction "as [they] ha[ve] done for the past 75 years—applying the standards set out in *International Shoe* and its progeny, with attention to their underlying values of ensuring fairness and protecting interstate federalism." *Id.* at 1025 n.2 (majority).

corporations act only "through their agents," those agents are "not the corporation[s]" themselves. *Id.* So corporations do not assume the risk of personal jurisdiction wherever their agents travel.

Bagdon's contrary rule would mean treating corporations—whose agents may frequently travel the country on corporate business—as present wherever those agents may be found. That approach risks exposing corporations to general jurisdiction in every State, *see Brown v. Lockheed Martin Corp.*, 814 F.3d 619, 640 (2d Cir. 2016)—and sometimes "in many places simultaneously," *Martinez*, 764 F.3d at 1068. Not only would such a rule largely obviate the need for *International Shoe*'s minimum-contacts test; it would also mean that corporations could be subject to general jurisdiction well beyond *Daimler*'s "paradigm" forums "for the exercise of general jurisdiction": where they are incorporated and headquartered. 571 U.S. at 137. To so hold would be to rob *Daimler* of meaning. *See Brown*, 814 F.3d at 640. This Court should not do so.

B. *Bagdon* does not reflect New York common law on general jurisdiction.

1. Seeking to sidestep both the plain language and legislative history of the BCL's registration statutes, Plaintiffs theorize that the Legislature left in place *Bagdon*'s "common law" rule when enacting the

BCL. Reply 1. Plaintiffs ground that theory on the presumption that Legislature does not impliedly abrogate common-law rules. *See, e.g.*, *Simmons v. Trans Express Inc.*, 37 N.Y.3d 107, 114 (2021).

But *Bagdon* never announced a common-law rule. Common-law rules are "judicially created," *Wieder v. Skala*, 80 N.Y.2d 628, 633 (1992), such as rules with "origins in early English court decisions," *Senator Linie Gmbh & Co. Kg v. Sunway Line Inc.*, 291 F.3d 145, 161–66 (2d Cir. 2002) (quotation marks omitted), *cited in* Reply 3. *Bagdon*, by contrast, had its origins in preexisting statutes. It assessed "the laws of the state" to determine whether a foreign corporation appointing an in-state agent consented to general jurisdiction. 217 N.Y. at 436. In doing so, *Bagdon* construed Code of Civil Procedure § 432, which required that "foreign corporations" be served with process "within the State," including by serving in-state agents appointed under General Corporation Law § 16. Code of Civil Procedure § 432(2); *see Bagdon*, 217 N.Y. at 436, 438. *Bagdon* thus reflects "statutory law"—the body of decisions "derived . . . from statutes," *Black's Law Dictionary*, s.v. statutory law (11th ed. 2019)—not common law.

At any rate, *Bagdon*'s rule is long since antiquated. *Bagdon* construed a statutory regime that required in-state service on foreign corporations. The statute mandating that regime, Code of Civil Procedure § 432, has been off the books for a century. In 1921, the Code of Civil Procedure was repealed by the Civil Practice Act, *see Eagle-Picher Lead Co. v. Mansfield Paint Co.*, 201 App. Div. 223, 224 (3d Dep't 1922), which was in turn repealed in 1962 by the CPLR, ch. 308, 1962 N.Y. Laws 593, 915 (codified at CPLR 10001).

The CPLR was a sea change. It "consolidate[d]" in "one place" the State's statutory regimes on civil practice, including its various statutes on personal jurisdiction, yielding a unified and authoritative code. Budget Report (Mar. 26, 1962), *reprinted in* Bill Jacket for ch. 308 (1962). And "in response" to cases such as *International Shoe*, it dispensed with the requirement that foreign corporations be served within the State, *Kreutter v. McFadden Oil Corp.*, 71 N.Y.2d 460, 467 (1988), obviating the need to subscribe to fictions that treated foreign corporations as being present in New York, *supra* pp. 16, 18–19. In enacting the CPLR, then, the Legislature intended to depart from the system *Bagdon* addressed

and to establish in its place an altogether new system, one in which foreign corporations could be served outside the State, *see* CPLR 302, 313.

Bagdon nowhere anticipated this legislative shift. It instead "interpret[ed]" a statutory regime "in force over fifty years ago"—bearing little resemblance to the current regime. *Matter of Eckenroth*, 167 Misc. 632, 634 (Sur. Ct. Kings County 1938). *Bagdon* therefore cannot be "binding precedent" when interpreting the regime "presently in force." *Id.*

2. Because the holding in *Bagdon*, a statutory-interpretation case, is not common law at all, Plaintiffs effectively ask this Court to create new common law: a rule that grants general personal jurisdiction over foreign corporations when the statutes themselves are silent. The Court should decline Plaintiffs' invitation.

Plaintiffs' rule would cause an immense, unanticipated shift in the litigation exposure of foreign corporations. Indeed, foreign corporations registered to do business in New York have long understood themselves not subject to general jurisdiction here. *See, e.g.*, *Bonkowski v. HP Hood LLC*, 2016 WL 4536868, *3 (E.D.N.Y. Aug. 30, 2016) (no general jurisdiction over foreign corporation registered to do business in New York); *Albany Intl. Corp. v. Yamauchi Corp.*, 978 F. Supp. 2d 138, 143

(N.D.N.Y. 2013) (same); *Bellepointe, Inc. v. Kohl's Dept. Stores, Inc.*, 975 F. Supp. 562, 565 (S.D.N.Y. 1997) (same).[4] And since *Daimler*, foreign corporations have understood themselves to be subject to general jurisdiction only where they are "at home"—where they are incorporated and headquartered. *See, e.g.*, *State of New York v. Vayu, Inc.*, __ A.D.3d __, 2021 N.Y. Slip Op. 04068, *1 n.2 (3d Dep't 2021); *AlbaniaBEG Ambient Sh.p.k. v. Enel S.p.A.*, 160 A.D.3d 93, 102 (1st Dep't 2018). Under Plaintiffs' rule, however, many foreign corporations would suddenly be forced to defend against any worldwide claim in New York courts, regardless of how limited their New York operations may be. It is easy to imagine how costly this could become for businesses with limited operations in the State. For small businesses, the costs could be prohibitive.

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[4] Like the BCL, the Banking Law requires foreign banking corporations seeking to conduct business in the State to register with the Department of Financial Services and appoint the Superintendent of Financial Services as their agent for accepting service of process. Courts have consistently declined to interpret the relevant provision of the Banking Law to confer general jurisdiction over foreign financial institutions merely by virtue of their registration. *See, e.g.*, *Fire & Police Pension Assn. of Colorado v. Bank of Montreal*, 368 F. Supp. 3d 681, 693 n.10 (S.D.N.Y. 2019); *Dennis v. JPMorgan Chase & Co.*, 343 F. Supp. 3d 122, 211 (S.D.N.Y. 2018).

That risk is reason enough for this Court to reject the new common-law rule Plaintiffs propose. The Court does not take lightly New York's status as an international commercial center or the interests of those who operate in New York while relying on the current rules. Thus, in fashioning common-law rules, the Court considers "[t]he understanding and expectations of society," *Flo & Eddie, Inc. v. Sirius XM Radio, Inc.*, 28 N.Y.3d 583, 603 (2016)—including whether the "consequences" of such rules would threaten "New York's preeminence in global financial affairs," *Motorola Credit Corp. v. Standard Chartered Bank*, 24 N.Y.3d 149, 163 (2014).

Plaintiffs' rule would do just that. It would upset foreign corporations' legitimate, settled expectation that registering to do business here does not subject them to general jurisdiction. And it would cause those corporations to reassess whether the benefits of doing New York business outweigh the costs of being forced to answer in New York for claims touching any corner of the globe. Given the significant reliance interests Plaintiffs' rule would upend—and the potential for corporate flight as a result—the Court should reject it in favor of the rule that follows from the text and history of the current statutory framework.

III. Endorsing Plaintiffs' jurisdiction-by-registration theory would harm New York State and its corporations.

Plaintiffs' jurisdiction-by-registration rule would harm New York State, which would suffer from decreased investment in the State and from an increased backlog in its courts. The rule would also harm New York corporations, which would suffer from increased uncertainty about where they are subject to jurisdiction.

A. Plaintiffs' rule would deter out-of-state corporations and financial institutions from doing business in New York and would risk overwhelming New York's judiciary.

A rule imposing personal jurisdiction on all foreign corporations that register to do business here will cause foreign corporations to think twice before conducting business in New York. That is a result worth avoiding. Foreign corporations enrich the commercial diversity of New York, which thrives from the range of industries and depth of activity performed by foreign corporations. The State also benefits from the in-state jobs these corporations and financial institutions create and the significant tax revenue that these businesses bring to the State. Indeed, the State has actively encouraged foreign investment, as evidenced by its efforts to entice out-of-state "businesses . . . to come and stay" in New

York. Press Release, New York State, *Governor Cuomo Launches "New York Open for Business" Marketing Initiative* (Aug. 24, 2011), http://tiny.cc/b902uz.

Yet a rule that would subject foreign corporations to general jurisdiction would undermine New York's attractiveness to foreign corporations. Rather than be forced to litigate all claims here—which could become prohibitively expensive for small corporations with limited resources—foreign corporations may well decide to invest only in States whose courts have made clear that foreign corporations may register to do business without submitting to personal jurisdiction. The prospect of such corporate flight is real. As the Delaware Supreme Court observed in rejecting an argument that registration subjects out-of-state corporations to personal jurisdiction, "[b]usinesses select their states of incorporation and principal places of business with care," including by assessing whether a particular State is one where they would be willing to be "sued generally." *Genuine Parts Co. v. Cepec*, 137 A.3d 123, 127 (Del. 2016). Adopting Plaintiffs' proposed rule would alter the calculus for New York corporations. And the resulting exodus of corporations from the State

would harm the many New Yorkers who rely on foreign businesses for goods, services, jobs, and support.

A jurisdiction-by-registration regime would also likely have follow-on effects for foreign financial institutions. Like foreign corporations, foreign financial institutions must register to do business here and must appoint a New York official (the Superintendent of Financial Services) to accept service of process. *See* Banking Law § 200(3). Given the parallels between the BCL's and the Banking Law's registration statutes, courts have considered them together. *See Gucci Am., Inc. v. Weixing Li*, 768 F.3d 122, 136 n.15 (2d Cir. 2014); *see also Motorola Credit Corp. v. Uzan*, 132 F. Supp. 3d 518, 521–22 (S.D.N.Y. 2015) (rejecting argument that registration under Banking Law § 200(3) constitutes consent to jurisdiction). If foreign financial institutions believe that their parallel registration requirement will subject them to jurisdiction, they too might choose to do business elsewhere. That flight could jeopardize New York's status as "a national and international leader in commerce," *Deutsche Bank Natl. Trust Co. v. Barclays Bank PLC*, 34 N.Y.3d 327, 331 (2019)—home to offices of over 80% of all foreign banks operating in the United

States, with assets exceeding $2.3 trillion. New York Dept. of Fin. Servs., *Annual Report* 14, 18 (2019), http://tiny.cc/7902uz.

Finally, Plaintiffs' theory would clog New York courts, creating backlogs that the judiciary has worked tirelessly to reduce over the past half-decade. The current regime limits lawsuits against foreign corporations, allowing only those corporations that themselves "create[]" "contacts" with the State to be sued here for claims arising out of those contacts. *Walden v. Fiore*, 571 U.S. 277, 284 (2014) (quotation marks omitted); *accord, e.g.*, *Williams v. Beemiller, Inc.*, 33 N.Y.3d 523, 529 (2019). Plaintiffs' theory, in contrast, would allow thousands of foreign corporations to be sued in New York in cases that lack any connection to the State—as is the case here.

The predictable result would be an increase in the caseload of an already taxed judiciary, thwarting the Unified Court System's goal of "improving disposition rates and times, cutting backlogs, disposing of the oldest cases, increasing trial capacity and providing better services to the public." New York Unified Court Sys., *The State of Our Judiciary—Excellence Initiative: Year One* i (2017), http://tiny.cc/9902uz. Put differently, an influx of cases unconnected to New York would reduce

access to justice for New Yorkers, including some of Amici's members. The Court should reject that unfair outcome.

B. Plaintiffs' rule would deprive New York corporations of crucial predictability in structuring their affairs.

Just as Plaintiffs' rule would upend foreign corporations' jurisdictional expectations, *supra* p. 26, it would also make life unpredictable for New York corporations. Like all corporations, New York corporations rely on settled jurisdictional rules "to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980). *Daimler* provides New York corporations with this certainty, allowing them to expect that they will be subject to general jurisdiction only where they are "at home." 571 U.S. at 137. That "[p]redictability . . . is valuable to corporations making business and investment decisions." *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010).

Adopting a jurisdiction-by-registration rule would undermine the predictability *Daimler* affords New York corporations. Since *Daimler*, the highest courts of at least seven States have held that registration

statutes do not constitute general jurisdiction.[5] A contrary decision here risks creating a patchwork of decisional law across the country, especially if other States' courts follow this Court's decision in this case. That risk is far from trivial. "New York has long been the epicenter of the commercial world," and its judges have "expertise" that allows for "predictable applications of commercial law and basic business principles to complicated facts." Brian M. Cogan & Allen M. Klinger, *Practice Before the Commercial Division*, *in* 4 *West's New York Practice Series: Commercial Litigation in New York State Courts* § 39:1, at 1031 (Robert L. Haig ed., 5th ed. 2020). So other States may well look to New York—"a leader in the development of corporate law," Daniel R. Kahan, Note, *Shareholder Liability for Corporate Torts: A Historical Perspective*, 97 Geo. L.J. 1085, 1100 (2009)—in deciding whether to subject foreign corporations to general jurisdiction.

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[5] *See Lanham v. BNSF Ry. Co.*, 305 Neb. 124, 134–35, *as modified*, 306 Neb. 124 (2020); *DeLeon v. BNSF Ry. Co.*, 392 Mont. 446, 453 (2018); *Segregated Account of Ambac Assur. Corp. v. Countrywide Home Loans, Inc.*, 376 Wis. 2d 528, 542–43 (2017); *State ex rel. Norfolk S. Ry. Co. v. Dolan*, 512 S.W.3d 41, 52 (Mo. 2017); *Aspen Am. Ins. Co. v. Interstate Warehousing, Inc.*, 2017 IL 121281 ¶ 27 (2017); *Figueroa v. BNSF Ry. Co.*, 390 P.3d 1019, 1029 (Or. 2017); *Genuine Parts*, 137 A.3d at 126.

If other States follow suit—breaking from the States that have ruled to the contrary—New York corporations will suffer. For one thing, they will no longer be able to easily predict where they might be sued. Instead, plaintiffs could shop among any of the States that have adopted the jurisdiction-by-registration rule, leaving New York corporations to guess where they will be haled into court, or to cease doing business in States that have adopted such a rule. For another, allowing New York corporations to be sued far and wide would make it more likely that domestic corporations' employees would have to travel out of state to participate in depositions, trials, and the like. Such travel necessarily "caus[es] disruption to [those employees'] daily management" of the company, ultimately harming the company. *In re Amkor Tech., Inc. Sec. Litig.*, 2006 WL 3857488, *4 (E.D. Pa. Dec. 28, 2006).

In short, Plaintiffs' rule could render New York a uniquely risky State in which to conduct business, or it could spawn a race to the bottom as other States enact similarly broad jurisdictional rules. Either outcome hurts New York's business interests.

CONCLUSION

For these reasons, this Court should affirm the Appellate Division's order.

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CERTIFICATE OF COMPLIANCE

1. The following statement is made in accordance with Court of Appeals Rule 500.13(c).

2. The Chamber's brief was prepared in the processing system Word for Microsoft 365, with Century Schoolbook typeface, 14-point font.

3. The text of the body brief, omitting the cover page and tables, has a word count of 6,512, as calculated by the processing system.

Dated: July 22, 2021

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