NOTES

PENNOYER’S GHOST: CONSENT, REGISTRATION STATUTES, AND GENERAL JURISDICTION AFTER DAIMLER AG V. BAUMAN

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This Note evaluates general personal jurisdiction based on a “consent-by-registration” theory, arguing that this old basis of jurisdiction is unconstitutional after Daimler AG v. Bauman. Daimler overturned nearly seventy years of law on general jurisdiction, and in doing so provoked the return to a basis of jurisdiction dating back to Pennoyer v. Neff, with plaintiffs arguing that foreign corporations “consent” to general jurisdiction when they register to do business in states outside their place of incorporation or principal place of business. But Pennoyer is dead. Thus, the question is whether Pennoyer’s ghost provides a constitutional basis for general jurisdiction, even after Daimler’s severe limitations of it.

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INTRODUCTION

Daimler AG v. Bauman signaled the end of an era.¹ Through that decision, eight justices of the Supreme Court overturned nearly seventy years of jurisprudence on general personal jurisdiction.² The impact of Daimler is so fundamental that many famous procedure cases of the twentieth century would never have made it through the courthouse door under the decision’s narrow standard.³

But Daimler has proven to be a double-edged sword. Daimler limited general jurisdiction under the Due Process Clause to a defendant corporation’s principal place of business or place of incorporation.⁴ In doing so, longstanding bases of personal jurisdiction in the United States have been eliminated,⁵ sparking the search for alternative means to establish general jurisdiction over foreign corporations.⁶

² Daimler, 134 S. Ct. at 763.
³ General jurisdiction is the “power to adjudicate any kind of controversy when jurisdiction is based on relationships, direct or indirect, between the forum and the person or persons whose legal rights are to be affected.” Arthur T. von Mehren & Donald T. Trautman, Jurisdiction to Adjudicate: A Suggested Analysis, 79 HARV. L. REV. 1121, 1136 (1966).
In contrast, specific jurisdiction is based on “affiliations between the forum and the underlying controversy,” which “normally support only the power to adjudicate with respect to issues deriving from, or connected with, the very controversy that establishes jurisdiction to adjudicate.” Id.
⁵ See also Daimler, 134 S. Ct. at 760.
⁶ This includes “doing business,” which long prevailed as a basis for general jurisdiction. Id. at 761 n.18.
⁷ For the purposes of this Note, “foreign corporation” means any corporation sued outside its place of incorporation or principal place of business. Thus, “foreign
This search produced an unanticipated result: Century-old cases are finding new life, and the theory that foreign corporations “consent” to general jurisdiction by registering to do business in a forum state is now the go-to alternative to Daimler’s holding. This notion of “consent-by-registration” implicates case law as old as Pennoyer v. Neff, a cornerstone of American civil procedure.

But Pennoyer is dead. As Professor Linda Silberman has noted, the death-knell rendered to Pennoyer in Shaffer v. Heitner was so long-coming it proved anticlimactic. Yet the turn to consent-by-registration after Daimler signals the rise of Pennoyer’s ghost, a theory of general jurisdiction based on a corporation’s compliance with state registration statutes.

Pennoyer’s ghost and its consent-by-registration theory attempts to circumvent the minimum contacts test established by International Shoe v. Washington in 1945, stirring a decades-old split among federal courts of appeal.

**Table 1: Consent-by-Registration to General Jurisdiction Circuit Split**

<table>
<thead>
<tr>
<th>Circuit Court</th>
<th>Constitutionality of Consent-by-Registration</th>
<th>Case</th>
</tr>
</thead>
<tbody>
<tr>
<td>First Circuit</td>
<td>Violates due process</td>
<td>Cossaboon v. Me. Med. Ctr., 600 F.3d 25, 37 (1st Cir. 2010).</td>
</tr>
<tr>
<td>Second Circuit</td>
<td>Satisfies due process (dicta)</td>
<td>Spiegel v. Schulmann, 604 F.3d 72 (2d Cir. 2010).</td>
</tr>
<tr>
<td>Sixth Circuit</td>
<td>Undecided</td>
<td>None</td>
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</tbody>
</table>

“corporation” includes corporations from other U.S. states and corporations established outside the country. “Nonresident” and “foreign” corporations are synonymous.

7 See infra Part I.B (discussing post-Daimler litigation over the jurisdictional impact of corporate registration statutes).

8 See generally infra Appendix (surveying the laws of all fifty states regarding registration to do business and the penalties for failure to register to do business and collecting post-Daimler case law).

9 95 U.S. 714 (1877).


11 All fifty states have such statutes. See sources cited infra Appendix (providing a full account of these provisions).

12 326 U.S. 310 (1945); see also infra notes 40–43 and accompanying text.
<table>
<thead>
<tr>
<th>Circuit Court</th>
<th>Constitutionality of Consent-by-Registration</th>
<th>Case</th>
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<tbody>
<tr>
<td>Seventh Circuit</td>
<td>Violates due process</td>
<td>Wilson v. Humphreys (Cayman) Ltd., 916 F.2d 1239 (7th Cir. 1990).</td>
</tr>
<tr>
<td>Tenth Circuit</td>
<td>Undecided</td>
<td>None</td>
</tr>
<tr>
<td>D.C. Circuit</td>
<td>Undecided</td>
<td>None</td>
</tr>
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</table>

As the table above illustrates, the Third\(^{13}\) and Eighth\(^{14}\) Circuits interpret consent-by-registration to general jurisdiction as consistent with the Due Process Clause, and are supported in dicta by the Second\(^{15}\) and Ninth\(^{16}\) Circuits. Opposed to this interpretation, the First,\(^{17}\) Fourth,\(^{18}\) Fifth,\(^{19}\) Seventh,\(^{20}\) and Eleventh\(^{21}\) Circuits hold consent-based general jurisdiction violates due process. Only the Sixth,

\(^{13}\) See Bane v. Netlink, Inc., 925 F.2d 637, 641 (3d Cir. 1991) (holding that Netlink was subject to general personal jurisdiction because it was authorized to do business in Pennsylvania).

\(^{14}\) See Knowlton v. Allied Van Lines, Inc., 900 F.2d 1196, 1199 (8th Cir. 1990) (holding that foreign corporations that appoint an agent for service of process under Minnesota’s registration statute have consented to general jurisdiction regardless of any minimum contacts analysis).


\(^{16}\) See King v. Am. Family Mut. Ins. Co., 632 F.3d 570, 576 n.6 (9th Cir. 2011).

\(^{17}\) The First Circuit suggests that the scope of consent-by-registration is limited to specific jurisdiction only. Compare Cossaboon v. Me. Med. Ctr., 600 F.3d 25, 37 (1st Cir. 2010) (“Corporate registration . . . adds some weight to the jurisdictional analysis, but it is not alone sufficient to confer general jurisdiction.”), with Holloway v. Wright & Morrissey, Inc., 739 F.2d 695, 697 (1st Cir. 1984) (“It is well-settled that a corporation that authorizes an agent to receive service of process in compliance with the requirements of a state statute, consents to the exercise of personal jurisdiction in any action that is within the scope of the agent’s authority.”).

\(^{18}\) See Ratliff v. Cooper Labs., Inc., 444 F.2d 745, 748 (4th Cir. 1971) (“Applying for the privilege of doing business is one thing, but the actual exercise of that privilege is quite another. . . . The principles of due process require a firmer foundation than mere compliance with state domestication statutes.”).

\(^{19}\) See Siemer v. Learjet Acquisition Corp., 966 F.2d 179, 181 (5th Cir. 1992) (“[B]eing qualified to do business . . . is of no special weight in evaluating general personal jurisdiction.” (internal quotation marks omitted)).

\(^{20}\) See Wilson v. Humphreys (Cayman) Ltd., 916 F.2d 1239, 1245 (7th Cir. 1990). While the Seventh Circuit did not expressly discuss “consent,” it held that registration to do business alone “cannot satisfy . . . the demands of due process.” Id.
Tenth, D.C., and Federal Circuit Courts of Appeal have yet to take a position on the jurisdictional impact of consent-by-registration. But post-\textit{Daimler} courtroom battles over whether this “consent” to general jurisdiction satisfies due process in cases where foreign corporate defendants are not “at home” under the \textit{Daimler} standard are growing in number. Until the Supreme Court resolves this question, \textit{Pennoyer}’s ghost will haunt defendants in every forum where they are registered.

This Note argues that it is unconstitutional to assert general jurisdiction over foreign corporations based on a consent-by-registration theory. Consent is a possible basis of limited jurisdiction, but in the twenty-first century there is no constitutional basis for asserting general jurisdiction over foreign corporations based on a consent-by-registration theory. Consent is a possible basis of limited jurisdiction, but in the twenty-first century there is no constitutional basis for asserting general jurisdiction over foreign corporations based on a consent-by-registration theory. Consent is a possible basis of limited jurisdiction, but in the twenty-first century there is no constitutional basis for asserting general jurisdiction over foreign corporations based on a consent-by-registration theory. Consent is a possible basis of limited jurisdiction, but in the twenty-first century there is no constitutional basis for asserting general jurisdiction over foreign corporations based on a consent-by-registration theory.

\begin{itemize}
\item \textbf{21} See Consol. Dev. Corp. v. Sherritt, Inc., 216 F.3d 1286, 1293 (11th Cir. 2000) (citing \textit{Learjet}, 966 F.2d at 183, and \textit{Ratliff}, 444 F.2d at 748). \textit{Sherritt} does not explicitly mention consent, but the case cites \textit{International Shoe} and holds that “casual presence of a corporate agent . . . is not enough to subject the corporation to suit where the cause of action is unrelated to the agent’s activities.” \textit{Id}.
\item \textbf{23} See, e.g., \textit{GUCCI AM., INC. v. LI}, 768 F.3d 122, 136 n.15 (2d Cir. 2014) (suggesting the district court consider whether consent-by-registration is a valid basis of general jurisdiction); \textit{Chatwal Hotels & Resorts LLC v. Dollywood Co.}, 2015 WL 539460, at *6 (S.D.N.Y. Feb. 6, 2015) (“After \textit{Daimler} . . . the mere fact of [the defendant’s] being registered to do business is insufficient to confer general jurisdiction in a state that is neither its state of incorporation or its principal place of business.” (citation omitted)); \textit{Brown v. CBS, Inc., 19 F. Supp. 3d 390, 396–400 (D. Conn. 2014) (holding that the imposition of general jurisdiction on a foreign registered entity, pursuant to Connecticut’s registration statute, violated due process); \textit{Sioux Pharm, Inc. v. Summit Nutritional Int’l, Inc., 859 N.W.2d 182, 187 (Iowa 2015) (dismissing jurisdiction over foreign corporation but noting it was “never . . . registered to do business in Iowa”); \textit{Zucker v. Waldmann, N.Y. Slip Op. 50055, 2015 WL 390192 (N.Y. Sup. Ct. 2015) (stating foreign corporations can consent to jurisdiction by registering to do business in New York); see also infra Part I.B (elaborating on judicial reactions to \textit{Daimler}).
\item \textbf{24} All fifty states and the District of Columbia have registration statutes, though states vary on whether registration establishes consent to jurisdiction, and whether that jurisdiction is general or specific. See infra Appendix.
\item \textbf{26} See infra Part II.A (outlining a statutory and constitutional analysis to determine whether registration to do business establishes consent to jurisdiction); see also, e.g., Ins. Corp. of Ir., Ltd. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 703–05 (1982) (noting possible bases of consent); \textit{Jack H. FRIEDENTHAL, MARY KAY KANE & ARTHUR R. MILLER, CIVIL PROCEDURE 106 (4th ed. 2005)} (“Perhaps the biggest exception to the Pennoyer rule was the notion, still valid today, that a defendant not physically present in the state may consent to the jurisdiction of its courts.”); \textit{AUSTIN WAKEMAN SCOTT, FUNDAMENTALS OF PROCEDURE IN ACTIONS AT LAW 39 (1922)} (“[I]jurisdiction over the
eral jurisdiction through a corporation’s compliance with state registration statutes.\textsuperscript{27} \textit{Daimler} provoked the rise of \textit{Pennoyer}’s ghost by eliminating “doing business” as a basis of general jurisdiction; however, in doing so, it simultaneously made assertions of consent-by-registration to general jurisdiction violative of post-\textit{Daimler} due process limits.

Part I of this Note provides an overview of personal jurisdiction in the United States and then reviews the \textit{Daimler} decision and its less anticipated effect—the exploration of consent-by-registration as a separate basis for general jurisdiction over foreign corporations. Part II analyzes consent-by-registration as a theory of general personal jurisdiction under two separate lenses of due process. Part II.A analyzes the theory in the context of \textit{Daimler}’s rationale that calls for “uniqueness” and “ascertainability.” Part II.B examines the history of consent-by-registration and its relationship to the now invalidated “doing business” basis of general jurisdiction in order to determine whether compliance with registration statutes is a “touchstone of jurisdiction” that satisfies due process outside the prevailing minimum contacts standard required by \textit{International Shoe} and its progeny. Part III then illustrates an additional concern implicated by consent-by-registration—the unconstitutional conditions doctrine. Under each analysis, this Note demonstrates that \textit{Daimler} renders consent-by-registration to general jurisdiction unconstitutional. Ultimately, this Note concludes that the future of personal jurisdiction lies in reforms to specific jurisdiction, not fictions done away with by \textit{International Shoe} and its progeny—including the \textit{Daimler} case itself.\textsuperscript{28}

\textsuperscript{27} In the decades prior to \textit{Daimler}, others have articulated the problems with consent-by-registration, yet none have addressed the due process concern or anticipated the particulars of twenty-first century personal jurisdiction. \textit{See, e.g.}, D. Craig Lewis, \textit{Jurisdiction over Foreign Corporations Based on Registration and Appointment of an Agent: An Unconstitutional Condition Perpetuated}, 15 DEL. J. CORP. L. 1 (1990) (arguing consent-based general jurisdiction is an unconstitutional condition); Pierre Riou, \textit{General Jurisdiction over Foreign Corporations: All that Glitters Is Not Gold Issue Mining}, 14 REV. LITIG. 741, 793–800 (1995) (arguing consent-based general jurisdiction should be overturned on federalism grounds); Lee Scott Taylor, \textit{Note, Registration Statutes, Personal Jurisdiction, and the Problem of Predictability}, 103 COLUM. L. REV. 1163, 1192–93 (2003) (arguing registration statutes satisfy due process but are unpredictable).

I

DAIMLER AG v. BAUMAN AND THE RISE
OF PENNOYER’S GHOST

It all started with Pennoyer.29 A shibboleth for first-year law students, Pennoyer established the connection between personal jurisdiction and the Due Process Clause.30 Articulating a theory of jurisdiction that prevailed from the late-nineteenth to the mid-twentieth century, Pennoyer’s territorial view united notions of “power”31 and “consent”32 at a time when territorial borders determined the reach of state authority.33 Under Pennoyer’s “power theory,” summons issued to natural persons who were physically present in a forum, combined with service of process that guaranteed notice, were the requisite components of jurisdiction.34 Consequently, state
authority over corporations was limited by the nineteenth-century view that corporations resided only in their state of incorporation.³⁵

Corporate liabilities were not so limited, however, and tensions quickly developed between Pennoyer’s rigid territoriality and economic reality. As corporations increasingly conducted commerce beyond the borders of their places of incorporation, courts struggled to reconcile a legitimate interest in regulating activities taking place within their borders and the personal jurisdiction doctrine that constrained them.³⁶ Fictions of jurisdiction developed in response,³⁷ complementing Pennoyer through more expansive interpretations of “consent,” “presence,” and—and by the beginning of the twentieth century—“doing business.”³⁸

But even these were insufficient. Principles of due process once “appropriate for the age of the ‘horse and buggy’ or even for the age of the ‘iron horse’ could not serve the era of the airplane, the radio, and the telephone.”³⁹ In response to exponential economic growth, new communications, and transportation that could travel farther and faster, the Supreme Court signaled its formal departure from Pennoyer’s sway in International Shoe v. Washington.⁴⁰ Instead of “power

³⁵ See infra Part II.B (discussing this issue and its relationship to consent-by-registration). For a historical overview of jurisdiction over corporations up to the mid-nineteenth century, see William F. Cahill, Jurisdiction over Foreign Corporations and Individuals Who Carry On Business Within the Territory, 30 Harv. L. Rev. 676, 679–90 (1917).

³⁶ See, e.g., Neirbo Co. v. Bethlehem Shipbuilding Corp., 308 U.S. 165, 169 (1939) (describing the “long, tortuous evolution” of personal jurisdiction precedent with respect to corporations as a “history of judicial groping for a reconciliation between the practical position achieved by the corporation in society and a natural desire to confine the[ir] powers”).

³⁷ See Riverside & Dan River Cotton Mills v. Menefee, 237 U.S. 189, 194 (1915) (“Whatever long ago may have been the difficulty in applying the principles of Pennoyer v. Neff to corporations, . . . such difficulty ceased to exist.”) (citing St. Clair v. Cox, 106 U.S. 350 (1882)).

³⁸ Kurland, supra note 28, at 577–86, charts the development of these three jurisdictional bases between Pennoyer and International Shoe, arguing “consent” and “presence” were used interchangeably and ultimately subsumed by “doing business” jurisdiction. Cowan v. Ford Motor Co. supports Kurland’s assessment. 694 F.2d 104, 107 (5th Cir. 1982) (holding that appointing an agent and conducting substantial business in Mississippi established general jurisdiction based on consent), on reh’g, 713 F.2d 100 (5th Cir. 1983), certified question answered, 437 So. 2d 46 (Miss. 1983); see also Friedrich K. Juenger, The American Law of General Jurisdiction, 2001 U. Chi. Legal F. 141, 149–52 (noting differences between “presence” and “consent” and arguing the Supreme Court “vaccillated” between them).

³⁹ Kurland, supra note 28, at 573 (citations omitted).

over the defendant’s person,”41 the relationship between the parties, the dispute, and the forum became the new inquiry for personal jurisdiction.42 Due process no longer limited adjudicative authority to the territorial borders of each state; instead, defendants could be called into court wherever they had “certain minimum contacts . . . such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’”43

Through its “minimum contacts” test, International Shoe established the standards for specific jurisdiction and general jurisdiction,44 doing away with the fictions of “consent” and “presence” that courts developed to complement Pennoyer. Without overturning the results reached in earlier cases, International Shoe acknowledged that earlier cases involving corporations “resort[ed] to the legal fiction that [the corporation] has given its consent to service and suit, consent being implied from its presence in the state. . . . But more realistically . . . those authorized acts were of such a nature as to justify the fiction.”45 However, responses to Daimler demonstrate that these fictions somehow persist, even after Pennoyer was thought overruled in Shaffer v. Heitner.46

The Supreme Court decided only three general jurisdiction cases between International Shoe and Daimler: Perkins v. Benguet Consolidated Mining Co.,47 Helicopteros Nacionales de Colombia, S.A. v. Hall,48 and Goodyear Dunlop Tires Operations S.A. v. Brown.49 All three of these cases quietly inform the consent-by-registration jurisdictional issue.50 However, Goodyear had the greatest influence on the Supreme Court’s decision in Daimler.

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42 Id. at 204 (“[T]he relationship among the defendant, the forum, and the litigation, rather than the mutually exclusive sovereignty of the States on which the rules of Pennoyer rest, became the central concern of the inquiry into personal jurisdiction [after International Shoe].”).
43 Int’l Shoe, 326 U.S. at 316 (quoting Milliken v. Meyer, 311 U.S. 457, 463 (1940)).
44 See von Mehren & Trautman, supra note 2, at 1136 (defining specific and general jurisdiction). But see Kurland, supra note 28, at 586 (arguing International Shoe “served rather to destroy existent doctrine than establish new criteria”).
45 Int’l Shoe, 326 U.S. at 318 (emphasis added) (citing Smolik v. Phila. & Reading Coal & Iron Co., 222 F. 148 (S.D.N.Y. 1915)). For more on Smolik, see infra Part II.B.
46 Shaffer, 433 U.S. at 206 (“[T]he law of state-court jurisdiction no longer stands securely on the foundation established in Pennoyer.”).
50 In every general jurisdiction case heard by the Supreme Court following International Shoe, Justices have either commented on or made inquiries into the consequences of consent-by-registration. First, in Perkins, 342 U.S. at 440 n.2, the Court noted that the foreign corporation did not register to do business or appoint an agent for
In Goodyear, a unanimous Court found it unconstitutional to assert general jurisdiction over foreign tire manufacturers sued in North Carolina after two thirteen-year-old residents were killed in a tragic bus accident abroad. The jurisdictional question raised was an “easy case” based on Supreme Court precedent, as well as the prevailing view among lower courts, which acknowledged that “regularly occurring sales of a product in a State do not justify the exercise of jurisdiction over a claim unrelated to those sales.” But Goodyear went further than affirming already accepted views of general jurisdiction. By holding that general jurisdiction requires a corporation’s forum contacts be “so continuous and systematic as to render [it] essentially at home in the forum state,” and by listing “domicile, place of incorporation, and principal place of business as ‘paradigm’ bases for the exercise of general jurisdiction,” Goodyear gave a preview of the new era Daimler would usher in.

A. The Daimler Case

The Supreme Court’s decision in Daimler represents a fundamental shift in personal jurisdiction, but few would have imagined that service of process in Ohio. Then, in Helicopteros, counsel for the foreign corporation went so far as to concede his client would be subject to general jurisdiction if the South American helicopter company had registered to do business in Texas. See Oral Argument at 19:24, Helicopteros, 466 U.S. 408 (1984), available at https://www.oyez.org/cases/1983/82-1127. Finally, in Goodyear, a split of authority on the jurisdictional consequences for consent-by-registration was acknowledged by both counsel for petitioners and respondents at oral argument before the Court, as well as by the U.S. government. See Transcript of Oral Argument, Goodyear Dunlop Tires Operations, S.A. v. Brown, 131 S. Ct. 2846 (2011), No. 10-76, 2011 WL 87746 (documenting that Justice Ginsburg asked, “suppose it’s just a corporation that’s registered to do business in North Carolina, and the connection with that registration; it says: I so-and-so my agent to receive process for any and all claims?”). For comment on the Court’s mention of “consent” in the Daimler decision, see infra note 223.

51 Goodyear, 131 S. Ct. at 2851.
54 Goodyear, 131 S. Ct. at 2857 n.6.
55 See, e.g., Silberman, supra note 52, at 612 (noting general jurisdiction would not be established over Goodyear’s foreign subsidiaries “even under a theory of aggregate contacts”).
56 Goodyear, 131 S. Ct. at 2851 (emphasis added) (internal quotation marks omitted).
57 Id. at 2854 (alteration in original) (quoting Lea Brilmayer et al., A General Look at General Jurisdiction, 66 Tex. L. Rev. 721, 728 (1988)).
the case would produce such a result. In \textit{Daimler}, twenty-two Argentinian plaintiffs sued in California federal district court, alleging German car manufacturer DaimlerChrysler AG was vicariously liable for the acts of its Argentinian subsidiary during Argentina’s “Dirty War.”\footnote{Before \textit{Goodyear}, the view was that “continuous and systematic” activities of a corporation could suffice for general jurisdiction. See, e.g., Matthew Kipp, \textit{Inferring Express Consent: The Paradox of Permitting Registration Statutes to Confer General Jurisdiction\textit{,} 9 REV. LITIG. 1, 35 (1990) (“[C]ontinuous and substantial contacts with the forum permitted the assertion of general jurisdiction.”); Riou, supra note 27, at 742 (“[A] corporation is amenable to general jurisdiction if it has ‘continuous and systematic’ contacts with the forum state.”).} According to the complaint, Mercedes-Benz Argentina—a Daimler subsidiary—collaborated with state security forces from 1976 to 1983, aiding in the torture, kidnapping, detention, and murder of plaintiffs or their close relatives.\footnote{Daimler, 134 S. Ct. at 750–52; see also Linda J. Silberman, \textit{Jurisdictional Imputation in DaimlerChrysler AG v. Bauman: A Bridge Too Far\textit{,} 66 VAND. L. REV. EN BANC 123, 124 (2013) (outlining the basis for the claims leveled against Daimler).}

After a series of dramatic appeals, the case eventually reached the Supreme Court, which held that Daimler could not be sued in California, because Daimler could not be deemed “at home” in that state.\footnote{Daimler, 134 S. Ct. at 751.} However, in the process of reaching that decision, the Court jettisoned notions of “doing business” and “presence” based on “continuous and systematic” activities,\footnote{For an overview of the case history in \textit{Daimler}, see Silberman, supra note 60, at 133.} theories that supported general jurisdiction over claims for more than a century—even after \textit{Goodyear}.\footnote{Daimler, 134 S. Ct. at 762 (“It was therefore error for the Ninth Circuit to conclude that Daimler . . . was at home in California, and hence subject to suit there on claims by foreign plaintiffs having nothing to do with anything that occurred or had its principal impact in California.”).}

In \textit{Daimler}, Justice Ginsburg’s opinion for eight members of the Court held that general jurisdiction over corporations is limited to places where those defendants are “fairly regarded as at home.”\footnote{Id. at 761 n.18 (concluding \textit{Perkins’s} citation to cases upholding the exercise of general jurisdiction based on presence “should not attract heavy reliance today”).} Two
“paradigms” for that standard exist in the corporate-general-jurisdiction context: a corporation’s principal place of business, and its place of incorporation.67 Noting that “[s]imple jurisdictional rules . . . promote greater predictability,”68 the Court’s stated rationale in finding that these two paradigms satisfy due process was that they are unique (“each ordinarily indicates only one place”) and ascertainable.69 And though it left open the door to an “exceptional case” where “a corporation’s operations in a forum other than its formal place of incorporation or principal place of business may be so substantial and of such a nature as to render the corporation at home in that State,”70 Justice Ginsburg’s majority opinion was explicit that “general jurisdiction in every State in which a corporation engages in a substantial, continuous, and systematic course of business” would be “unacceptably grasping.”71

Stating that general jurisdiction “calls for an appraisal of a corporation’s activities in their entirety, nationwide and worldwide,” rather than a defendant’s in-state contacts alone,72 the Court held Daimler’s activities in California did not come near the level required to establish general jurisdiction over the German parent corporation, even if the contacts of Daimler AG’s subsidiary, Mercedes-Benz USA (MBUSA), were imputed to Daimler and MBUSA was considered “at home” in California.73 According to the Court, holding otherwise would merely substitute the now-defunct “doing business” jurisdiction for the Court’s nascent “at home” standard,74 allowing “exorbitant exercises of all-purpose jurisdiction [that] would scarcely permit out-of-state defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.”75 For the majority, such rampant unpredictability violated due process.76

67 Id. (internal citations omitted).
68 Id. (internal quotation marks omitted) (citing Hertz Corp. v. Friend, 559 U.S. 77, 94 (2010)).
69 Id.
70 Id. at 761 n.19.
71 Id. at 761.
72 Id. at 762 n.20.
73 Id. at 762. The Court noted that MBUSA’s California sales accounted for only 2.4% of Daimler’s global sales. Id. at 752. The Court also noted that neither MBUSA nor Daimler had its principal place of business or place of incorporation in California. Id. at 761.
74 See id. at 762 n.20 (“A corporation that operates in many places can scarcely be deemed at home in all of them. Otherwise, ‘at home’ would be synonymous with ‘doing business’ tests framed before specific jurisdiction evolved in the United States.”).
75 Id. at 761–62 (internal citations and quotation marks omitted).
76 In the process of limiting general jurisdiction to all but two “paradigm” locations and putting an end to doing business jurisdiction, the Court overturned two long-standing
B. Responses to Daimler: Problems in the Courts and Legislatures

The response to the Court’s decision was immediate. In the post-Daimler Era, courts have overwhelmingly followed the Supreme Court’s restraint of general jurisdiction, finding it only in instances where a corporation is genuinely “at home.” Yet Daimler also produced an unanticipated response: Courts are now looking to “consent” as a basis of general jurisdiction over foreign corporations, asserting not that foreign corporations have consented to be “found at home” through registration to do business, but that they have consented to be sued over anything. Neither Daimler nor any other post-International Shoe Supreme Court case clearly ruled on consent-based general jurisdiction, leaving lower courts to interpret the issue independently. This has produced disparate results, and state and federal
cases: Barrow S.S. Co. v. Kane, 170 U.S. 100 (1898), and Tauza v. Susquehanna Coal Co., 115 N.E. 915 (1917) (Cardozo, J.). Daimler, 134 S. Ct. at 761 n.18 (putting an end to cases “dominated by Pennoyer’s territorial thinking” and suggesting that general jurisdiction based on consent-by-registration is subject to the same due process limitations as any other theory of jurisdiction).


78 See, e.g., Monkton Ins. Servs., Ltd. v. Ritter, 768 F.3d 429, 432 (5th Cir. 2014) (“It is . . . incredibly difficult to establish general jurisdiction in a forum other than the place of incorporation or principal place of business.”); Sonera Holding B.V. v. Çukurova Holding A.S., 750 F.3d 221, 226 (2d Cir. 2014) (stating that Daimler makes “clear that even a company’s ‘engage[ment] in a substantial, continuous, and systematic course of business’ is alone insufficient to render it at home in a forum” (alteration in original)), cert. denied, 134 S. Ct. 2888 (2014); Gliklad v. Bank Hapoalim B.M., No. 155195/2014 (N.Y. Sup. Ct. Aug. 11, 2014) (denying general jurisdiction over a foreign bank with place of incorporation and principal place of business in Israel, even though the defendant bank possesses a New York branch that is “the center of its operations in the United States, where it actively conducts business”); see also Linda J. Silberman & Aaron D. Simowitz, Recognition and Enforcement of Foreign Judgments and Awards: What Hath Daimler Wrought?, 91 N.Y.U. L. REV. (forthcoming 2016).

One case that seemingly departs from Daimler’s “at home” standard is Barriere v. Juluca, No. 12-23510-CIV, 2014 WL 652831 (S.D. Fla. Feb. 19, 2014). In that case, a Florida district court asserted general jurisdiction over an Anguillan corporation in a suit where an American plaintiff slipped and fell at the corporation’s resort in Anguilla. Id. at *1. The district court acknowledged Daimler’s requirement that a corporation must be “at home” in the forum for a court to exercise general jurisdiction. Id. at *6. Nevertheless, the district court held that, under Daimler, it is still “possible for a corporation to be ‘at home’ in places outside of its place of incorporation or principal place of business.” Id. at *7. It should be noted that the defendant at issue failed to offer documents supporting its argument against jurisdiction. As a result, it may be argued that the defendant thus waived its objection to general jurisdiction being asserted over it.

79 But see infra note 223 (discussing the singular mention of “consent” in Justice Ginsburg’s Daimler opinion).
courts are in disarray over the jurisdictional and due process implications of registration statutes, especially after *Daimler*.

For instance, in *AstraZeneca AB v. Mylan Pharmaceuticals, Inc.*[^80] the Swedish company AstraZeneca and its Delaware-based U.S. subsidiary filed a patent infringement claim in Delaware federal district court against Mylan, a corporation with its place of incorporation and principal place of business in West Virginia.[^81] Plaintiff AstraZeneca alleged three bases for the court’s exercise of jurisdiction over Mylan: (1) general jurisdiction; (2) specific jurisdiction;[^82] and (3) consent to general jurisdiction.[^83] The district court judge was quick to find Mylan was not “at home” in Delaware and thus not subject to general jurisdiction based on that standard.[^84] The case would have been uninteresting but for AstraZeneca’s third alleged basis: “Consent to personal jurisdiction obviates the need to consider due process and minimum contacts.”[^85]

Noting disagreement on the consent-by-registration issue,[^86] the district court held that “compliance does not amount to consent to jurisdiction or waiver of due process” in the post-*Daimler* world.[^87] Not only did the district court deny general jurisdiction based on consent, it rejected a widely cited 1988 Delaware State Supreme Court decision upholding consent-by-registration,[^88] stating that it “can no longer be said to comport with federal due process,” because “just as minimum contacts must be present so as not to offend ‘traditional


[^81]: Id. at *1.

[^82]: Id. at *6. This Note focuses on consent to general jurisdiction, but the Delaware district court’s willingness to find specific jurisdiction in this case demands attention. The court noted specific jurisdiction has been historically disfavored involving the claims at issue in *AstraZeneca*, id. at *6, but nevertheless found specific jurisdiction was proper. Id. at *7. According to the district court judge, because of *Daimler*’s impact on general jurisdiction, courts must look at specific jurisdiction in new ways. Id. at *6–7; see also Silberman, *supra* note 1, at 12–17 (discussing the likelihood that courts will attempt to expand specific jurisdiction in the wake of *Daimler*); cf. Eli Lilly & Co. v. Mylan Pharm., Inc., No. 1:14-CV-00389-SEB-TA, 2015 WL 1125032, at *4–5 (S.D. Ind. Mar. 12, 2015) (upholding specific jurisdiction over Mylan after determining the foreign corporation is not “at home” in Indiana).

[^83]: *AstraZeneca*, 2014 WL 5778016, at *3. The court also discussed the “exceptional case” scenario outlined in *Daimler* and the creative attempts by plaintiffs to use it. Id. at *4.

[^84]: Id. at *3.

[^85]: Id.

[^86]: Id. at *4.

[^87]: Id. at *5.

notions of fair play and substantial justice,’ the defendant’s alleged ‘consent’ to jurisdiction must do the same.” 89

Less than two months later, in a case involving the same defendant and the same claims, a different Delaware district court judge reached the opposite conclusion on the consent issue. Acorda Therapeutics, Inc. v. Mylan Pharmaceuticals, Inc. 90 differs from AstraZeneca in only two respects—different judge, different plaintiff. Conceding AstraZeneca’s “rejection of consent as a basis for general jurisdiction,” and noting that the holding in that case “may well be the correct view,” 91 Acorda held that “Daimler does not change the fact that [the defendant subsidiary] consented to this Court’s exercise of personal jurisdiction when it registered to do business and appointed an agent for service of process in the State of Delaware.” 92 The court noted International Shoe’s minimum contacts test, but nevertheless held that “due process may also be satisfied by consent of the party asserting a lack of personal jurisdiction.” 93

According to the judge, consent satisfies due process, even in cases of general jurisdiction. In Acorda, it did not matter that neither the subsidiary nor parent corporate defendants were “at home” under the Daimler standard. Based on the theory that registration to do business in a state constitutes “consent to general jurisdiction,” even the fact that no section of Delaware’s registration statute “expressly addresses whether or not registration to do business in Delaware constitutes consent [to] general jurisdiction” 94 was irrelevant. 95

Post-Daimler litigation over consent-by-registration general jurisdiction continues to grow. 96 Exemplifying the tension created

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89 AstraZeneca, 2014 WL 5778016, at *5 (citation omitted) (“[M]ere compliance with such statutes sufficient to satisfy jurisdiction would expose companies . . . to suit all over the country, a result specifically at odds with Daimler.”).
93 Id. at *5.
94 Id. at *10.
95 Id. at *12 (“Daimler does not expressly address consent.”).
between consent-based general jurisdiction and *Daimler*, Mylan Pharmaceuticals—the same defendant exposed to conflicting decisions in *AstraZeneca* and *Acorda*—has been subjected to general jurisdiction in at least two states outside its “home.”97 The tension between these lower court decisions and *Daimler* illustrates the need for Supreme Court resolution of the consent-by-registration issue.98

In addition to new case law, the New York State Legislature is considering legislation to “reinforce the continuing viability of consent as a basis of general (all-purpose) personal jurisdiction over foreign corporations authorized to do business in New York.”99 Based on recommendations of the New York Advisory Committee on Civil Practice, the proposal suggests *Daimler* is limited to jurisdiction “decided on the basis of constitutional due process.”100 The proposed law relies on consent as a separate basis for general jurisdiction, pur-


98 *Acorda* is currently on appeal to the Federal Circuit as an issue of first impression before that court, but resolution either way could exacerbate the unpredictable nature in which consent-based general jurisdiction works. Given the existing circuit split on this issue, *supra* Table 1, and the fact that federal district courts would be bound by the Federal Circuit on issues related to its jurisdiction (e.g., patents), federal district courts simultaneously bound by their own circuit will be forced to interpret the same statute in two ways, depending on how *Acorda*’s appeal is resolved.


100 A. Doc. 6714-7013, *supra* note 99. However, every assertion of jurisdiction must meet the requirements of due process. The issue is whether consent-by-registration satisfies due process based on a theory outside *Daimler*’s “at home” standard. See *infra* Part II.B (concluding it does not).
porting to make clear that registration to do business in New York results in consent to general jurisdiction in that state.\(^{101}\)

If enacted, the New York statute will almost certainly face constitutional challenge.\(^{102}\) Ultimately, its success and the validity of court decisions like Acorda depend on whether consent-based general jurisdiction is within the limits of the Due Process Clause. However, as Part II demonstrates, it is not.

II

**CONSSENT-BY-REGISTRATION TO GENERAL JURISDICTION VIOLATES DUE PROCESS**

Mere compliance with state registration statutes and the appointment of an agent for service of process\(^{103}\) is an insufficient constitutional rationale for asserting general jurisdiction over a foreign corporation in the post-*Daimler* Era. Consent-by-registration to general jurisdiction was ambiguous and the subject of a split among state and federal courts even in the twentieth century.\(^{104}\) After *Daimler*, registration statutes cannot serve as a constitutional basis for general jurisdiction over foreign corporations for three reasons. First, neither *Daimler*’s demand for “uniqueness” and “ascertainability” as prerequisites for general jurisdiction, nor *International Shoe*’s minimum contacts requirement is satisfied under a consent-by-registration theory. Second, the consent-by-registration theory asserted against foreign corporations is not a “touchstone of jurisdiction” that warrants its use.

\(^{101}\) Historically, New York courts have overwhelmingly upheld consent-by-registration as a basis for general jurisdiction. *E.g.*, Spiegel v. Schulmann, 604 F.3d 72, 77 n.1 (2d Cir. 2010) (discussing consent-by-registration in dicta); Steuben Foods, Inc. v. Oystar Grp., Inc., No. 10-CV-780S, 2013 WL 2105894, at *3 (W.D.N.Y. May 14, 2013) (stating that for at least 60 years, “New York courts have determined that general jurisdiction may be asserted over a corporation solely on the basis that it has registered to do business”); Augsbury Corp. v. Petrokey Corp., 470 N.Y.S.2d 787, 789 (N.Y. App. Div. 1983) (“The privilege of doing business in New York is accompanied by an automatic basis for personal jurisdiction.”). *See also infra Appendix* (detailing how New York courts uphold the consent-by-registration theory). Note, however, that even recent courts blur concepts of “presence” and “consent” in the context of registration statutes. *See* STX Panocean (U.K.) Co. v. Glory Wealth Shipping Pte Ltd., 560 F.3d 127, 131–32 (2d Cir. 2009) (discussing consent-by-registration but also stating “registration with the State satisfies the . . . test for being ‘found’”).

\(^{102}\) In addition to New York’s proposed legislation, a Pennsylvania jurisdiction statute, 42 PA. CON. STAT. § 5301(a)(2)(ii) (2013), is a prime candidate for constitutional challenge after *Daimler*. The Pennsylvania provision states that Pennsylvania may “exercise general personal jurisdiction” over corporations through “[c]onsent, to the extent authorized by the consent.”

\(^{103}\) As the statutes in the Appendix illustrate, all fifty states provide the requirement for both registration and appointment, so these provisions can be treated as the same for the purposes of consent-based jurisdiction.

\(^{104}\) *Supra* Table 1.
as an alternative basis for satisfying due process. Third, consent-by-registration to general jurisdiction after Daimler likely violates the unconstitutional conditions doctrine.

A. Consent-by-Registration Is Not Unique, Ascertainable, or Sufficient Under a Minimum Contacts Analysis

Differing interpretations of registration statutes might render foreign corporations subject to general jurisdiction in dozens of states. Each state may interpret broadly its jurisdiction-rendering statutes (such as registration statutes and long-arm statutes) to the limits of due process. But that interpretive authority neither requires states to open their courts to the full extent permitted under the Due Process Clause, nor does it prohibit states from doing so. As demonstrated in the Appendix to this Note, different states thus interpret their registration statutes to have different consequences. Furthermore, because federal courts are not required to follow state court interpretations of federal due process, and because state courts are only truly bound by federal due process interpretations of the U.S. Supreme Court, foreign corporations are subjected to varying consequences when they register to do business. Registration statutes fail to satisfy Daimler’s due process requirements as a result.

Determining whether registration to do business establishes consent to general jurisdiction requires courts to perform a three-step statutory and constitutional analysis: (1) Determine whether the applicable registration statute equates compliance with consent to personal

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105 E.g., Sondergard v. Miles, Inc., 985 F.2d 1389, 1393 (8th Cir. 1993) (stating consent-by-registration would establish general jurisdiction over unrelated claims arising even before registration); Rose’s Stores, Inc. v. Cherry, 526 So. 2d 749, 752 (Fla. Dist. Ct. App. 1988) (“By having a registered agent in the state, the minimum contacts requirement is met.”). But see Cossaboon v. Me. Med. Ctr., 600 F.3d 25, 37 (1st Cir. 2010) (“Corporate registration in New Hampshire adds some weight . . . but it is not alone sufficient to confer general jurisdiction.”); Sandstrom v. ChemLawn Corp., 904 F.2d 83, 88–90 (1st Cir. 1990) (counting registration to do business as a contact in the determination of whether there is general jurisdiction, but finding it insufficient even when combined with in-state advertising and employee recruitment).

106 Perkins v. Benguet Consol. Mining Co., 342 U.S. 437, 446 (1952) (“[W]e find no requirement of federal due process that either prohibits Ohio from opening its courts to the cause of action here presented or compels Ohio to do so.”).

107 The Advisory Committee on Civil Practice—which initially suggested the consent-based general jurisdiction legislation in New York—asserts that “Daimler’s limitation on general jurisdiction was decided on the basis of constitutional due process.” Report of the Advisory Committee on Civil Practice to the Chief Administrative Judge of the Courts of the State of New York 31 (2015). Problematically, this suggests that due process need not be met in order to assert jurisdiction, which cannot be the case as long as jurisdiction is tied to the Fourteenth Amendment. Minimum contacts might not be the sole basis for personal jurisdiction, but due process must always be satisfied.
jurisdiction, or whether it only intends to provide service of process resulting in notice to defendants;\(^{108}\) (2) Decide whether that consent establishes general or specific jurisdiction;\(^{109}\) (3) Consider whether this consent satisfies due process.\(^{110}\) The first two steps are matters of statutory interpretation. The third is crucial after *Daimler*. It is a matter of constitutional due process that must ultimately be answered by the Supreme Court, and one on which state courts and federal courts differ widely.\(^{111}\)

Split decisions persist not only between federal district and circuit courts, but also in *intra*-forum splits between state and federal courts interpreting the same statute. Connecticut’s registration statute and cases interpreting it illustrate this issue.\(^{112}\) Nearly thirty years before *Daimler*, a Connecticut state appellate court in *Wallenta v. Avis Rent a Car System, Inc.* interpreted Connecticut’s registration statute as consent to general jurisdiction.\(^{113}\) Later, a Connecticut federal district

\(^{108}\) *E.g.*, Pittock v. Otis Elevator Co., 8 F.3d 325, 329 (6th Cir. 1993) (reasoning the Ohio Supreme Court “rejected the proposition that service of process may be equated with personal jurisdiction” (citing Wainscott v. St. Louis-S.F. Ry., 351 N.E.2d 466 (Ohio 1976))); *Anderson v. Bedford Assocs., Inc.*, No. 3:97cv1018 (GLG), 1997 WL 631117, at *3 (D. Conn. Sept. 19, 1997) (distinguishing between “service of process” and personal jurisdiction and collecting cases on that point); *Werner v. Wal-Mart Stores, Inc.*, 861 P.2d 270, 272 (N.M. Ct. App. 1993) ("While designation of an agent for service of process may confer power on a state to exercise its jurisdiction, it does not automatically do so. We must look to the legislative intent.").


\(^{110}\) See supra Table 1 outlining the circuit split on the question. As this Note demonstrates, courts throughout the United States are grappling with this issue. *Compare In re Asbestos Litig.*, No. CV N14C-03-247 ASB, 2015 WL 5016493, at *3 (Del. Super. Aug. 25, 2015) (“*Daimler* does not foreclose a state registration statute from conferring jurisdiction over a foreign corporation registered to do business in Delaware by virtue of its express consent.”), *motion to certify appeal denied*, No. CV N14C-03-247 ASB, 2015 5692111 (Del. Super. Sept. 24, 2015), *with Keely v. Pfizer Inc.*, No. 4:15CV00583 ERW, 2015 WL 3999488, at *4 (E.D. Mo. July 1, 2015) (“A defendant’s consent to jurisdiction must satisfy the standards of due process and finding a defendant consents to jurisdiction by registering to do business in a state or maintaining a registered agent does not.”).

\(^{111}\) See infra Appendix.

\(^{112}\) The wording of Connecticut’s registration statute is similar to that of most state registration statutes: “The registered agent of a foreign corporation authorized to transact business in this state is the corporation’s agent for service of process, notice or demand required or permitted by law to be served on the foreign corporation.” *Conn. Gen. Stat. Ann.* § 33-929(a) (West 2015).

\(^{113}\) *S22 A.2d 820, 823 (1987)*. This case was remanded to determine whether or not assertion of general jurisdiction satisfied due process. *Id.* at 824.
court judge disagreed with that interpretation, stating the statute merely constitutes consent to service, and that “amenability to service of process is different from activities sufficient to subject the company to personal jurisdiction.”

More than a decade later, in *Talenti v. Morgan*, a Connecticut state appellate court ignored the federal court decision, but went further than *Wallenta* to equate registration with a “voluntary consent” to general jurisdiction that meets the requirements of the Due Process Clause.

This schism on issues of statutory interpretation and due process persists, though at least one Connecticut district judge since *Daimler* has held that due process is not satisfied, even if the state’s registration statute is interpreted as consent to general jurisdiction. Regardless, the state of personal jurisdiction in Connecticut illustrates that consent-by-registration fails to meet *Daimler*’s due process demand for limited, “unique,” and “ascertainable” locations for general jurisdiction.

It is thus incompatible with the Court’s post-*Daimler* interpretation of due process to uphold consent-by-registration as a basis for general, all-purpose jurisdiction. Not only does such a theory bury *Daimler* by keeping in place the pre-*Daimler* jurisdictional status quo (merely switching the ostensible basis of jurisdiction from “doing business” to “consent”), it contradicts the due process criteria required for general jurisdiction: ascertainability and uniqueness. This latter point is best illustrated by the circular logic announced in the legal guidelines provided by New York State to foreign corporations contemplating registration to do business:

[I]f an organization is not doing business that subjects it to jurisdiction . . . it is not doing business that requires qualification. Conversely, by qualification an organization concedes that it is subject to jurisdiction . . . however, not all business activity engaged in by a foreign organization rises to “doing business” in the qualification sense.

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115 968 A.2d 933 (2009).
116 Id. at 940–41 n.14 (stating the defendant “voluntarily consented” to jurisdiction, and that “the exercise of jurisdiction by the court does not violate due process”).
117 See, e.g., WorldCare Ltd. Corp. v. World Ins. Co., 767 F. Supp. 2d 341, 355 (D. Conn. 2011) (“Expansive, non-explicit consent to being hailed into court on any claim whatsoever in a state in which one lacks minimum contacts goes against the longstanding notion that personal jurisdiction is primarily concerned with fairness.”).
120 NEW YORK SECRETARY OF STATE, OFFICE OF GENERAL COUNSEL, “DOING BUSINESS” IN NEW YORK: AN INTRODUCTION TO QUALIFICATION, www.dos.ny.gov/cnsl/
These guidelines stand in stark contrast to the Uniform Law Commission’s Model Registered Agent Act, which ten states and the District of Columbia have implemented to explicitly state that registration statutes provide no jurisdictional basis over foreign corporations.

Furthermore, compliance with a registration statute neither establishes the continuous and systematic contacts that render a foreign corporation “at home” as Daimler requires nor results in an “exceptional case” that allows jurisdiction to be asserted over claims wholly unrelated to a forum state. Prior to Daimler, some courts considered registration to do business or the appointment of an agent for service of process to be sufficient to uphold general jurisdiction under a traditional minimum contacts analysis, even in cases where foreign corporations registered, but never conducted any actual business in a forum state. However, Daimler invalidates the theory that registration creates sufficient contacts for general jurisdiction by holding that even “continuous and systematic contacts” are insufficient to confer general jurisdiction, unless those contacts render a corporation “at home.” Almost every court accepts this view in the wake of Daimler.

Ironically, the post-Daimler disarray described above provokes the same concerns that Daimler sought to address, exacerbating the Supreme Court’s concern over comity in the U.S. exercise of judicial jurisdiction.

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122 See infra Appendix.

123 See, e.g., Rose’s Stores, Inc. v. Cherry, 526 So. 2d 749, 752 (Fla. Dist. Ct. App. 1988) (“By having a registered agent in the state, the minimum contacts requirement is met.”) But according to Daimler, “only a limited set of affiliations with a forum will render a defendant amenable to all-purpose jurisdiction there.” Daimler, 134 S. Ct. at 760.

124 See id. at 760–61 (rejecting “unacceptably grasping” assertions of general jurisdiction); see also Riou, supra note 27, at 745 (noting the possibility that forum non conveniens and venue statutes will fail to protect against unfair litigation sparked by consent-by-registration general jurisdiction).

125 Acknowledging the transnational nature of litigation today, Justice Ginsburg in Daimler noted the narrower approach to general jurisdiction taken by other countries. See Daimler, 134 S. Ct. at 763. Thus, it bears noting that neither the European Union’s Brussels Regulation (Recast), Council Regulation 1215/2012 L. 351(EU) (effective Jan. 2015), nor the laws of England support general jurisdiction based on a registration theory. See Dicey, Morris, & Collins, The Conflict of Laws 425 (15th ed. 2012) (“[T]o say that a corporation which, under the threat of heavy fine, files with the Registrar of Companies . . . thereby submits to the jurisdiction seems even more artificial than saying that a
might nevertheless satisfy due process if that theory were rooted in
the origins of American jurisprudence on personal jurisdiction,
allowing the theory to potentially circumvent a minimum contacts
analysis. However, Part II.B demonstrates that statutory compli-
cance with registration statutes lacks that requisite history and
tradition.

B. Consent-by-Registration Is Not a “Touchstone of Jurisdiction”

Consent-by-registration goes to the heart of *Pennoyer*, but its
constitutionally permissible boundaries are significantly more limited
than what post-*Daimler* decisions upholding consent-based general
jurisdiction suggest. Because consent-by-registration fails a traditional
minimum contacts analysis under *Daimler*, its due process validity
depends on the Supreme Court’s willingness to consider consent-
based general jurisdiction a “touchstone of jurisdiction” along the
lines of personal jurisdiction based on physical presence discussed in
Justice Scalia’s plurality opinion in *Burnham v. Superior Court*.

A “touchstone of jurisdiction” is a basis of adjudicative authority
that satisfies due process because of its historical connection to the
adoption of the Fourteenth Amendment and its continued practice up
to the present day. In *Burnham*, Justice Scalia wrote for four jus-
tices of the Court, upholding jurisdiction over natural persons based
on their physical presence in a forum. Because they found so-called
“tag” jurisdiction to be part of personal jurisdiction’s history and tra-
dition since the days of *Pennoyer v. Neff*, service upon a physically
present defendant in the forum state was enough to establish personal
corporation which establishes a place of business in England is deemed to be present in
England.”).

126 *See* *Burnham v. Superior Court*, 495 U.S. 604, 619 (1990) (plurality opinion) (arguing
that jurisdiction based on just being physically present in the forum satisfies due process
because it always has and is rooted in American jurisprudence); *see also* *Sun Oil Co. v.
Wortman*, 486 U.S. 717, 730 (1988) (holding that the Court has long approved forum-state
application of its own statute of limitations, and there was no justification to alter that
tradition); Carol Andrews, *Another Look at General Personal Jurisdiction*, 47 WAKE
FOREST L. REV. 999, 1072–73 (2012) (arguing that “consent theory changes the
constitutional inquiry” by “shift[ing] any due process analysis from minimum contacts to
the validity of the consent”).

127 *Burnham*, 495 U.S. at 619. However, as Justice Scalia’s *Burnham* opinion discussed,
“*International Shoe* confined its ‘minimum contacts’ requirement to situations in which the
defendant ‘be not present within the territory of the forum.’” *Id.* at 621. *But see* Burt
Neuborne, *General Jurisdiction, Corporate Separateness, and the Rule of Law*, 66 VAND. L.
REV. EN BANC 95, 107 & n.45 (2013) (arguing *Burnham* alone survived *International
Shoe*’s “‘minimum contacts’ shipwreck” and that *Burnham*’s unanimous result “obscures
the fierce disagreement” over whether *International Shoe*’s fairness standard controls all
assertions of personal jurisdiction).

128 *Burnham*, 495 U.S. at 622.
jurisdiction. No question into whether minimum contacts existed was required.129

But while historically supported in-state service may require no inquiry into “traditional notions of fair play and substantial justice,”130 assertions of consent-by-registration to general jurisdiction demand one. As the remainder of this Part demonstrates, consent-by-registration to general jurisdiction carries neither the history nor the tradition required to establish it as a touchstone of jurisdiction. On the contrary, although registration statutes were commonly accepted as a basis for specific jurisdiction, it was not until the twentieth century that three of America’s most prominent jurists, in a rapid trilogy of cases, expanded the scope of state authority over foreign corporations to include what is known today as general jurisdiction. Thus, even accepting the argument that “[i]f a thing has been practiced for two hundred years by common consent, it will need a strong case for the Fourteenth Amendment to affect it,”131 consent-by-registration is still an insufficient basis for asserting general jurisdiction over foreign corporations.

1. Consent in Context: A Nexus of Territory, Registration, Service, and Jurisdiction

Consent is far from a singular concept, especially in the personal jurisdiction context.132 As such, “the primary source of problems arises in those cases in which the thesis of consent has been extended to cover cases where in fact consent does not exist.”133 The question of whether or not genuine consent exists complicates a constitutional inquiry into the validity of registration statutes as a basis for general jurisdiction.134 Nevertheless, while some forms of consent are valid bases of jurisdiction, consent-by-registration to general jurisdiction is not one of them.

Pennoyer established the nexus between adjudicative authority over a defendant and fair notice to that defendant provided through

129 Id. at 604–05.
130 Int’l Shoe, 326 U.S. at 316 (quoting Milliken v. Meyer, 311 U.S. 457, 463 (1940)).
131 Sun Oil, 486 U.S. at 730.
132 See Kevin D. Benish & Nathan D. Yaffe, A Typology of Consent (unpublished manuscript) (on file with author) (categorizing various manifestations of consent and their effect on jurisdiction, immunity, venue, notice, and aggregate litigation).
133 Kurland, supra note 28, at 575 (citing Pennoyer v. Neff, 95 U.S. 714, 735 (1877)); see also WorldCare Corp. v. World Ins. Co., 767 F. Supp. 2d 341, 355 (D. Conn. 2011) (““Consent’ is meaningless unless its scope is defined.”
134 Consent may be express or implied, exacted before or after commencing litigation, genuine or coerced. See Ins. Corp. of Ir. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 703 (1982) (“[P]ersonal jurisdiction represents first of all an individual right, it can, like other such rights, be waived.”).
service of process.135 Like the doctrine of personal jurisdiction itself, the meaning of “service of process” and its relationship to assertions of jurisdiction have changed over time.136 In Pennoyer’s heyday, service of process was limited to the territorial borders of each state. As a result, while service on a natural person “sufficed both to assert the state’s power over him and to give the defendant notice of the pending action,”137 such service was impossible over a corporation that existed only in its home state. This was a result of the nineteenth-century principle that “a corporation must dwell in the place of its creation,” and the fact that officers of a corporation did not carry corporate liabilities with them and thus could not be automatically served while in another state.138

Registration statutes developed as a solution to this “manifest injustice.”139 But registration statutes alone did not remedy states’ inability to assert jurisdiction over foreign corporations under Pennoyer’s power theory.140 Instead, states conditioning the right to

135 Harold L. Korn, The Development of Judicial Jurisdiction in the United States: Part I, 65 Brook. L. Rev. 935, 983 (1999). Through “process,” a state established jurisdiction, whereas “service” of it gave notice to defendants. Jurisdiction and notice through service of process seemed indivisible during the Pennoyer Era, but there is no doubt they can be achieved through separate means today. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 291 (1980) (noting due process requires both notice and personal jurisdiction, and that adequate service established notice but was insufficient to confer jurisdiction); Wenche Siemer v. Learjet Acquisition Corp., 966 F.2d 179, 181, 183 (5th Cir. 1992) (denying general jurisdiction based on registration to do business and categorizing registration statutes as a “procedural requirement[ ] of notice”).

136 As noted by Professor Korn, “process” is a legal term “laden with more meanings than it can usefully bear,” given the evolution of the jurisdiction-notice nexus. Korn, supra note 135, at 983.

137 Friedenthal, Kane & Miller, supra note 26, at 103.

138 St. Clair v. Cox, 106 U.S. 350, 354 (1882) (citation omitted) (discussing situations when a corporate officer travels to other forums and noting that “his functions and his character would not accompany him”).

139 Id. at 354–55 (“To meet and obviate this inconvenience and injustice, the legislatures of several states interposed and provided for service of process on officers and agents of foreign corporations doing business therein.”). Note that in Barrow v. Kane, one of the two “Pennoyer Era” cases overturned by Daimler, the Supreme Court acknowledged that registration statutes were about establishing jurisdiction over causes of action arising out of contracts in a particular forum state. Barrow S.S. Co. v. Kane, 170 U.S. 100, 107–08 (1898) (noting that since it would be a “manifest injustice” to allow foreign corporations to “do business” and sue in courts without being subject to suit themselves, states have responded by enacting statutes that required foreign corporations “making contracts within the state” to appoint agents “upon whom process may be served in actions upon such contracts” (emphasis added)). Liabilities on which a corporation could be sued, however, were limited to instances involving specific jurisdiction under today’s standard.

140 Scott, supra note 26, at 50 n.46 (“A corporation . . . is domiciled only in the state creating it. Hence, jurisdiction over a foreign corporation cannot be based upon domicile.”).
conduct interstate business on compliance with registration statutes relied on Pennoyer’s other basis of jurisdiction—consent.\textsuperscript{141}

But while Pennoyer permitted courts to establish general “tag” jurisdiction over a natural person through service based on defendants’ physical presence—recognized in Burnham—consent had a comparatively limited jurisdictional reach.\textsuperscript{142} As noted by Arthur von Mehren, “[l]egislation, passed in the early decades of the nineteenth century, involved the state’s power to exclude foreign corporations from doing business in the state and required that they consent to state-court jurisdiction over causes of action arising from business done locally on their behalf.”\textsuperscript{143} That the limitations of consent-by-registration precede the Pennoyer Era itself is a fact demonstrated by the Supreme Court’s decision in Lafayette Insurance Co. v. French.\textsuperscript{144}

In 1855, thirteen years before the ratification of the Fourteenth Amendment and more than twenty years prior to Pennoyer, an Ohio citizen sued in Indiana federal court to enforce an Ohio judgment. In the original suit, the Ohio Supreme Court held it could imply consent of a foreign corporation to suits arising out of in-state contacts based on service of process upon a foreign corporation’s in-state agent.\textsuperscript{145} Like the registration statutes of today, Ohio’s registration statute required state authorization and appointment of an agent for service before a foreign corporation could legally conduct business.

Upholding Ohio’s jurisdiction over the nonresident Indiana corporation, the U.S. Supreme Court wrote that a “corporation created by Indiana can transact business in Ohio only with the consent, express or implied, of the latter State. . . . This consent may be accompanied by such conditions . . . provided they are not repugnant to the constitution or laws of the United States.”\textsuperscript{146} The Court emphasized its decision was limited to claims arising out of in-state activity.\textsuperscript{147} In

\textsuperscript{141} See supra note 32 (noting the role of consent in Pennoyer).

\textsuperscript{142} See, e.g., Simon v. S. Ry. Co., 236 U.S. 115, 130 (1915) (“[T]he statutory consent of a foreign corporation to be sued does not extend to causes of action arising in other states.” (citing Old Wayne Mut. Life Ass’n v. McDonough, 204 U.S. 8, 22 (1907))).


\textsuperscript{144} 59 U.S. 404, 407 (1855).

\textsuperscript{145} Id.


\textsuperscript{147} French, 59 U.S. at 408–09 (“We limit our decision to the case of a corporation acting in a State foreign to its creation, under a law of that State which recognized its existence,
other words, French was a specific jurisdiction case in today’s personal jurisdiction vocabulary. But as the legal fiction of corporate presence developed, so did the consequences for corporations registering to do business in foreign states.148

In St. Clair v. Cox,149 the Supreme Court expanded the notion of implied consent articulated in French to encompass cases where corporate consent to jurisdiction could be implied by the fact that a corporation was “doing business” in the forum state, even if they had not registered to do business.150 Yet the Supreme Court continued to consistently limit jurisdiction to only those claims that arose out of each forum state, since those were the truly voluntary acts corporations were making by directing commerce into foreign forums.151 But that jurisdictional limitation vanished in the early twentieth century.

2. “Doing Business” and the Leap to Consent-by-Registration to General Jurisdiction

As cases overruled by Daimler illustrate, limits on a consent theory of jurisdiction began to change as interpretations of “doing business” expanded and came to more closely resemble a corporation’s “presence” rather than its implied “consent.”152 This more

for the purposes of making contracts there and being sued on them, through notice to its contracting agents.” (emphasis added)).

148 Mary Twitchell, The Myth of General Jurisdiction, 101 Harv. L. Rev. 610, 622 (1988) (noting the analogy sometimes drawn between corporations and natural persons and arguing that corporate “presence” supported general jurisdiction as if a natural person were in the forum).


150 Nevertheless, general jurisdiction still applied only where corporations at the time could be said to reside: in their place of incorporation. As Justice Field noted in St. Clair:

The principle that a corporation must dwell in the place of its creation, and cannot . . . migrate to another sovereignty . . . prevented the maintenance of personal actions against it. There was no mode of compelling its appearance in the foreign jurisdiction. Legal proceedings there against it were, therefore, necessarily confined to the disposition of such property belonging to it as could be there found; and to authorize them legislation was necessary.

Id. at 354.


152 In Barrow S.S. Co. v. Kane, a New Jersey plaintiff sued, in New York, a British corporation that kept offices, property, and employees in New York City. 170 U.S. 100, 101 (1898). At the time, service on New York agents did not establish jurisdiction, but the Supreme Court upheld jurisdiction, stating it “may be implied from a grant of authority . . . to carry on its business there.” Id. at 107 (emphasis added). Tauza v. Susquehanna Coal Co., 115 N.E. 915, 918 (N.Y. 1917), held the same. Writing for the New York Court of Appeals, Judge Cardozo upheld general jurisdiction over the defendant Pennsylvania company, because it maintained a “branch office in New York” that “contain[ed] eleven desks, and other suitable equipment” for salesmen. Id. at 916. Although both Barrow and
expansive interpretation of “doing business” eventually confused the three concepts. As a result, consent-by-registration experienced a theoretical leap to general jurisdiction through a trilogy of cases decided one hundred years ago.

Writing in the 1915 case Smolik v. Philadelphia & Reading Coal & Iron Co., Judge Learned Hand held that “in the interests of justice,” courts may “impute[] results to the voluntary act of doing business within [a] foreign state, quite independently of any intent.” The defendant in Smolik, a Pennsylvania mining corporation, was sued by Anthony Smolik after he was injured in a mine operated by the company. Although no part of its mines were in New York, the defendant was found to be “doing business” in the state. By virtue of having obtained a state license, the defendant had appointed an agent for service of process, but since service was made on the non-resident corporation on a claim unrelated to New York, the defendant moved to set aside the service.

In a four-page opinion, Judge Hand upheld jurisdiction over the unrelated claim, stating that “personal jurisdiction . . . depends upon the interpretation of the consent actually given, an interpretation determined altogether by the intent of the state statutes.” Interpreting the relevant statute to permit New York residents to “sue foreign corporations upon any cause of action whatever,” Hand found “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.”

Tausa were cited in Perkins v. Benguet Consolidated Mining Co., 342 U.S. 437, 446 & n.6 (1952), Daimler made clear that these cases are no longer persuasive. Daimler AG v. Bauman, 134 S. Ct. 746, 762 n.18 (2014).

The first Supreme Court case articulating a rule that collapses these theories appears to be People’s Tobacco Co. v. American Tobacco Co., 246 U.S. 79, 87 (1918) (“The general rule deducible from all our decisions is that the business must be of such nature and character as to warrant the inference that the corporation has subjected itself to the local jurisdiction, and is . . . present within the state or district where service is attempted.”) (emphasis added)). Cf. Phila. & Reading Ry. Co. v. McKibbin, 243 U.S. 264, 265 (1917) (Brandeis, J.) (discussing “presence” and “doing business” “in the absence of consent”).

The defendant’s argument was that “the express consent [of registering to do business and appointing an agent for service of process] must be limited in exactly the same way” as implied consent is limited. Id. (discussing defendant’s arguments related to St. Clair v. Cox, 106 U.S. 350 (1882)).

Id. at 149.

Id. at 150. After upholding jurisdiction over the unrelated claim, he acknowledged that “[w]hen . . . a foreign corporation will be taken to have consented to the appointment of an agent to accept service, the court does not mean that . . . it has
In a New York Court of Appeals decision one year later, Judge Cardozo articulated the same view held by Judge Hand. Bagdon v. Philadelphia & Reading Coal & Iron Co. presented nearly identical facts to those in Smolik. The exact same defendant contested the validity of service upon it in New York for the same reason as in the year before: Registration to do business in New York State only established jurisdiction for claims related to that forum. According to the Pennsylvania company, “any other construction would do violence to its rights under the federal Constitution.”

Judge Cardozo held otherwise. Citing Smolik and characterizing the issue before the court as one of contract, Cardozo wrote “when a foreign corporation is engaged in business in New York, and is here represented by an officer, he is its agent to accept service, though the cause of action has no relation to the business here transacted.” Doing business in New York required a “stipulation” that designated an agent for service of process in the state. Thus the court in Bagdon, like Judge Hand in Smolik, determined its jurisdictional reach as a matter of statutory interpretation. As such, the stipulation involved was considered “a true contract,” one that “deals with the jurisdiction of the person.” Bagdon’s only reference to due process rights of the defendant was contained as an aside in the case’s closing sentence.

Other courts in the United States quickly adopted the rationale of these cases to expand jurisdiction over claims unrelated to a
One year later, the Supreme Court accepted the principle established in Smolik and Bagdon. In Pennsylvania Fire Insurance Co. v. Gold Issue Mining & Milling Co., a Pennsylvania insurance company registered to do business in Missouri, establishing an agent for service of process pursuant to the statutory requirements for that registration. The Gold Issue Mining and Milling Company was an Arizona corporation that owned property in Colorado insured by Pennsylvanian Fire. After that property was struck by lightning and destroyed, Gold Issue Mining sued Pennsylvania Fire in Missouri over the Colorado claim.

Departing from the Court’s narrower precedents of the past, Justice Holmes held that “when a power actually is conferred by a document, the party executing it takes the risk of the interpretation that may be put upon it by the courts. The execution was the defendant’s voluntary act.” However, as suggested in Part II.A, the unpredictable “risk of interpretation” rationale underlying the holding of Pennsylvania Fire creates an impermissible level of uncertainty for defendants under the Daimler standard. But cases far predating Daimler also support the fact that Pennsylvania Fire can no longer provide a constitutional basis for consent-by-registration to general jurisdiction.

While Pennsylvania Fire, Bagdon, and Smolik stand for the proposition that state registration statutes can be interpreted to uphold general jurisdiction over foreign corporations based on a “consent” theory, courts relying on this trilogy of cases ignore the qualifications quickly placed on it by the Supreme Court in Chipman, Ltd. v. Pennsylvania Fire, 243 U.S. 93 (1917).

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168 See, e.g., Rishmiller v. Denver & R.G.R. Co., 159 N.W. 272, 273–74 (Minn. 1916) (upholding jurisdiction “no matter where the cause of action arose” based on “consent,” “presence,” and “doing business,” stating “[n]either the nature of the business nor the volume of the business transacted is important so long as the corporation can fairly be said to be doing business in the state” (citing Int’l Harvester Co. of Am. v. Kentucky, 234 U.S. 579 (1914); Comm. Mut. Accident Co. v. Davis, 213 U.S. 245, 256 (1909); Bagdon, 111 N.E. at 1075)).

169 243 U.S. 93 (1917); see also Kipp, supra note 59 (suggesting registration statutes were enacted to establish service on corporations, not jurisdiction); Riou, supra note 27, at 748–68 (analyzing Pennsylvania Fire).


171 Pennsylvania Fire, 243 U.S. at 96.

Thomas B. Jeffrey Co. and Robert Mitchell Furniture Co. v. Selden Breck Construction Co. Through these cases, the Supreme Court clarified the intended scope of its Pennsylvania Fire decision.

Chipman presented facts similar to the Pennsylvania Fire-Bagdon-Smolik trilogy. However, a significant difference was that the foreign corporation was no longer “doing business” in New York—it had merely not yet revoked its registration. Although the Court noted registration could be of “federal cognizance,” it specifically distinguished the case from both Bagdon and Tauza based on the quantum of activity the foreign corporations in those cases were conducting compared to the Wisconsin-based Thomas B. Jeffrey Company. Robert Mitchell provided a similarly narrow decision to further cabin Pennsylvania Fire. Stressing the “limited interpretation of a compulsory assent,” Justice Holmes stated courts should not expand the scope of registration, and that “appointment of the agent is the only ground for imputing to the defendant an even technical presence.”

This stands in contrast to post-Daimler theories of consent-by-registration as a separate basis for general jurisdiction, especially given the history of those statutes that illustrates their use as a commonly accepted basis for specific jurisdiction and the fact that their validity was questioned and cavetated from the start. Notable early twentieth-century proceduralists support the view that the Pennsylvania Fire-Bagdon-Smolik trilogy’s true basis of jurisdiction was “doing business,” not consent. Furthermore, as discussed by

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173 251 U.S. 373 (1920).
175 Here, suit was filed in a New York court by a New York plaintiff over a Wisconsin-based claim against a Wisconsin-based corporation. Chipman, 251 U.S. at 376–77.
176 Id. at 378.
177 Id. at 378–79.
178 Robert Mitchell, 257 U.S. at 216.
179 See supra Part II.B.1 (demonstrating this point).
180 See, e.g., Chipman, Ltd. v. Thomas B. Jeffery Co., 260 F. 856, 858 (S.D.N.Y. 1919) (interpreting Smolik as requiring a foreign corporation to have been “transacting business” in order for a court to hear claims unrelated to its jurisdiction), aff’d sub nom., Chipm., Ltd., v. Thomas B. Jeffrey Co., 251 U.S. 373 (1920); see also Henderson, supra note 151, at 94–96 (criticizing the rationale supporting Smolik and Bagdon).
181 Austin Scott’s 1922 treatise articulated the three bases of personal jurisdiction over foreign corporations: “implied consent,” “presence,” and “doing business.” Smolik, Bagdon, and Pennsylvania Fire are placed clearly under the “doing business” category, which underscores the unreliable nature of a consent-by-registration theory over claims unrelated to a forum after Daimler. Scott, supra note 26, at 48–52. However, “doing business” does not capture the full theoretical scope for which Scott cites Smolik. See id. (citing Smolik for the “principle[ ] of justice [that] if a corporation voluntarily does business within the state, it is bound by the reasonable regulations by the state of that business” (emphasis added)); see also Cahill, supra note 35, at 691–95 (arguing the
Justice Scalia in *Burnham*, presence and consent in the context of jurisdiction over corporations were “purely fictional,” and “*International Shoe* cast those fictions aside.” And although the most important cases purporting to establish general jurisdiction through consent-by-registration were decided at a time when it was “difficult . . . it seem[ed] impossible, to impute the idea of locality to a corporation,” *Daimler* stands for the proposition that “[a] corporation that operates in many places can scarcely be deemed at home in all of them.” Thus, according to an overwhelming majority of the Supreme Court, the world has changed. It is necessary to understand the limits of consent-by-registration as a theory of jurisdiction in this new light.

*Daimler* endorsed the move away from jurisdictional fictions, stating that “changes in the technology of transportation and communication, and the tremendous growth of interstate business activity” have transformed our understanding of how jurisdiction functions. The consequence has been that both “consent and doing business . . . have narrower implications.” With “doing business” interred by *Daimler*, the general jurisdiction consent-by-registration theory embodying *Pennoyer*’s ghost is equally impermissible, and is thus likely unconstitutional.

Supreme Court abandoned consent as a basis for jurisdiction over foreign corporations at the turn of the twentieth century in favor of “doing business” jurisdiction); Case Comment, *Service of Process on Nonresidents in Actions in Personam*, 34 *YALE L.J. 415*, 423 (1925) (stating that “a growth of law on what constitutes ‘doing business’” accompanied the consent-by-registration decisions).

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182 495 U.S. 604, 617–18 (1990) (plurality opinion); see also Charles W. “Rocky” Rhodes, *Nineteenth Century Personal Jurisdiction Doctrine in a Twenty-First Century World*, 64 FLA. L. REV. 387, 426 (2012) (arguing that the “at home” standard announced in *Goodyear* “completed the rejection of the . . . fictitious presence construct” that predated *International Shoe*).

183 Hutchinson v. Chase & Gilbert, 45 F.2d 139, 141 (2d Cir. 1930) (Hand, J.) (emphasis added); see also New Eng. Mut. Life Ins. v. Woodworth, 111 U.S. 138, 144 (1884) (discussing the development of registration statutes as a response to foreign corporations “doing business” in multiple forums).


185 *Id.* at 753–54 (citing *Burnham v. Superior Court*, 495 U.S. 604, 617 (1990) (plurality opinion) (internal quotation marks omitted)). As suggested shortly after *International Shoe* by Kurland, supra note 28, at 580, if the Due Process Clause “denied the power of the state to imply consent to suit on claims arising out of transactions occurring elsewhere than within the state,” it is questionable that “it did not also deny to the state the power to extort such a consent in writing.”

186 Von Mehren & Trautman, supra note 2, at 1142 n.53.

187 See, e.g., *Daimler*, 134 S. Ct. at 761 n.18 (referring to post-*International Shoe* Supreme Court citations of cases upholding general jurisdiction without minimum contacts as “unadorned citations . . . dominated by *Pennoyer*’s territorial thinking . . . [that] should not attract heavy reliance today”); Morris v. Skandinavia Ins., 279 U.S. 405, 408–09 (1929) (“The purpose of state statutes requiring the appointment by foreign corporations of
III
CONSENT-BY-REGISTRATION IS AN UNCONSTITUTIONAL CONDITION AFTER DAIMLER

After Daimler, consent-by-registration also burdens foreign corporations with an unconstitutional condition. Under the unconstitutional conditions doctrine, “the government ‘may not deny a benefit to a person because he exercises a constitutional right.’” Describing the doctrine in its “canonical form,” Richard Epstein once noted that “even if a state has absolute discretion to grant or deny a privilege or benefit, it cannot grant the privilege subject to conditions that improperly ‘coerce,’ ‘pressure,’ or ‘induce’ the waiver of constitutional right.” Requiring foreign corporations to relinquish their due process right to be free from lawsuits where they are not “at home” violates this doctrine.

A. The Coercive Effect of Registration Statutes in the Absence of Doing Business Jurisdiction

The crux of the unconstitutional condition question presented by Pennoyer’s ghost is coercion. Professors Adam Cox and Adam Samaha have illustrated elsewhere that “there is no snappy and established test for analyzing unconstitutional conditions questions.” While various analyses exist, ranging from “germaneness” tests, to “balancing” tests, to tests focused on other factors that may trigger

agents upon whom process may be served is primarily to subject them to the jurisdiction of local courts in controversies growing out of transactions within the state.” (emphasis added).

Commentators made this assertion nearly a century ago. See Recent Case, Foreign Corporations—Service of Process—Jurisdiction Over Cause of Action Arising Outside the State, 29 HARV. L. REV. 880, 880 (1916) (arguing Bagdon and Smolik likely present an unconstitutional condition).

Koontz v. St. Johns River Water Mgmt. Dist., 133 S. Ct. 2586, 2594 (2013) (citation omitted) (collecting cases); see also Kathleen Sullivan, Unconstitutional Conditions, 102 HARV. L. REV. 1413, 1421–22 (1989) ("Unconstitutional conditions problems arise when government offers a benefit on condition that the recipient perform or forego an activity that a preferred constitutional right normally protects from government interference.").

Epstein, Unconstitutional Conditions, supra note 146, at 6–7.

Adam B. Cox & Adam M. Samaha, Unconstitutional Conditions Questions Everywhere: The Implications of Exit and Sorting for Constitutional Law and Theory, 5 J. LEGAL ANALYSIS 61, 67 (2013); see also id. at 68 (“Unconstitutional conditions doctrine actually designates a kind of problem calling for analysis rather than the analysis used to solve a kind of problem.” (footnote omitted)); cf. Cass R. Sunstein, The Partial Constitution 301 (1993) (calling the unconstitutional conditions doctrine an “anachronism” and arguing that it should be abandoned).


See, e.g., Sunstein, supra note 191, at 305–18 (arguing for a shift “away from an emphasis on whether there has been ‘coercion’ or ‘penalty,’ and toward an inquiry into the
an unconstitutional condition.\textsuperscript{194} Case law on the relationship between foreign corporations, judicial power, and unconstitutional conditions suggests that a “coercive effects test” will most likely apply in a challenge to the consent-by-registration general jurisdiction question.\textsuperscript{195}

The coercive effects test applied here is triggered if an entity is required to sacrifice one constitutional right for another when exercising a privilege or a benefit. This test is specific to consent-based general jurisdiction, since a full-blown analysis of the relationship between genuine consent and coercion is beyond the scope of this Note.\textsuperscript{196} However, as this Part demonstrates, this coercive effects test is both independently sufficient and historically supported as a means to identify an unconstitutional condition involving registration statutes and foreign corporations. Under this analysis, and even assuming that compliance with a registration statute constitutes “consent to general jurisdiction” (it does not), a foreign corporation’s statutory compliance is likely a “coerced consent” unable to withstand legal scrutiny after \textit{Daimler}.

As long as “doing business” and “continuous and systematic” activities were accepted bases of adjudicative authority, courts and states extracted nothing more than they already had over corporations—general personal jurisdiction. Prior to \textit{Daimler}, it did not matter whether general jurisdiction was based on minimum contacts or consent-by-registration. General jurisdiction existed on the basis of “doing business,” so there was arguably no constitutional right to be sacrificed. Thus, registration statutes possessed no coercive effect on foreign corporations that failed to comply.\textsuperscript{197} But with “doing business” eliminated as a basis of general jurisdiction,\textsuperscript{198} the courthouse door-closing penalty statutes enacted by states for failure to register to nature of the interest affected by the government and the reasons offered by government for its intrusion").

\textsuperscript{194} See Cox & Samaha, \textit{supra} note 191, at 67 n.11 (collecting sources).


\textsuperscript{196} For a discussion of “unimpeachable consent” and coercion in the broader context of the civil justice system, see Benish & Yaffe, \textit{supra} note 132.

\textsuperscript{197} But see Lewis, \textit{supra} note 27, at 15–20 (arguing there was a possible unconstitutional condition, even when “doing business” was a valid basis of jurisdiction); Recent Case, \textit{supra} note 188, at 880 (same).

\textsuperscript{198} See \textit{supra} Part I.A.
do business bear the hallmarks of coercion that trigger an unconstitutional condition. 199

In the wake of Daimler, a foreign corporation conducting interstate commerce in a state that upholds consent-by-registration to general jurisdiction is forced to forfeit one of two constitutional rights: (1) the due process protection against unwarranted assertions of all-purpose jurisdiction; or (2) access to federal courts via diversity jurisdiction, which is likely barred by door-closing state penalty statutes that eliminate access to state courts and thus also deny federal court access under the Erie Doctrine, 200 specifically under the Supreme Court’s holding in Woods v. Interstate Realty Co. 201 But if corporations may engage freely in interstate commerce 202 and be free from general personal jurisdiction except in cases where they are “at home,” it follows that states do not have the power to demand a tradeoff between the Fourteenth Amendment’s due process protections and access to federal court diversity jurisdiction under Article III of the Constitution. 203 The coercive effect of this false choice represents no choice at all, except between “the rock and the whirlpool.” 204

199 Part III.B and the Appendix to this Note detail contemporary penalties for failure to comply with foreign corporate registration statutes.

200 Erie R.R. Co. v. Tompkins, 304 U.S. 64 (1938).

201 337 U.S. 535 (1949). In Woods, a Tennessee corporation brought a diversity action against a Mississippi defendant in Mississippi federal court. Because the foreign corporate plaintiff was not registered to do business in Mississippi, the defendant asserted that the suit had to be dismissed pursuant to a Mississippi door-closing statute providing that non-registered corporations “shall not be permitted to bring or maintain any action or suit in any of the courts of this state.” In a 6–3 decision, the Supreme Court held that “where in such cases one is barred from recovery in the state court, he should likewise be barred in the federal court.” Id. at 538; cf. Union Brokerage Co. v. Jensen, 322 U.S. 202, 211–12 (1944) (upholding door-closing statute as permissible under the Commerce Clause where foreign corporation was “localized” and the state law was designed “for the purpose of insuring the public safety and convenience” (internal quotation marks and citation omitted)).


203 U.S. CONST. art. III, § 2. There is an unresolved tension between those cases that held non-removal statutes to be an unconstitutional condition and the Erie Doctrine’s impact on door-closing penalties for non-compliance with registration statutes. Compare supra notes 199–203 and accompanying text (discussing Woods v. Interstate Realty Co., 337 U.S. 535 (1949)), with infra notes 208–18 (discussing non-removal statutes and unconstitutional conditions). Though beyond the scope of this Note, analysis of these two lines of case law is necessary to determine whether this tension can be resolved.

204 Frost v. R.R. Comm’n of State of Cal., 271 U.S. 583, 593 (1926). Further emphasizing the coercive effect of this false choice is that corporations are incentivized to violate state laws in order to preserve their due process protection against exorbitant jurisdiction, an argument against consent-by-registration made 100 years ago in Smolik. Smolik v. Phila. & Reading Coal & Iron Co., 222 F. 148, 150 (S.D.N.Y. 1915). There, the defendant argued that its express consent to appoint an agent for service of process could not be expanded beyond the jurisdictional reach of consent when it is implied (e.g., when corporations fail to
This coerced consent-by-registration to general jurisdiction is likely void under the unconstitutional conditions doctrine as a result.205

**B. Parallels Between Today’s Door-Closing Penalties and the Original Unconstitutional Condition Cases**

The unconstitutional condition implicated by consent-by-registration statutes and the sufficiency of the coercive effects test that identify it are supported by historical parallels between today’s consent-by-registration statutes and what are considered the original unconstitutional conditions cases: Nineteenth-century statutes that conditioned a foreign corporation’s right to do business on waiving the right to federal diversity jurisdiction.206 Struck down as an unconstitutional condition between 1874 and 1922,207 these “non-removal” statutes are similar to the registration statutes at issue today in terms of their door-closing effect on federal court access. An overview of the cases overturning these bygone statutes illustrates the invalidity of consent-by-registration to general jurisdiction today.

*Home Insurance Co. v. Morse* was the first Supreme Court case to address a state statute conditioning a foreign corporation’s authority to do business within a state upon surrendering access to federal court.208 The basic facts of the case are as follows: The Home Insurance Company was a New York corporation with its principal place of business in New York City that registered to do business and appointed an agent for service of process, but are still carrying on business activities in the forum). To hold otherwise would leave “an outlaw who refused to obey the laws of the state . . . in better position than a corporation which chooses to conform.” *Id.* After *Daimler*, the observation made long ago by *Henderson*, *supra* note 151, at 99, that “a corporation occupies a more favorable constitutional position because it has violated a state law” suggests a coerced consent rather than a genuine one capable of meeting due process.

205 Cf. *Union Pac. R.R. Co. v. Pub. Serv. Comm’n*, 248 U.S. 67, 70 (1918) (“It always is for the interest of a party under duress to choose the lesser of two evils. But the fact that a choice was made according to interest does not exclude duress. It is the characteristic of duress properly so called.”).

206 Berman, *supra* note 195, at 63 n.246 (crediting an 1876 dissent as the Supreme Court’s first reference to “unconstitutional conditions” (citing *Doyle v. Cont’l Ins. Co.*, 94 U.S. 535, 543–44 (1876) (Badley, J., dissenting))).

207 For an overview of this history, see Berman, *supra* note 195, at 59–70.

208 87 U.S. (20 Wall.) 445 (1874). As discussed in Part II.B, States throughout the nineteenth century could exclude corporations entirely from their borders. *Compare Morse*, 87 U.S. (20 Wall.) at 458–59 (Chase, C.J., dissenting) (“The right to impose conditions upon admission follows . . . from the right to exclude altogether.”), *with Sec. Mut. Life Ins. Co. v. Prewitt*, 202 U.S. 246, 249 (1906) (“A state has the right to prohibit a foreign corporation from doing business within its borders, unless such prohibition is so conditioned as to violate some provision of the Federal Constitution.”).
“agrees that suits commenced in the State courts of Wisconsin shall not be removed by the acts of said company into the United States Circuit or Federal courts.”209 Upon being sued in Wisconsin state court over an insurance policy, the New York company attempted to remove the dispute to federal court on the basis of diversity jurisdiction. However, the state trial court refused to recognize the removal and rendered judgment in favor of the plaintiff.210

The Supreme Court reversed the case after Wisconsin’s supreme court affirmed the trial court judgment.211 Although noting an individual’s right to forego the right to federal court removal “as often as he sees fit, in each recurring case,” the Court stated that a defendant cannot “bind himself in advance . . . to forfeit his rights at all times and on all occasions, whenever the case may be presented.”212 Citing Article III and the Judiciary Act of 1789,213 the Supreme Court held that the Constitution provides an “absolute right” to remove cases into federal court, that Wisconsin’s non-removal statute was “repugnant to the Constitution” and void, and that the explicit agreement between Home Insurance and the State of Wisconsin which sacrificed the corporation’s removal right was “void, as it would be had no such statute been passed.”214

Constitutional questions surrounding non-removal statutes were fully resolved in 1922 by the Supreme Court in *Terral v. Burke Construction Co.*215 In that case, a Missouri corporation was on the verge of losing its license to do business in Arkansas because it was attempting to maintain suits in Arkansas federal district court.216 Holding that states may not “exact from [a foreign corporation] a waiver of the exercise of its constitutional right to resort to the federal courts, or thereafter withdraw the privilege of doing business because of its exercise of such right, whether waived in advance or not,”217 the Court rested its decision on the ground that States cannot “curtail the free exercise” of rights endowed by the U.S. Constitution.218

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209 Morse, 87 U.S. (20 Wall.) at 446 (internal quotation marks omitted).
210 Id. at 447.
211 Id.
212 Id. at 451 (emphasis added).
213 Id. at 453–54.
214 Id. at 458.
216 Id. at 530.
217 Id. at 532.
218 Id. at 532–33 (“[T]he sovereign power of a state . . . is subject to the limitations of the supreme fundamental law.”); see also Harrison v. St. Louis & S.F. R.R. Co., 232 U.S. 318, 328 (1914) (“[T]he several states may not by any exertion of authority in any form, directly or indirectly, destroy, abridge, limit, or render ineffectual [the Constitution’s judicial power].”).
Today’s door-closing penalties for non-compliance with consent-by-registration statutes raise concerns similar to those that rendered non-removal statutes unconstitutional one hundred years ago. Present-day registration statutes might soon be invalidated under the unconstitutional conditions doctrine as a result. Today a corporation conducting interstate business and seeking to maintain federal court access is faced with registration statutes in multiple states that are interpreted as “consent to general jurisdiction.” By obeying those laws, that corporation forfeits its due process protection from all-purpose jurisdiction “in advance,” “at all times,” and “on all occasions.” This scenario presents coercive effects that are at least as severe as those which triggered an unconstitutional condition in both Morse and Terral. Thus, like the unconstitutional conditions struck down in those cases, the conditions attached to general-jurisdiction-rendering registration statutes after Daimler are too burdensome and likely void as a result.

CONCLUSION

Séances with ghosts of jurisdiction past are no way to satisfy the demands of due process. “The Constitution is not to be satisfied with a fiction,” and consent to general jurisdiction through a registration statute appears to be just that—a fiction capable of transforming every court in the United States into an all-purpose forum for disputes throughout the world. The potential for such outcomes, and the tension it creates with the Court’s overwhelming consensus in Daimler, illustrates the constitutional inadequacy of consent-by-registration to general jurisdiction.

Those seeking jurisdictional inroads must look beyond the vestiges of Pennoyer’s bygone era. Rather than focus the lawsuits of tomorrow on a constitutionally suspect theory of jurisdiction, the future of adjudicative authority lies in reforms to specific jurisdic-

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219 Morse, 87 U.S. (20 Wall.) at 451.
220 Cf. Bendix Autolite Corp. v. Midwesco Enters., Inc., 486 U.S. 888, 895 (1988) (Kennedy, J.) (“[D]esignation with the Ohio Secretary of State of an agent for the service of process likely would have subjected [the defendant] to the general jurisdiction of Ohio courts over transactions in which Ohio had no interest. . . . [T]his exaction is an unreasonable burden on commerce.”).
222 Based on the facts of Daimler itself—Daimler AG’s subsidiary (MBUSA) was registered to do business in California at the time the original suit was filed—Daimler hypothetically could have been hailed into California’s courts if (1) that state adopted a consent-by-registration theory of general jurisdiction; and (2) that consent could be attributed to Daimler. Cf. Daimler, 134 S. Ct. at 761 n.19 (“It is one thing to hold a corporation answerable for operations in the forum . . . quite another to expose it to suit on claims having no connection whatever to the forum State.”).
Such reforms present better opportunities for successful suits, rather than the entrenchment likely to result from reliance on registration statutes as a basis of general jurisdiction.

Fictions must not be allowed to deny “fair play and substantial justice.” However, the story of Pennoyer’s ghost demonstrates that “fair play” is a two-way street. Defendants must not be forced to litigate over any and every issue wherever they might have registered to do business as required by the laws of all fifty states, but plaintiffs must also have access to justice. That access depends on courts asserting jurisdiction where the authority to do so exists, as well as guaranteeing everyday people the same protections from unconstitutional burdens which corporations enjoy. By taking these needs into account and moving away from consent-based general jurisdiction, reformers and civil justice advocates can make personal jurisdiction less about avoiding disputes and more about enforcing rights.

Consent is referenced only once in Justice Ginsburg’s Daimler opinion. However, that reference provides twenty-first century insight into consent-by-registration as a theory of jurisdiction and suggests avenues of future research into how compliance with corporate registration statutes affects specific jurisdiction. Compare Daimler, 134 S. Ct. at 755–56 (referencing Perkins v. Benguet Consol. Mining Co., 342 U.S. 437 (1952), as “the textbook case of general jurisdiction appropriately exercised over a foreign corporation that has not consented to suit in the forum” (quoting Goodyear Dunlop Tires Operations S.A. v. Brown, 131 S. Ct. 2846, 2856 (2011) (internal quotation marks and brackets omitted) (emphasis added)), with Perkins, 342 U.S. at 440 n.2 (noting the foreign corporate defendant in Perkins did not register to do business or appoint an agent for service of process), and Daimler, 134 S. Ct. at 755 (noting that “specific jurisdiction . . . form[s] a considerably more significant part of the scene” in American courts today (internal citation omitted)).
This Appendix outlines the jurisdictional implications of corporate compliance with registration statutes in all fifty states and the District of Columbia. Most states are unclear and have not yet clarified the jurisdictional consequences of their registration statutes (thirty-two states have no definite interpretation). However, eleven states and the District of Columbia have made clear that their corporate registration statutes affect service only, while six states have made it clear that registration to do business results in “consent” to general jurisdiction. Note also that New Jersey, New Mexico, and Tennessee each strongly suggest that a consent-by-registration theory is acceptable under the registration statutes enacted in those states.

**Alabama**

**Registration Statute:** ALA. CODE § 10A-1-5.31 (LexisNexis 2013).


**Consequence of Registration:** Unclear. No relevant cases.

**Alaska**

**Registration Statute:** ALASKA STAT. § 10.06.753 (2014).

**Penalty:** door-closing statute and fines (up to $10,000 per year). ALASKA STAT. §§ 10.06.710, .713 (2014).

**Consequence of Registration:** Unclear. No relevant cases.

**Arizona**

**Registration Statute:** ARIZ. REV. STAT. ANN. § 10-1507 (2013).

**Penalty:** door-closing statute. ARIZ. REV. STAT. ANN. § 10-1502 (2013).


**Arkansas**

**Registration Statute:** ARK. CODE ANN. § 4-27-1501 (2001); ARK. CODE ANN. § 4-20-115 (Supp. 2013).

**Penalty:** door-closing statute. ARK. CODE ANN. § 4-27-1502 (Supp. 2013).

**Consequence of Registration:** Service only. ARK. CODE ANN. § 4-20-115 (Supp. 2013) explicitly states appointment of a registered agent has no effect on jurisdiction or venue.
California
Penalty: door-closing statute. Cal. Corp. Code § 17708.07 (West 2014). See also Cal. Corp. Code § 2203(a), which charges a $20 per day penalty to unregistered foreign corporations conducting business, and also states that unauthorized corporations “shall be deemed to consent to the jurisdiction . . . in any civil action arising in this state in which the corporation is named a party defendant.”


Colorado


Connecticut

Consequence of Registration: Unclear. Connecticut’s state supreme court has not issued a definitive interpretation of the state’s registra-

**Delaware**


**District of Columbia**


**Penalty:** None.

**Consequence of Registration:** Service only. D.C. Code § 29-104.02 explicitly states that registration to do business and designation of an agent does not itself establish personal jurisdiction.
Florida


Consequence of Registration: Unclear. There is no clear due process interpretation of the Florida registration statute. Compare Confederation of Canada Life Ins. Co. v. Vega y Arminan, 144 So. 2d 805, 810 (Fla. 1962) (holding that it does not violate due process to subject a registered foreign corporation to service of process on a cause of action that arose outside the forum), with In re Farmland Indus., No. 3:05-CV-587-J-32MCR, 2007 WL 7694308, at *12 (M.D. Fla. Mar. 30, 2007) (holding that general jurisdiction through Florida’s registration statute does not satisfy due process), and Sofrar, S.A. v. Graham Eng’g Corp., 35 F. Supp. 2d 919, 921 & n.2 (S.D. Fla. 1999) (holding that registration to do business is insufficient to subject company to personal jurisdiction under Florida’s long-arm statute).

Georgia


Hawaii


Consequence of Registration: Unclear. No relevant cases.

Idaho


Consequence of Registration: Service only. Idaho Code § 30-21-414 (2015) explicitly states that appointment of a registered agent has no effect on jurisdiction or venue.

Illinois

Indiana

Iowa

Kansas


Kentucky
Penalty: door-closing statute and $2 per day fine for each day corporations conduct business without registration. KY. REV. STAT. ANN. § 14A.9-020 (West 2012).

Louisiana
Consequence of Registration: Unclear. No relevant cases.

Maine
Penalty: door-closing statute and fine up to $500 per year. ME. REV. STAT. ANN. tit. 13-C, § 1502 (2013).
Consequence of Registration: Service Only. ME. REV. STAT. ANN. tit. 5, § 115 explicitly states that appointment of a registered agent has no effect on jurisdiction or venue.

Maryland
Penalty: door-closing statute, fines for corporations, as well as individual officers and agents, misdemeanor charges for individual officers and agents, and forfeiture of the right to do “intrastate business.” Md. Code Ann., Corps. & Ass’ns §§ 7-301 to -02, 7-304 (LexisNexis 2014).


Massachusetts

Michigan
Consequence of Registration: Unclear. No relevant cases.

Minnesota
Consequence of Registration: General Jurisdiction. In Rykoff-Sexton, Inc. v. Am. Appraisal Assoc’s., Inc., 469 N.W.2d 88, 90–91 (Minn. 1991), the Minnesota State Supreme Court held that consent-by-registration establishes general jurisdiction over foreign corporations and satisfies due process.

Mississippi
Missouri
Consequence of Registration: Unclear. Although there is not a definitive interpretation of the Missouri registration statute, district courts in Missouri are starting to hold that consent-by-registration to general jurisdiction is unconstitutional in the post-Daimler era. See Keeley v. Pfizer Inc., No. 4:15CV00583 ERW, 2015 WL 3999488, at *4 (E.D. Mo. July 1, 2015) (“A defendant’s consent to jurisdiction must satisfy the standards of due process and finding a defendant consents to jurisdiction by registering to do business in a state or maintaining a registered agent does not.”); Neeley v. Wyeth LLC, No. 4:11-CV-00325-JAR, 2015 WL 1456984, at *3 (E.D. Mo. Mar. 30, 2015) (noting that adopting the consent-by-registration theory would make every foreign corporation registered to do business in Missouri subject to general jurisdiction and that “Daimler clearly rejects this proposition”).

Montana
Penalty: door-closing statute and fines ($1,000 per year maximum). MONT. CODE ANN. § 35-1-1027 (2013).
Consequence of Registration: Service only. MONT. CODE ANN. § 35-7-115 (2013) explicitly states that appointment of a registered agent has no effect on jurisdiction, though it is silent on venue.

Nebraska
Penalty: door-closing statute and fines totaling $500 per day ($10,000 maximum per year). NEB. REV. STAT. § 21-20,169 (2012).
Consequence of Registration: General Jurisdiction. In Mittelstadt v. Rouzer, 328 N.W.2d 467, 469 (1982), the Nebraska State Supreme Court held that registration to do business and appointment of an agent establishes consent-based jurisdiction. In April 2015, a Nebraska federal district court held that Daimler did not change the consent-by-registration calculus. Perrigo Co. v. Merial Ltd., No. 8:14-CV-403, 2015 WL 1538088, at *7 (D. Neb. Apr. 7, 2015) (“Daimler circumscribes the extent to which a defendant can be compelled to submit to general jurisdiction, but . . . it does nothing to upset well-

224 This is repealed as of Jan. 1, 2016, and will be replaced by the Nebraska Model Business Corporation Act, 2014 Neb. Laws 749. However, this does not make any substantive changes to Nebraska’s law.
settled law regarding what acts may operate to imply consent.” (citation omitted)).

**Nevada**

**Registration Statute:** [NEV. REV. STAT. §§ 80.010 (2013)].

**Penalty:** door-closing statute and suspension of statute of limitations, as well as fines up to $10,000. [NEV. REV. STAT. §§ 80.055, .095 (2013)].

**Consequence of Registration:** *Service Only.* The Nevada State Supreme Court interpreted the statute as consent to service only in *Freeman v. Second Judicial Dist. Court ex rel. Cnty. of Washoe*, 1 P.3d 963, 968 (2000).

**New Hampshire**

**Registration Statute:** [N.H. REV. STAT. ANN. §§ 293-A:15.01, :15.07, :15.10 (2015)].

**Penalty:** door-closing statute and fines. [N.H. REV. STAT. ANN. § 293-A:15.02 (2015)].

**Consequence of Registration:** *Unclear.* No decisive statutory interpretation. For an opinion holding that New Hampshire’s statute establishes at least *specific* jurisdiction (but refusing to comment on general jurisdiction), see *Holloway v. Wright & Morrissey, Inc.*, 739 F.2d 695, 699 (1st Cir. 1984).

**New Jersey**

**Registration Statute:** [N.J. STAT. ANN. §§ 14A:4-1 to -2 (West 2003)].

**Penalty:** door-closing statute and fines ($1000 per year maximum). [N.J. STAT. ANN. § 14A:13-11 (West 2003)].

New Mexico


New York


North Carolina


North Dakota
Consequence of Registration: Service only. N.D. Cent. Code § 10-01.1-15 (2012) explicitly states registration and appointment of a registered agent has no effect on jurisdiction or venue.

Ohio
Penalty: door-closing statute and fines up to $10,000. Ohio Rev. Code Ann. §§ 1703.28, .29 (West 2013). In addition, § 1703.99 states that corporate officers conducting business without registration will be charged with a misdemeanor. But see Citibank v. Eckmeyer, 2009 WL 1452614 (Ohio Ct. App. 11th Dist., May 8, 2009) (holding Ohio’s registration statute as applied to national banks is unconstitutional under the Supremacy Clause because of the National Banking Act, 12 U.S.C. § 1 (2011)).
Consequence of Registration: Service only. In Wainscott v. St. Louis-S.F. Ry. Co., 351 N.E.2d 466, 471 (1976), the Ohio State Supreme Court noted the “consent theory” of personal jurisdiction only supports claims arising out of activities within the forum. Federal courts interpreting Wainscott and the Ohio registration and appointment statutes echo this holding. E.g., Pittock v. Otis Elevator Co., 8 F.3d 325, 329 (6th Cir. 1993) (“[Wainscott] provided that proper service of process does not eliminate the requirement that minimum contacts exist to permit Ohio courts to acquire personal jurisdiction.”). See also Avery Dennison Corp. v. Alien Tech. Corp., 632 F. Supp. 2d 700, 711 n.7 (N.D. Ohio 2008) (“[I]t appears that registration to do business in Ohio is simply one fact to consider in analyzing personal jurisdiction.”).

Oklahoma
Consequence of Registration: Unclear. No relevant cases.
Oregon

Pennsylvania
Penalty: door-closing statute. 15 PA. CONS. STAT. ANN. § 411(b) (West 2015) (effective July 1, 2015).
Consequence of Registration: General Jurisdiction. 42 PA. CONS. STAT. ANN. § 5301 (West 2013) explicitly states that registration to do business results in consent to general jurisdiction.

Rhode Island
Penalty: door-closing statute. R.I. GEN. LAWS § 7-1.2-1418 (2014). But cf. R.I. GEN. LAWS § 7-1.2-1803 (2014) (extending the authority of registration statutes only so far as the U.S. Constitution permits).

South Carolina
Consequence of Registration: Unclear. No relevant cases.

South Dakota

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226 This replaced 15 PA. CONS. STAT. § 4141 and § 4143, which are repealed.
Penalty: door-closing statute and fines up to $1,000 per year. S.D. Codified Laws §§ 47-1A-1502, -1502.2 (2007).

Consequence of Registration: Service only. S.D. Codified Laws § 59-11-21 (2009) explicitly disclaims registration as a basis for jurisdiction or venue.

Tennessee


Consequence of Registration: Specific or General Jurisdiction. In Davenport v. State Farm Mut. Auto. Ins. Co., the State Supreme Court of Tennessee noted the state has historically upheld “the consent theory as a basis of in personam jurisdiction over foreign corporations.” 756 S.W.2d 678, 679 (Tenn. 1988). In doing so, the court held foreign corporations that registered to do business did not benefit from a state statute which limited suits in Tennessee courts to claims arising from within Tennessee itself. Id. at 684. The opinion’s dicta may support a consent-by-registration to general jurisdiction argument, but one subsequent court interpreted this decision as relating to specific jurisdiction. Ratledge v. Norfolk S. Ry. Co., 958 F. Supp. 2d 827, 838 (E.D. Tenn. 2013). But see Alwood & Greene v. Buffalo Hardwood Lumber Co., 279 S.W. 795, 797 (1926) (citing Barrow Steamship Co. v. Kane, 170 U.S. 100 (1898) and using “consent” and “doing business” theories interchangeably to uphold general jurisdiction).

Texas


Utah
Registration Statute: UTAH CODE ANN. §§ 16-10a-1511, -17-203 (LexisNexis 2013).
Penalty: door-closing statute and fines ($5000 per year maximum). UTAH CODE ANN. § 16-10a-1502 (LexisNexis 2013).
Consequence of Registration: Service only. Under UTAH CODE ANN. § 16-17-401 (LexisNexis 2013), registration to do business and appointment of an agent do not create an independent basis for jurisdiction.

Vermont
Penalty: door-closing statute, fines ($1,000 per year maximum), fees, and injunction against doing business in Vermont. VT. STAT. ANN. tit. 11A, § 15.02 (2010).

Virginia

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**West Virginia**


**Consequence of Registration:** *Unclear.* No relevant cases.

**Wisconsin**

**Registration Statute:** WIS. STAT. §§ 180.0501, .1507, .1510 (2013).

**Penalty:** door-closing statute. WIS. STAT. § 180.1502 (2013).

**Consequence of Registration:** *Unclear.* No relevant cases.

**Wyoming**


**Consequence of Registration:** *Unclear.* No relevant cases.