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Coerced Corporate Consent

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COERCED CORPORATE CONSENT

Jason J. Jarvis[*]

ABSTRACT

Corporations are not human beings, but they have rights, including the constitutional right of due process. The United States Supreme Court recently held in Mallory v. Norfolk Southern Railway Co. *that due process is satisfied when a state requires that a corporation consent to personal jurisdiction before it can conduct business in that state. The Court did not analyze, however, whether such business registration statutes can be coercive and, if so, when. These unanswered questions expose corporations to previously unexplored risks.*

Involuntary consent is an oxymoron. Consent must be knowing and voluntary, and consent extracted by threat is coerced and invalid. These concepts seem intuitive when applied to people but less so when applied to corporations. How can a corporation feel threatened? When do coercion principles apply to corporate actions?

To answer these questions, this Article first discusses the philosophical underpinnings of consent and coercion, the relevant historical background for jurisdiction by consent, and the animating constitutional principles. On these bases, it concludes that coercion can apply in state-to-corporation relationships, that jurisprudence and scholarship support this application, and that the Constitution protects corporations from unfair conditions imposed by states.

The Article then argues that a state violates a corporation's due process rights when the corporation would experience a threat if it loses the privilege of conducting business in such state because the corporation needs to do business there or would cease to exist as established. Put differently, when a state wields more market power than a corporation can voluntarily resist, it coerces the corporation's consent, rendering such consent invalid.

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That said, not all state registration statutes are coercive because not all states threaten all corporations. The voluntariness of a corporation's decision to do business in a state depends on the particular state and the particular corporation—the bargaining power of some (but not all) states can coerce some (but not all) foreign corporations. Thus, whether a statute violates due process should be considered on a case-by-case basis, with certain industries and company sizes at greater risk of coercion than others. This Article concludes by offering a proposed mechanism to make that assessment.

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INTRODUCTION

Imagine you own a small-talk radio station in Delaware that broadcasts the latest news and analysis about finance and corporate affairs. Your wattage is reasonably strong, but to reach the massive markets in New York and the District of Columbia, you need to add an extender or "repeater" tower in Pennsylvania.[1] Extender towers require installation, maintenance, and leasing their physical location but do little more than extend the range of your broadcast.

Because your station is incorporated and based in Delaware, to install and lease the tower, you need to register to do business in the Commonwealth of Pennsylvania under its foreign corporate registration statute. Your corporate attorney warns you that doing so might subject you to general personal jurisdiction in Pennsylvania—that is, courts in Pennsylvania can hear all claims against your company regardless of whether they relate to your Pennsylvania tower.[2] But without reaching the New York and D.C. markets, you will lack adequate listeners to sell advertising, so you register in Pennsylvania and cross your fingers. You really have no choice in the matter. Without the extension to your broadcast signal, you might as well shut down the entire station.

Until very recently, even though the Pennsylvania statute said your radio station was subject to general jurisdiction, courts were reluctant to extend this kind of jurisdiction over remote defendants.[3] The Supreme Court of Pennsylvania itself held in 2021 that the statute violated the Fourteenth Amendment Due Process Clause, which prohibits blanket general jurisdiction by statute.[4]

However, two years later the United States Supreme Court reversed the Supreme Court of Pennsylvania in *Mallory v. Norfolk Southern Railway Co*.[5] It

1 Radio repeater towers extend the range of regular radio signals. *See Basic Radio Awareness*, TAIT RADIO ACAD., https://www.taitradioacademy.com/topic/repeater-systems-1/ [https://perma.cc/PH2Q-YFPZ] (last visited Jan. 13, 2026).

2 Personal jurisdiction is the power of a court over a party. Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945).

3 A remote defendant is one who is not "at home" in the forum state, which is the place where the relevant lawsuit is filed. Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 919 (2011); *see also* Lea Brilmayer Jennifer, *A General Look at General Jurisdiction*, 66 TEX. L. REV. 721, 742 (1988) (describing the difference between defendants with local activities versus ones with a local principal place of business).

4 Mallory v. Norfolk S. Ry. Co., 266 A.3d 542, 571 (Pa. 2021), *vacated and remanded*, 600 U.S. 122 (2023).

5 600 U.S. 122, 134 (2023) (plurality opinion) (holding that Pennsylvania's registration with the Pennsylvania Department of State confers the same "rights" and "liabilities" as domestic corporations, including

held that Pennsylvania's business registration statute, which subjects corporate registrants to jurisdiction for all matters, does not violate due process because defendants who appoint a registered agent for service of process have consented to jurisdiction.[6]

The decision has significant consequences for companies doing business in the United States but especially for companies outside the Fortune 50.[7] Since *International Shoe Co. v. Washington*,[8] corporate defendants have been subject to specific jurisdiction where they have had minimum contacts.[9] At least since *Daimler AG v. Bauman*,[10] if not before, a defendant was subject to general jurisdiction in a state only where it was incorporated or had its principal place of business.[11] Whether registration statutes could independently establish general jurisdiction remained unsettled—the subject of a split in authority and various statutes and their interpretations.[12] A few scholars warned that registration statutes could unfairly mimic general jurisdiction, but the literature did not take hold with courts or legislatures.[13] It should now.

The Court just gave every state in the country permission to adopt registration statutes that create de facto general jurisdiction.[14] And there is no doctrinal distinction between powerful Fortune 50 companies and everyone

the power of "state courts to 'exercise general personal jurisdiction' over a registered foreign corporation, just as they can over domestic corporations" (quoting 42 PA. CONS. STAT. § 5301(a)(2)(i) (2025))).

[6] Agents for service of process are discussed *infra* Section II.C.

[7] *See* discussion *infra* Section IV.A.

[8] 326 U.S. 310 (1945).

[9] *Id.* at 316.

[10] 571 U.S. 117 (2014).

[11] *Id.* at 139; *see also* Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct., 592 U.S. 351, 358–59 (2021) (describing the binary distinction between general versus specific jurisdiction). In a nutshell, general jurisdiction means a defendant can be sued for anything; specific jurisdiction means the defendant can be sued in a forum state for things related to their contacts with that particular state. *See id.*

[12] *See, e.g.*, State *ex rel.* Norfolk S. Ry. Co. v. Dolan, 512 S.W.3d 41, 52 (Mo. 2017) (recognizing a then-extant "split of authority as to whether a registration statute constitutionally can require consent to general jurisdiction in order to register to do business in a state").

[13] *See* discussion *infra* Section II.E.

[14] *See* Mallory v. Norfolk S. Ry. Co., 600 U.S. 122, 128, 133 (2023) (plurality opinion). According to the Court, *Mallory* was the straightforward application of undisturbed authority that a state can condition doing business on appointing an agent for service of process and demand foreign businesses consent to jurisdiction for all purposes as though they were a domestic business. *See id.* at 128 (citing Pa. Fire Ins. Co. of Phila. v. Gold Issue Mining & Milling Co., 243 U.S. 93 (1917)). Thus, consent-based jurisdiction, as approved by the Supreme Court in *Mallory*, operates like general personal jurisdiction because plaintiffs can now sue corporations registered to do business in Pennsylvania for any claim whether or not it relates to the defendant's contacts or the plaintiff's injury.

else.[15] For large multinational corporations, few people will shed tears.[16] For smaller or midsized corporations and nonprofits—such as your little Delaware radio station—the stakes are higher, and the imposition of general jurisdiction eventually starts to look like a due process violation.

The concept of consent is neither new nor controversial to the law of jurisdiction.[17] With *Mallory*, there has been renewed scholarly interest in the concept.[18] However, the related principle of coercion is missing from the consent-based personal jurisdiction analysis. This is a problem because coercion means a lack of voluntariness, and voluntariness is the hallmark of consent.[19] Coerced consent—a familiar concept in criminal procedure and contract law[20]—is largely unfamiliar in the civil procedure context, so there is not a lot to go on

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[15] Amazon can afford to choose both not to do business in any state and appear and defend itself for any claim in any jurisdiction. *See* discussion *infra* Section IV.A. A small business expanding into a regional market lacks that power, as discussed *infra* Section IV.A.

[16] Although large multinational corporations can theoretically be coerced, they are not likely to engender much sympathy; it is the millions of small- and medium-sized businesses (and nonprofits) in the United States that are at risk given the logistical and financial difficulties of defendant lawsuits in remote jurisdictions. *See* discussion *infra* Section IV.A. The Court made no such distinction, however, in *Mallory.* Without a doctrinal distinction, industry, location, and size are all irrelevant as long as the registration statute invokes the magic words. *See Mallory*, 600 U.S. at 134, 167 (Barrett, J., dissenting) (plurality opinion).

[17] Consent can be express in the form of pre-litigation contract provisions or implied by conduct. JACK H. FRIEDENTHAL, MARY KAY KANE, ARTHUR R. MILLER & ADAM N. STEINMAN, CIVIL PROCEDURE § 3.5, at 104–05 (6th ed. 2021). Friedenthal and his coauthors characterize all forms of consent-based jurisdiction as distinct from physical presence, but one could count physical presence as implied consent. *See id.* at 104. Indeed, such is the theoretical underpinning of the nonresident motorist statutes of the early twentieth century, which found jurisdiction based on presence. *See* Hess v. Pawloski, 274 U.S. 352, 354 (1927); Joseph Henry Beale, *The Jurisdiction of Courts over Foreigners*, 26 HARV. L. REV. 283, 297 (1913) ("Consent is the principal ground of jurisdiction over an absent party, and it is in general a sufficient ground.").

[18] *See, e.g.*, Robin J. Effron & Aaron D. Simowitz, *The Long Arm of Consent*, 80 N.Y.U. ANN. SURV. AM. L. 179, 236 (2024) ("What underlies the intuition that 'consent' creates a zone of constitutional permissibility is deference, meaning that courts defer to a forum state's decision to allow or interpret certain volitional acts to enlarge the jurisdiction of the forum, and that courts will defer to parties' implicit and explicit behaviors as intention to be bound by a judgment of that court."); Scott Dodson, *The Complexities of Consent to Personal Jurisdiction*, 113 CALIF. L. REV. 333, 337–38, 350 (2025) (identifying distinctions in the historical and modern kinds of consent).

[19] *See, e.g.*, Kimberly Kessler Ferzan, *Consent and Coercion*, 50 ARIZ. ST. L.J. 951, 957–58 (2018) (arguing that coercion reflects misconduct and, like the equitable maxim that no one can profit from their own wrongdoing, consent secured by coercion is not real consent).

[20] Schneckloth v. Bustamonte, 412 U.S. 218, 228–29 (1973) (consent must be voluntary and not coerced to satisfy warrantless searches); *cf.* Bremen v. Zapata Off-Shore Co., 407 U.S. 1, 12–13 (1972) (noting that freely negotiated private agreements may not be given full effect where affected by fraud, undue influence, or "overweening bargaining power"). Indeed, many laws or agreements could be considered coercive from a theoretical framework. But as shown *infra* Sections III.D–E, coercion itself has a more specific philosophical meaning that helps distinguish between laws that influence corporate behavior by promising benefits and those that constitute threats against existence by conditioning the waiver of constitutional rights.

from a jurisprudential standpoint. Identifying what coercion means in the personal jurisdiction context is uncharted territory. Moreover, applying philosophical principles to state-mandated statutory registration requirements for out-of-state businesses is instinctively awkward.

This Article's first task, therefore, is to probe the concepts of consent and coercion to test whether coercion could be a defense to consent-based jurisdiction. Although *Mallory* is the impetus, the plurality offered no guidance on this question because it ignored coercion.[21] Of course, if consent-based jurisdiction is impervious to claims of coercion, then the Court was correct to ignore it. To confirm whether the Court was right, however, requires asking some theoretical questions the Court did not.[22] This Article explores and answers, for example, these questions: Is doing business in any given state always voluntary? Does private law theory support the notion of corporate involuntariness? Can a state threaten a business, and, if so, any kind of business?[23] What right does a corporation have to do business free from general jurisdiction? Does consent to jurisdiction in return for the right to do business offer only the illusion of choice? Does that matter? *Mallory* provides a timely opportunity to confront these questions given the hazards that business registration statutes now create.

If corporations can be coerced, then the plurality in *Mallory* left unexamined a critical limitation on business registration statutes. To be sure, the Court seemed unmoved by the imposition of personal jurisdiction over the defendant, Norfolk Southern.[24] As far as the plurality was concerned, Norfolk Southern (a large railway company) had such complex and significant contacts with

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[21] The dissent acknowledges that submission to authority confirms personal jurisdiction, but "if a defendant contests the court's authority, the court must determine whether it can nevertheless assert coercive power over the defendant." *Mallory*, 600 U.S. at 164 (Barrett, J., dissenting) (emphasis omitted).

[22] Consider how consent can be express or implied; even implied consent usually has obvious factual markers courts consider. Coercion in the context of corporate actions demands an answer to the question: When does a fair and open transaction cross over into an unfair closed system without meaningful choice?

[23] *See Mallory*, 600 U.S. at 167–68 (Barrett, J., dissenting). The plurality indicates great concern for the common sense proposition that a big, powerful railroad like Norfolk Southern is at no disadvantage defending a suit in Pennsylvania, where it has more than minimum contacts. *Id.* at 141–43 (plurality opinion). At best, the plurality conflates specific jurisdiction's minimum contacts analysis with whether Norfolk Southern's consent was voluntary.

[24] *See id.* at 146 (plurality opinion). Although Justice Gorsuch authored the plurality opinion in *Mallory*, his concurring opinion in *Ford Motor Co. v. Montana Eighth Judicial District Court* curiously recognized the importance of identifying corporate consent. 592 U.S. 351, 383 (2021) (Gorsuch, J., concurring) (wondering whether personal jurisdiction jurisprudence is "destined" to "be about trying to assess fairly a corporate defendant's presence or consent").

Pennsylvania that its consent to jurisdiction raised no fairness concerns.[25] Norfolk Southern's contacts in Pennsylvania are so extensive that one can imagine the Justices wondering how such a large company with extensive contacts could possibly be coerced.[26]

Indeed, huge corporations with innumerable contacts are unlikely champions for a theory of coercion in the registration statute context. Few people would argue that a powerful state entity is incapable of coercing an individual to waive individual liberty rights, but many people might agree that a state has little chance of coercing a national corporation. This Article argues that states coerce a corporation when, due to its size, industry, or business plan, the corporation has no choice but to register to do business in a state and, by doing so, subject itself to general jurisdiction.[27]

To explain why that is a problem, this Article proceeds in four Parts. Part I explores the philosophical foundations for the concepts of consent and coercion. Part II shifts to a historical study of consent to personal jurisdiction. This Part concludes by discussing the percolating demand for clarity that spurred the Court to grant certiorari in *Mallory*, the fractured *Mallory* decision itself, and the most relevant recent scholarship preceding it.

Part III addresses the constitutional principles underlying the question of whether coercive registration statutes violate the Constitution. First, it considers whether the Due Process Clause protects not only human beings but also corporations. Second, it reviews the unconstitutional conditions doctrine, which prevents states from conditioning the ability to do business on waiving constitutional rights. Third, it reviews interstate federalism's protection of

[25] *See Mallory*, 600 U.S. at 141–43 (plurality opinion). The plurality's discussion of fairness was dicta according to its own emphatic reliance on *Pennsylvania Fire Insurance Co. v. Gold Issue Mining & Milling Co*. *See id.* at 138–39. But in the case below, the Supreme Court of Pennsylvania discussed the concept of coercion with respect to its own statute. Mallory v. Norfolk S. Ry. Co., 266 A.3d 542, 571 (Pa. 2021), *vacated and remanded*, 600 U.S. 122 (2023) ("Our statutory scheme of conditioning the privilege of doing business in the Commonwealth on the submission of the foreign corporation to general jurisdiction in Pennsylvania courts strips foreign corporations of the due process safeguards guaranteed in *Goodyear* and *Daimler*. Legislatively coerced consent to general jurisdiction is not voluntary consent and cannot be constitutionally sanctioned.").

[26] The volume of contacts may play a role in showing bargaining power, but it is not dispositive of coercion. *See* discussion *infra* Section IV.A.

[27] There could absolutely be other ways of analyzing the possibility of coercion and propriety of consent-based registration statutes, including complex economic analyses, that are beyond the parameters of this Article. Yet whatever tool is employed needs to be simple and intuitive enough for courts and litigants to be able to argue and resolve them. *See* discussion *infra* Part IV.

interstate commerce and the way registration statute coercion defeats that purpose.

Part III establishes that corporations have due process rights.[28] The unconstitutional conditions doctrine protects those rights from unfair conditional waiver.[29] And interstate federalism provides prudential policy reasons to strengthen those rights in particular to protect against protectionist-motivated Commerce Clause violations.

In Part IV, the Article offers a theory of coercive jurisdiction, describing means of detecting it and defending why courts should be protective of not only smaller corporations but also smaller and less commercially powerful states. This distinction is crucial. There should be no one-size-fits-all approach to registration statutes. The reason they are suspect is because they *can be* coercive not because they are *always* coercive. This Part offers a theory of how to make that distinction. It also raises troubling possibilities that an unrestrained consent-based regime enables.[30]

This Article offers three takeaways and concludes with a suggestion. First, states are capable of coercing businesses when they can theoretically threaten a business's viability by withholding business registration, thus giving the business no legitimate choice to refuse registration (and general jurisdiction) if it wants to exist. Second, such "coercive jurisdiction" violates the unconstitutional conditions doctrine because foreign corporations should not have to waive their due process defense against general jurisdiction in return for the privilege of doing business. Third, there are structural federalism and normative policy reasons to disfavor registration statutes that operate free from coercion analysis.

The suggestion is this: Before finding that a business registration statute creates consent-based personal jurisdiction, a court should consider whether the defendant's decision to do business in the state was sufficiently voluntary. The approach advanced by this Article is to proceed in two stages: First, it focuses on the industry and type of corporation; and, second, it evaluates the state's benefit versus the corporation's need as an equation of relative bargaining

[28] *See, e.g.*, Pennoyer v. Neff, 95 U.S. 714, 742 (1878) (affirming due process rights for defendants).

[29] One thing this Article confronts is what it means for corporations to give up the due process right to be free from unfairly acquired general jurisdiction as opposed to the mere argument that *Mallory* forecloses such due process rights. *See* discussion *infra* Section III.A.

[30] *See* discussion *infra* Section IV.C.

power. Under such an approach, if the type of corporation and industry risk is low and it is hard to see unequal relative bargaining power, then courts should not disturb the consent-based jurisdiction that business registration statutes create. However, if there is inherent risk in the corporate type or industry and the power dynamic delta is significant, courts should refuse to exercise consent-based personal jurisdiction over defendants because state coercion of the defendant's consent violates its due process rights.

I. IS IT CONSENT OR IS IT COERCION?

This Part first explores how concepts of voluntariness and consent apply to entities like corporations and then whether and how corporations are subject to coercion. Each of these sections begins with the terminology before delving into their application in the unfamiliar—and sometimes counterintuitive—realm of corporate law.

Consent is the "voluntary yielding to what another proposes or desires; agreement, approval, or permission regarding some act or purpose, esp[ecially] given voluntarily by a competent person."[31] The Restatement (Second) of Torts describes consent as a "willingness in fact for conduct to occur" that "may be manifested by action or inaction."[32]

Corporations consent when their agents voluntarily act or decline to act.[33] They can consent to federal magistrate jurisdiction,[34] removal,[35] takings, searches, settlement of suits, filing consolidated tax returns, and to an almost unlimited number of other things human beings can consent to under the law.[36] These examples establish that, just like human beings, corporations consent

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[31] *Consent*, BLACK'S LAW DICTIONARY (11th ed. 2019).

[32] RESTATEMENT (SECOND) OF TORTS § 892 (A.L.I. 1979).

[33] *See, e.g.*, Edmonds v. Fehler & Feinauer Constr. Co., 252 F.2d 639, 641 (6th Cir. 1958) ("A corporation acts through its agents.").

[34] *See* 28 U.S.C. § 636(c).

[35] *See, e.g.*, Unicom Sys., Inc. v. Nat'l Louis Univ., 262 F. Supp. 2d 638, 643 (E.D. Va. 2003) (answers are not by themselves "'affirmative . . . and unambiguous' manifestations of consent" (quoting 28 U.S.C. § 1446)).

[36] *See, e.g.*, United States v. Certain Parcels of Land in Cnty. of Fairfax, 345 U.S. 344, 348 (1953) (consent to takings); Pullin v. La. State Racing Comm'n, 477 So. 2d 683, 686–87 (La. 1985) (consent to searches); Forest Oil Corp. v. Strata Energy, Inc., 929 F.2d 1039, 1045 (5th Cir. 1991) (consent to settlement of suit); United States v. Shaltry (*In re* Home Am. T.V.-Appliance Audio, Inc.), 232 F.3d 1046, 1048 (9th Cir. 2000) (consent to consolidated tax filings).

when they act voluntarily.[37] On the other hand, acts of consent "are involuntary when the actor is *forced* to do what he does, whatever his own preferences in the matter."[38]

Concerning jurisdiction specifically, consent can be implied or express.[39] A corporation manifests a voluntary choice (i.e., consent) to submit to a court's jurisdiction when, for example, it knowingly and freely agrees to that jurisdiction by contract, express compliance, or implied agreement.[40]

Just as corporations can consent and advance their business interests, they can also be coerced to act against their business interests as, for example, when corporations act involuntarily in response to judgments[41] or in response to statutory and regulatory requirements.[42] Corporations act involuntarily when

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[37] *See* Tanya J. Monestier, *Registration Statutes, General Jurisdiction, and the Fallacy of Consent*, 36 CARDOZO L. REV. 1343, 1377–78 (2015).

[38] 3 JOEL FEINBERG, THE MORAL LIMITS OF THE CRIMINAL LAW: HARM TO SELF 189 (1986).

[39] *See* 42 PA. CONS. STAT. § 5301 (2025) (stating expressly that registering confers personal jurisdiction over corporations); Monestier, *supra* note 37, at 1377–78 ("The theory is straightforward: by taking voluntary and proactive steps to register and appoint an agent for service of process under the relevant state statute, a corporation has expressly consented to the state's authority over it."); Sternberg v. O'Neil, 550 A.2d 1105, 1112 (Del. 1988) ("[I]n the absence of express consent, due process requires minimum contacts for a finding of implied consent to a forum's jurisdiction."), *abrogated by* Genuine Parts Co. v. Cepec, 137 A.3d 123 (Del. 2016).

[40] *See, e.g.*, Nat'l Equip. Rental, Ltd. v. Szukhent, 375 U.S. 311, 316 (1964) (consent through contract) ("[P]arties to a contract may agree in advance to submit to the jurisdiction of a given court . . . ."); *see also* Ins. Corp. of Ir., Ltd. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 703 (1982) (implied agreement) ("[A]n individual may submit to the jurisdiction of the court by appearance."). The Supreme Court listed "a variety of legal arrangements" that "represent express or implied consent to the personal jurisdiction of the court." *See id.* at 703–04. Those arrangements included: (1) parties agreeing in advance to submit to the jurisdiction of a given court; (2) parties stipulating to jurisdiction; (3) parties agreeing to arbitrate; (4) parties voluntarily using certain state procedures; (5) parties waiving jurisdiction through a failure to timely raise the issue in an answer or responsive pleading; and (6) parties submitting to a court's jurisdiction. *Id.*

[41] *See, e.g.*, United States v. Paramount Pictures, Inc., 334 U.S. 131, 171, 178 (1948) (affirming the district court's ruling that the existing distribution scheme was in violation of U.S. antitrust law and creating the Paramount Decree, which prevented film production companies from owning exhibition companies and changed the industry's structure); United States v. Microsoft Corp., 253 F.3d 34, 99–100 (D.C. Cir. 2001) (finding in the antitrust context that the consent decree with the U.S. Department of Justice caused involuntary constraints on Microsoft); NLRB v. Ford Motor Co., 118 F.2d 766, 767 (9th Cir. 1941) (ordering Ford to cease its anti-union activities and recognize the United Automobile Workers as the bargaining representative for its workers).

[42] Environmental, labor, and trade regulations all provide examples where corporations respond to regulatory requirements. Companies must adhere to environmental laws that limit emissions, manage waste, and protect natural resources. *E.g.*, Clean Air Act (CAA), 42 U.S.C. §§ 7401–7675 (governing air emissions from stationary and mobile sources and requiring companies to obtain permits for emissions and to use the best available technology to control pollutants). Companies must adhere to labor laws that protect the rights and safety of workers. *E.g.*, Fair Labor Standards Act of 1938 (FLSA), 29 U.S.C. §§ 201–19. They must comply with trade regulations to protect the economy and ensure fair practices. *E.g.*, Securities Exchange Act of 1934, 15 U.S.C. §§ 78a–78qq; Sarbanes-Oxley Act of 2002 (SOX), Pub. L. No. 107-204, 116 Stat. 745 (2002). And,

they are forced by circumstances to do or not do something that violates their intended and efficient goals.[43] Those goals have traditionally been considered maximizing shareholder profit,[44] but corporate theory—and even Supreme Court jurisprudence—have challenged that norm.[45]

The law has long acknowledged that corporations can act involuntarily in nonjurisdictional contexts.[46] Contract law, for instance, provides two powerful examples.[47] First, just like individuals, corporations can argue that their contracts are unconscionable, which means the corporation entered into a contract without "meaningful choice."[48] As famously stated in *Campbell Soup Co. v. Wentz*,[49] "[t]hat equity does not enforce unconscionable bargains" has

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of course, corporations can be "involuntarily" forced into bankruptcy, receivership, or conservation. *See* 11 U.S.C. § 303 (involuntary bankruptcy); 15 STANDARD PENNSYLVANIA PRACTICE § 84:1 (2d ed. 2025) (a representative example of the kinds of receiverships). With respect to bankruptcy in particular, the concept of forcing certain necessary suppliers or "critical vendors" to provide the debtor with goods or services otherwise "involuntarily" is another example of where corporate preference can be overridden by coercive imperative. *See, e.g.*, Samuel Maizel, Colin Bernardino, Matthew Caine & Jeffrey Garfinkle, *Corporate Bankruptcy Panel: The Healthcare Industry Post-Affordable Care Act: A Bankruptcy Perspective*, 31 EMORY BANKR. DEV. J. 249, 265–66 (2015) ("I mean we've all faced issues where there are critical vendors to hospitals who are being forced into a situation that's involuntary where they're being, basically at little to no compensation, forced to provide goods and services to a very defunct underwater hospital.").

[43] *See infra* notes 79–81 and accompanying text.

[44] *See, e.g.*, Malcom S. Salter, *Rehabilitating Corporate Purpose* 25 (Harv. Bus. Sch., Working Paper No. 19-104, 2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3386356 [https://perma.cc/ZYF4-97MW] (acknowledging that the traditional view for for-profit corporations involved profit maximization for shareholders but that "corporate law does not today impose on management an exclusive profit-maximizing duty, but merely links directors' and managers' fiduciary responsibilities to the corporation's and stockholders' long-term interests").

[45] *See* Christopher A. Bartlett & Sumantra Ghoshal, *Changing the Role of Top Management: Beyond Strategy to Purpose*, HARV. BUS. REV., Nov.–Dec. 1994, at 79, 88 ("Corporations are one of the most, if not the most, important institutions of modern society. A company today is more than just a business. As important repositories of resources and knowledge, companies shoulder a huge responsibility for generating wealth by continuously improving their productivity and competitiveness. Furthermore, their responsibility for defining, creating, and distributing value makes corporations one of society's principal agents of social change. At the micro level, companies are important forums for social interaction and personal fulfillment."); *see also* Burwell v. Hobby Lobby Stores, Inc., 573 U.S. 682, 711–12 (2014) ("While it is certainly true that a central objective of for-profit corporations is to make money, modern corporate law does not require for-profit corporations to pursue profit at the expense of everything else, and many do not do so.").

[46] *See supra* note 42 (listing regulations that create involuntary corporate responses).

[47] *See infra* notes 49–53 and accompanying text.

[48] Ramirez v. Charter Commc'ns, Inc., 551 P.3d 520, 529 (Cal. 2024); *see also* Armendariz v. Found. Health Psychcare Servs., Inc., 6 P.3d 669, 689 (Cal. 2000) (defining unconscionability specifically in the context of arbitration agreements).

[49] 172 F.2d 80 (3d Cir. 1948).

been long established.[50] *Wentz*, of course, concerned businesses;[51] and there are numerous examples where corporations have successfully argued they lacked meaningful choice as a contract defense.[52]

Second, corporations can wield the contract defense of duress.[53] Applied in the corporate context, duress means being subjected to "improper pressure which overcomes [its] will and coerces [it] to comply with demands to which [it] would not yield if acting as a free agent."[54] Duress can be by physical compulsion (admittedly inapplicable to corporations) or by improper threat.[55] In describing a nonphysical threat sufficient to make a contract voidable, even improper threats "[do] not amount to duress if the victim has a reasonable alternative to succumbing and fails to take advantage of it."[56] Thus, corporations can argue that contracts they entered into based on an unavoidable economic threat are voidable.[57]

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[50] *Id.* at 83. While applying UCC § 2-302 (unconscionable contract or clause), some New Mexico courts have acknowledged that unconscionability is traditionally employed on behalf of individual consumers rather than businesses, *see, e.g.*, Bowlin's, Inc. v. Ramsey Oil Co., 662 P.2d 661, 669 (N.M. Ct. App. 1983) (quoting JAMES J. WHITE & ROBERT S. SUMMERS, UNIFORM COMMERCIAL CODE 149 (2d ed. 1980)), but they also emphasize this is because of the relative bargaining power of consumers versus companies. *See id.* (quoting JAMES J. WHITE & ROBERT S. SUMMERS, UNIFORM COMMERCIAL CODE 149 (2d ed. 1980)). For present purposes, most corporations wanting to do business in a state are more akin to consumers vis-à-vis sovereign states, and the ones that are not are unlikely to be coerced. *See* discussion *infra* Section IV.A.

[51] *Wentz*, 172 F.2d at 81.

[52] *See Bowlin's, Inc.*, 662 P.2d at 669 (citing Williams v. Walker-Thomas Furniture Co., 350 F.2d 445, 450 (D.C. Cir. 1965)); *see also* RESTATEMENT (SECOND) OF CONTRACTS § 208 (A.L.I. 1981) (collecting cases). Again, while the New Mexico courts may be correct that most successful unconscionability defenses may appear anecdotally to be consumer-driven, this is due to the bargaining disparity not their status as a legal or real person. *See Bowlin's, Inc.*, 662 P.2d at 669 (quoting JAMES J. WHITE & ROBERT S. SUMMERS, UNIFORM COMMERCIAL CODE 149 (2d ed. 1980)).

[53] *See* RESTATEMENT (SECOND) OF CONTRACTS § 175 (A.L.I. 1981). The Restatement offers several examples that would apply to a business as well as an individual, such as coercing contract formation in order to get urgently needed repairs, necessary goods, timely court procedures, and discharge of potential legal claims. *See id.* § 175 cmt. b, illus. 1, 2, 3, 5. Some states recognize the doctrine as having more efficacy than others. *See, e.g.*, Cimarron Pipeline Constr., Inc. v. U.S. Fid. & Guar. Ins. Co., 848 P.2d 1161, 1162 (Okla. 1993) (holding on certification from U.S. district court that "economic duress is recognized as an equitable doctrine in contract law [but] it is not an independent tort under Oklahoma law").

[54] Head v. Gadsden Civ. Serv. Bd., 389 So. 2d 516, 519 (Ala. Civ. App. 1980) (citing 17 C.J.S. CONTRACTS § 168).

[55] *See* RESTATEMENT (SECOND) OF CONTRACTS § 174 (A.L.I. 1981) (arguing that it is a bridge too far for an incorporeal corporation itself to suffer from a physical bodily threat).

[56] *Id.* § 175 cmt. b; *cf.* Finserv Comput. Corp. v. Bibliographic Retrieval Servs., Inc., 509 N.Y.S.2d 187, 188–89 (N.Y. App. Div. 1986) (denying on summary judgment a duress argument by corporation on the merits not ab initio); Cabot Corp. v. AVX Corp., 863 N.E.2d 503, 511–13 (Mass. 2007) (analyzing whether corporation had demonstrated elements of economic duress).

[57] Most circuits have countenanced duress arguments by corporations, even if they do not always prevail. *Cf.* Ismert & Assocs., Inc. v. New England Mut. Life Ins. Co., 801 F.2d 536, 536–37, 543, 545 (1st Cir. 1986)

While these contract defenses may not provide an avenue for corporations to argue against the imposition of business registration statutes, they suggest that the theoretical concept of involuntary corporate action is well-established.[58]

Even with such a foundation, registration statutes imposing general jurisdiction occupy a grey area between traditional definitions of corporate consent and coercion.[59] These statutes appear to offer corporations the voluntary choice of whether to register as a foreign corporation and submit to general jurisdiction or not.[60] But a company may have little or no practical choice in the matter if it wants to compete and survive.[61] Thus, a definition of consent alone does not adequately answer whether registration statutes are problematic, even with existing examples of what constitutes involuntary corporate acts in other circumstances.[62]

Precisely because of such grey areas, coercion is not simply the antithesis of consent. Moreover, finding a definition for corporate coercion is not intuitive because although coercion is widely discussed in philosophical and social science literature, such analysis usually concerns individuals.[63] To test whether

(analyzing whether tax service company's release was procured under duress but ultimately concluding no); First Nat'l Bank of Cincinnati v. Pepper, 547 F.2d 708, 714, 715 (2d Cir. 1976) (corporate shareholders suffered duress from coerced sale of stock because "an excessive demand can constitute duress even when the party holding the goods is legitimately due something"); Agathos v. Starlite Motel, 977 F.2d 1500, 1502, 1506 (3d Cir. 1992) (rejecting duress argument by employer in pension funding case based not on employer's status as a company but rather "because it made payments under the agreement for more than ten years"); Cumberland & Ohio Co. of Tex. v. First Am. Nat'l Bank, 936 F.2d 846, 850 (6th Cir. 1991) (holding company could have argued for duress but delayed making the argument past the statute of limitations); United States v. Stump Home Specialties Mfg., Inc., 905 F.2d 1117, 1123 (7th Cir. 1990) (holding that SBA loan modifications were "not coercive" to a small family business); Jamestown Farmers Elevator, Inc. v. Gen. Mills, Inc., 552 F.2d 1285, 1291 (8th Cir. 1977) ("Mutschler Grain can make out a claim of duress against General Mills" for threats made against grain corporation); Applied Genetics Int'l, Inc. v. First Affiliated Sec., Inc., 912 F.2d 1238, 1239, 1246 (10th Cir. 1990) (holding that summary judgment should not have been granted against economic duress claim by cattle breeding partnership against an underwriting company).

[58] *See supra* notes 46–57 and accompanying text. This area is ripe for consideration, discussion, and analysis in future work. For example, is there empirical evidence based on arbitration clause enforcement data to suggest a private law model for corporate involuntariness—i.e., coercion? Could the Constitution's prohibition against the impairment of contracts play a role? Scholars should further explore these topics, but further exploration of these questions is beyond the scope here.

[59] *See, e.g.*, 42 PA. CONS. STAT. § 5301 (2025).

[60] *See id.*

[61] *See supra* note 52.

[62] *See generally* Nir Eyal, *Informed Consent*, STAN. ENCYCLOPEDIA OF PHIL. (Jan. 16, 2019), https://plato.stanford.edu/archives/spr2019/entries/informed-consent/ [https://perma.cc/LRL2-XFZU] (describing issues of consent in "no choice" situations).

[63] *See, e.g.*, Robert Nozick, *Coercion*, *in* PHILOSOPHY, SCIENCE, AND METHOD: ESSAYS IN HONOR OF ERNEST NAGEL 440, 440–65 (Sidney Morgenbesser, Patrick Suppes & Morton White eds., 1969). While the

a state can coerce a corporation's consent, therefore, requires a working definition of coercion that is applicable to corporations.[64]

Modern philosophy traces the concept of coercion to Thomas Aquinas, who offered a first puzzle piece—the key concept of fear based on a threat.[65] Aquinas opined that because fear causes involuntariness, doing what is "necessary" is involuntary as well.[66] But even beyond these principles, combining the fear of a condition also creates involuntariness, according to Aquinas.[67] Defining coercion can be moralistic in the sense that it identifies an unfair deprivation of liberty.[68] It is by definition specific rather than societal, occurring in an interpersonal relationship instead of through institutionalized exploitation.[69]

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contract analogies are helpful, they too cannot tell the whole story about corporate voluntariness. *See supra* notes 46–57.

[64] For what is widely regarded as the most important modern essay on coercion, see generally Nozick, *supra* note 63. Since then, there has been extensive discussion of Nozick's narrow framework (e.g., Nozick focuses on the effects on the coerced and on threats rather than offers). Scott Anderson, *Coercion*, STAN. ENCYCLOPEDIA OF PHIL. (Jan. 23, 2023), https://plato.stanford.edu/archives/spr2023/entries/coercion/[https://perma.cc/W4SC-M2TX]. For purposes of this Article, the touchstone of coercion is where *P* has the power to require *Q* to perform or not perform some act and accept a less than desirable outcome, and *Q*'s reason for doing so was to avoid the consequence *P* could impose. *See* Nozick, *supra* note 63, at 441–42; *see also* Anderson, *supra* (summarizing Nozick's formulation).

[65] *See* Anderson, *supra* note 64.

[66] *See id. Stanford Encyclopedia of Philosophy* summarizes Aquinas's focus on "necessity" as an involuntary choice:

> Coercion, he says, is a kind of necessity in which the activities of one agent—the coercer—make something necessary for another agent. The 'necessity of coercion' is that in which 'a thing must be, when someone is forced by some agent, so that he is not able to do the contrary.' Such necessity is 'altogether repugnant to the will,' meaning that what is done because of coercion is not done voluntarily.

Id. (citations omitted).

[67] *Cf. id.* ("To say that something is voluntary, for Aquinas, implies that it follows from or is in accord with one's inclinations; in contrast, coercion is linked with the notions of violence and the involuntary.").

[68] ISAIAH BERLIN, LIBERTY 168 (Henry Hardy ed., 2002). One might argue that all law is coercive and in some sense it is. Determining when consent is ineffective because it has been coerced, however, is one of the tasks of this Part.

[69] *See* John Lawrence Hill, *Exploitation*, 79 CORN. L. REV. 631, 662 (1994). Hill contrasts coercion and exploitation by defining coercion as requiring three conditions:

> First, the coerced act must be voluntary in that the actor could have chosen to act differently. A person who performs some act which the person would not otherwise perform because there is a gun at the person's head is, nonetheless, acting voluntarily according to this definition: the person could have refused to perform that act, albeit with fearsome consequences. Second, coercion always takes place in the context of an interpersonal relationship. Neither natural nor physical conditions can coerce. Finally, and most importantly, coercion must involve the threat of harm, never the promise of benefit.

Id. (footnotes omitted).

Yet, it can arise even in transactional settings, such as a commercial quid pro quo,[70] and can be reflected in management and labor power dynamics.[71]

Aquinas identified the ultimate point: When a person "consents" to a proposal and their only or primary reason for consenting is the threat of another, the consenting individual's statement was made under duress and, therefore, does not impose any moral obligation binding the individual to the agreement.[72] This principle is firmly ensconced in the law, commonly in contract formation[73] or Fourth Amendment jurisprudence, because coercion vitiates consent.[74]

In his seminal treatise, *Coercion*, Alan Wertheimer explained:

> Our understanding of coercion underlies not only our response to individual action but also our view of various social practices. . . . [A]n entire social theory may be based upon a theory of coercion. Capitalist theory typically assumes that market transactions are voluntary and uncoerced, even if they are made against a background of economic necessity. . . . Robert Nozick argues that there is an important and sharp distinction between "circumstances" that limit alternatives *non*-coercively and specific interpersonal threats that coerce.[75]

One way of interpreting these philosophical principles is that coercion exists not where broad circumstances limit alternatives but where there are directed and unfairly coercive "bargains."[76] Consent, therefore, is choice free from coercion.[77] The challenge for applying this definition to corporations is that,

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[70] *See* Mark A. Lemley & Christopher R. Leslie, *Categorical Analysis in Antitrust Jurisprudence*, 93 IOWA L. REV. 1207, 1221–22 (2008) (analyzing voluntary versus coerced packaged patent licenses).

[71] *See* ROBERT NOZICK, ANARCHY, STATE, AND UTOPIA 262–63 (1974) (describing a lack of voluntariness for the choice of working versus starving). Nozick set off what became the hotly debated issue of whether wage offers in a capitalist society necessarily imply coercion, which has ramifications for corporate coercion. *See, e.g.*, David Zimmerman, *Coercive Wage Offers*, 10 PHIL. & PUB. AFFS. 121, 121–22 (1981); Lawrence A. Alexander, *Zimmerman on Coercive Wage Offers*, 12 PHIL. & PUB. AFF. 160, 161–62 (1983).

[72] *See* Jeffrie G. Murphy, *Consent, Coercion, and Hard Choices*, 67 VA. L. REV. 79, 81 (1981).

[73] *See supra* notes 46–57 and accompanying text; *see also, e.g.*, Tarpy v. Cnty. of San Diego, 1 Cal. Rptr. 3d 607, 614 (Cal. Ct. App. 2003) ("Economic duress does not necessarily involve an unlawful act, but may arise from an act that is so coercive as to 'cause a reasonably prudent person, faced with no reasonable alternative, to agree to an unfavorable contract.'" (quoting CrossTalk Prods., Inc. v. Jacobson, 76 Cal. Rptr. 2d 615, 623 (Cal. Ct. App. 1998))).

[74] *See, e.g.*, Lopera v. Town of Coventry, 640 F.3d 388, 398 (1st Cir. 2011) (noting it is well known that "coercion vitiates consent to a search under the Fourth Amendment").

[75] ALAN WERTHEIMER, COERCION 4–5 (1987).

[76] *See id.* at 5.

[77] *See id.*

under capitalist norms, corporations are presumed to make choices according to economic necessities, not external "threats" that could constitute coercion.[78]

To identify what constitutes coercion in the corporate context, it helps to look at coercion's two necessary elements: first, that the "maker of the proposal would be engaging in a wrong were he to carry out the threat"; and, second, that the threat would actually hurt the person being coerced.[79] Defining what is *a wrong* or what constitutes *hurt* requires some measure of normative morality—an issue with which Wertheimer grapples throughout his treatise.[80] This requirement is more difficult to parse for coerced personal jurisdiction because there is an imperfect connection between a normative moral judgment (even from the defendant's perspective), where the defendant is a business instead of, for example, an individual aggrieved by a warrantless search. At least according to Wertheimer, however, identifying a state's "wrong" against a company begins with understanding the business's perspective.[81]

From the business's perspective, the ability to do business in the state should be an inherent right. Mitchell Berman reiterated the now-settled proposition that "a state may not condition the privilege of doing business on a foreign corporation's waiver of its federal right of removal" and then argued it is best addressed by coercion analysis. [82] The "critical task" for testing coercion by states against businesses, Berman argued, is to ask whether "the state would confer the privilege of doing business but for a purpose in punishing this corporation or in encouraging agreement by others, [in which case] the withholding of the benefit is a penalty (hence presumptively unconstitutional), and the corresponding conditional proposal is (presumptively) coercive."[83]

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[78] *See id.* at 4–5. Consider again the introductory hypothetical. The radio station that enters into the market transaction Wertheimer describes may have elected that it is worth the risk to expose itself to lawsuits in Pennsylvania. It can also be argued that it is worth the station's risk to reach the New York market. Nozick and Wertheimer would describe these decisions as coercive "choice-limiters" by the state—succumb to general jurisdiction or you cannot survive as a radio station.

[79] *See* Mitchell N. Berman, *Commercial Speech and the Unconstitutional Conditions Doctrine: A Second Look at "The Greater Includes the Lesser"*, 55 VAND. L. REV. 693, 730 (2002).

[80] *See* WERTHEIMER, *supra* note 75, at 305–06. Wertheimer challenges both the assumption that we can evaluate voluntariness without normative morality and that moral wrongfulness is objective, but he does not necessarily reach a firm resolution. *See id.* at 302–03. Instead, he offers the solution that coercion creates involuntariness when demands or offers are morally impermissible from the standpoint of the coercee because then they "compromise the voluntariness of one's actions." *See id.* at 305–06. From a corporation's perspective "moral impermissibility" might best be translated as against business purpose.

[81] *Id.* at 503–06.

[82] *See* Mitchell N. Berman, *Coercion Without Baselines: Unconstitutional Conditions in Three Dimensions*, 90 GEO. L.J. 1, 59–60 (2001).

[83] *Id*. at 68.

In conjunction with the philosophy, Berman's formulation supports the idea that businesses *can* be coerced, although it does not answer *when* a corporation is coerced.[84]

This is the place to confront a fundamental objection to this Article's premise: the notion that the "bargain" between a state and a corporation is voluntary and simply the corporation's response to an economic necessity.[85] In philosophical terms, the dynamic between a state and a corporation is not a "threat" by the state, and without a threat, there is no coercion. There are two primary responses to this objection.

First, as Seth Kreimer argued powerfully in defense of corporate susceptibility to threats:

> In defining coercion as an alteration of the position one would have enjoyed in the normal course of events, I draw on the model used by several recent political theorists to define "freedom" and "coercion." The argument for so defining violations of constitutional liberties is twofold. First, these rights seek to protect individual choices. Therefore, the evaluation of an intervention as either supporting or interfering with that right can logically enough be phrased in terms of the effect that the intervention has on the range of choices available to the victim. The difference between a highwayman confronting a victim with the dilemma of "your money or your life" and a street vendor propositioning a pedestrian with the offer of "your money or my watch" is not that the highwayman removes the *possibility* of choice. The bold, greedy, or foolish victim still has the choice of refusing to part with his funds at the risk of death. Rather, the distinction lies in the fact that the highwayman has narrowed the *range* of choices; the victim no longer has the opportunity, which existed before the intervention, of choosing to retain *both* money and life. The street vendor, by contrast, enlarges the range of choice. Before the offer, the pedestrian could not have chosen to make the trade. [86]

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[84] *Cf. id.* at 68 (discussing business's ability for coercion but not when it occurs). Berman's article is useful for other reasons too as explored more fully *infra* Section II.E.

[85] *Cf. id.* at 6 (suggesting that conditional governmental offers are presumptively unconstitutional). This is related to but not the same as the objection addressed in section III.F regarding the "right to do business" as opposed to the due process right to be free from arbitrary and unfair restrictions. *See* discussion *infra* Section III.F.

[86] Seth F. Kreimer, *Allocational Sanctions: The Problem of Negative Rights in a Positive State*, 132 U. PA. L. REV. 1293, 1353–54 (1984) (footnotes omitted).

Put simply, threats eliminate choices, and corporations should be able to "choose" to do business without having to give up rights to do so.[87] This is another way of describing threats as choice-limiters.

Second, whether under a corporation's subjective perspective or a normative objective test, a corporation that must waive its constitutional right to exist suffers a threat. To understand why, consider again the theoretical understandings of consent and coercion. The hallmark of consent is that it is voluntary.[88] The hallmark of coercion is that there is a threat; whether there is a threat depends on either one of two things: an objective, normative morality or a relative, subjective perspective of the coercee.[89] If the dynamic between a state and a corporation constitutes a threat based on a corporation's perspective,[90] then what appears to be a bargain can still produce coercion, even in the context of rational economic "choice."[91]

Are there normative guidelines for determining whether an entity would be worse off if forced to give up a right it would otherwise have, even if it is being permitted a benefit in return? Yes. Nozick argues—and our legal system supports the idea—that there is an important distinction between an offer presenting an economic choice and a state-imposed threat.[92] How do you tell the difference?

Assume that State *A* adopts legislation whereby a corporation will receive extremely favorable tax rates if the corporation agrees to waive its due process rights to challenge jurisdiction. This is not coercive because there is no threat, and no matter how powerful an offer, its nature does not change. Now assume instead that State *A* adopts legislation that defendants must waive their jury trial right in order to do business at all. This is coercive because it requires waiving a constitutional right rather than promising an economic benefit. But what if State *A* adopts legislation that instead provides a mechanism for plea bargaining

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[87] *See, e.g.*, United States v. Zemek, 634 F.2d 1159, 1174 (9th Cir. 1980) ("The right to make business decisions and to solicit business free from wrongful coercion is a protected property right." (first citing United States v. Santoni, 585 F.2d 667 (4th Cir. 1978); then citing United States v. Nadaline, 471 F.2d 340 (5th Cir. 1973); and then citing United States v. Tropiano, 418 F.2d 1069 (2d Cir. 1969))).

[88] *See supra* note 31 and accompanying text.

[89] *See* WERTHEIMER, *supra* note 75, at 305–06.

[90] *See id.* at 305.

[91] Here is how Nozick distinguishes threats from offers: "Offers of inducements, incentives, rewards, bribes, consideration, remuneration, recompense, payment do not normally constitute threats, and the person who accepts them is not normally coerced." Nozick, *supra* note 63, at 447.

[92] *Id.*

whereby defendants waive their rights to an appeal in return for a lower sentence? This is likely noncoercive because it is an offer of a benefit. The parallel to the corporate context would be where states grant to a corporation special tolling rights in return for a waiver of the right to appeal. Unlike the right to do any business whatsoever, the special tolling right is an offer—and one the corporation is free to refuse.

Applying this dichotomy to our personal jurisdiction question: Is it normally expected that a corporation can do business in any state? If so, then a business registration statute is more of a threat because it makes the corporation worse off by being open to unrelated litigation claims. Is it morally expected that a corporation would be liable for unrelated claims by just doing business? Probably not.

Beyond these hypotheticals, the Supreme Court has recognized that a state's relationship to a business does not insulate it from creating "unconstitutional conditions."[93] The very fact that an unconstitutional conditions doctrine exists suggests a legal framework for finding that there is an objective way of measuring wrongfulness in bargaining.[94] In each of the leading cases involving the unconstitutional conditions doctrine, a party argued that the arm's length, bargained-for exchange was no more than fairly offering a benefit instead of wrongly withholding a right.[95] In other words, the Supreme Court has already repeatedly found a normative *wrongness* when the government conditions a *benefit* on the waiver of a *right*.[96] And if there is something wrongful about that conditioning, then there is an objective means of finding a threat by a state

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[93] *See* Frost & Frost Trucking Co. v. R.R. Comm'n of Cal., 271 U.S. 583, 593–94, 595 (1926) ("[T]he state, having power to deny a privilege altogether, may grant it upon such conditions as it sees fit to impose. But the power of the state in that respect is not unlimited; and one of the limitations is that it may not impose conditions which require the relinquishment of constitutional rights."); discussion *infra* Section III.B (discussing the unconstitutional conditions doctrine in greater detail).

[94] *See, e.g.*, Lafayette Ins. Co. v. French, 59 U.S. 404, 407 (1855) (explaining that states can condition a foreign corporation's right to do business on conditions as long as "they are not repugnant to the constitution or laws of the United States"); Keyishian v. Bd. of Regents, 385 U.S. 589, 600, 603–04 (1967) (discussing how states cannot condition public employment on an employee's refusal to exercise First Amendment rights).

[95] *See, e.g.*, Nat'l Rifle Ass'n of Am. v. Vullo, 602 U.S. 175, 191 (2024). In *National Rifle Ass'n of America v. Vullo*, for example, the Court criticized coercion leading to the termination of business relationships. *See id.* at 197–98. Because business relationships are a benefit, giving up that benefit for a constitutional right is the essence of the doctrine that has been applied in the corporate setting. *See id.* at 191–92.

[96] *Cf. id.* at 191 (stating that to show government coercion, "a plaintiff must plausibly allege conduct that, viewed in context, could be reasonably understood to convey a threat of adverse government action in order to punish or suppress [in that case] the plaintiff's speech").

against a corporation, and the issue is not whether corporations can be coerced—but when.

In sum, states can coerce, and corporations can be coerced.[97] Armed with this theoretical basis for corporate consent and coercion, the next Part pivots to personal jurisdiction by consent.

II. CONSENT AS A BASIS FOR JURISDICTION

Personal jurisdiction is the power of the court over the party.[98] There are two primary controls on the exercise of such jurisdiction: (1) the sovereign limitations on states;[99] and (2) the due process rights of defendants to be free from the unfair, arbitrary exercise of power.[100] Consent is one mechanism that satisfies the latter.[101] To understand when such consent might be invalid because it is coerced, however, requires a basic understanding of where consent-based jurisdiction came from and how it operates today.

A. Consent to the Sovereign

Consent has always been implicit in jurisdiction. From the earliest days of English courts, for example, consent served as the foundation for jurisdiction—whether it was implied consent to the authority of the sovereign or express consent to the jurisdiction of the courts.[102] Later, in the seventeenth and eighteenth centuries, there came a concerted effort to corral consent statutes.[103]

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[97] *See, e.g.*, *id.* Past scholarship has argued—if not assumed—that coercion is possible. *See* discussion *infra* Section II.E. Perhaps part of why that insight has not yet taken hold, however, has been the need to explain in more theoretical terms how the legal construct or entity of a corporation is subject to coercion.

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

[99] *See* World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 293 (1980).

[100] *See* Nebbia v. New York, 291 U.S. 502, 525 (1934).

[101] At its most elementary level, all jurisdiction flows from consent. *See, e.g.*, JOHN LOCKE, SECOND TREATISE OF GOVERNMENT: AN ESSAY CONCERNING THE TRUE ORIGINAL, EXTENT AND END OF CIVIL GOVERNMENT 58 (Richard Cox ed., 1982) ("Men being, as has been said, by nature, all free, equal, and independent, no one can be put out of his estate, and subjected to the political power of another, without his own *consent*. The only way whereby any one divests himself of his natural liberty, and *puts on the bonds of civil society* is by agreeing with other men to join and unite into a community, for their comfortable, safe, and peaceable living one amongst another, in a secure enjoyment of their properties, and a greater security against any that are not of it.").

[102] In medieval England, jurisdiction served as a proxy for political power. *See* FREDERIC WILLIAM MAITLAND, ROMAN CANON LAW IN THE CHURCH OF ENGLAND 120–21 (1898).

[103] Norma Adams cites a case where the court allowed the parties to proceed when it was shown "that the plaintiff had signed a previous agreement to submit to the jurisdiction of the bishop." Norma Adams, *The Writ of Prohibition of Court Christian*, 20 MINN. L. REV. 272, 283 (1936).

In England, for example, jurisdiction was based on the defendant's voluntary appearance, and territorial borders were irrelevant.[104] By the eighteenth century, constructive appearance replaced the need for actual appearance, and service of summons could establish the court's authority over the defendant.[105] The American colonies adopted these English traditions and added rules specifying, for example, that service was sufficient for jurisdiction only if service occurred while the defendant was physically present within the state's territorial limits.[106] As Scott Dodson has observed, until the mid-twentieth century, the two bases for personal jurisdiction were voluntary appearance or in-state service, but "[n]either was characterized as consent to personal jurisdiction."[107]

It was hard to apply in-state rules of service of process to disembodied corporations, however, so states adopted laws deeming service on in-state corporate agents to be in-state service *on the corporation*.[108] For example, in *Lafayette Insurance Co. v. French*,[109] Ohio law deemed service on an Ohio-residing agent of an out-of-state insurance company as service on the company's principal.[110] The defendant's "consent" in that case was the agreement that service on its in-state agent was direct service on the company.[111] Dodson's research suggests that consent did not establish personal jurisdiction itself.[112] Rather, it served as a stepping-stone to service of process.[113]

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[104] Dodson, *supra* note 18, at 339.

[105] *Id.* There is a faint suggestion of quantum mechanic's "Schrodinger's Cat" in this context. Schrodinger's Cat illustrates the quantum mechanic's principle that quantum particles acquire fixed locations only upon interaction or observance. *See* Christopher S. Baird, *What Did Schrodinger's Cat Experiment Prove?*, W. TEX. A&M UNIV. (Nov. 27, 2023), https://www.wtamu.edu/~cbaird/sq/2013/07/30/what-did-schrodingers-cat-experiment-prove/ [https://perma.cc/JE7C-FHLL]. Here, the corporation has no location until the corporation's location is "fixed" by serving it, at which time it ceases to be anywhere else—even though the corporate legal fiction continues elsewhere.

[106] *See* Harold L. Korn, *The Development of Judicial Jurisdiction in the United States: Part I*, 65 BROOK. L. REV. 935, 949 (1999).

[107] Dodson, *supra* note 18, at 338.

[108] *See* Charles W. "Rocky" Rhodes, *Nineteenth Century Personal Jurisdiction Doctrine in a Twenty-First Century World*, 64 FLA. L. REV. 387, 391–97 (2012).

[109] 59 U.S. 404 (1855).

[110] *See id.* at 406.

[111] Dodson, *supra* note 18, at 340.

[112] *See id.* at 370 n.215. Effron and Simowitz argue for a slightly different understanding—that consent was about deference to territorial power. *See* Effron & Simowitz, *supra* note 18, at 181. Although this Article benefits from that discussion, neither formulation impugns that corporate consent can be unlawfully coerced.

[113] *See* Effron & Simowitz, *supra* note 18, at 191.

B. Consent-Based Jurisdiction in the American Courts

For about one-and-a-half centuries, the concept of personal jurisdiction developed in the courts, starting from a purely territorial, power-based approach and culminating—most recently—in a constructively consent-based approach. This development largely happened along two separate tracks—one based on corporate registrations (with a one hundred year gap) and the other based on minimum contacts.[114]

The story starts with *Pennoyer v. Neff*,[115] where the Supreme Court established a presence-based personal jurisdiction framework, limiting states' exercise of personal jurisdiction to those physically present in their state.[116] Consent could be a valid basis for exercising personal jurisdiction, according to the Court, which explained that state statutes could require nonresident partnerships or organizations to appoint an agent to receive service of process in the state—and thus consent to be sued in the state—without running afoul of the Fourteenth Amendment.[117] *Pennoyer* confirmed two traditional methods of establishing personal jurisdiction: "service of process within the State, or . . . [by] voluntary appearance."[118] Service of process included "cases in which that mode of service may be considered to have been assented to in advance."[119] The seminal personal jurisdiction case, therefore, set the stage for the eventual adoption of consent-based jurisdiction many years later.

A few decades after *Pennoyer*, the Court confirmed in *Simon v. Southern Railway Co.*[120] that the appointment of an agent for service of process conferred jurisdiction by consent if the claim related to the defendant's activities in the forum state.[121] The Supreme Court did not say in *Simon* that a foreign corporation could be subject to jurisdiction for all claims by designating an agent for service of process—just the ones that related to its business there.[122]

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[114] *See, e.g.*, Craig Sanders, Note, *Of Carrots and Sticks: General Jurisdiction and Genuine Consent*, 111 NW. U. L. REV. 1323, 1329 (2017) (describing the development of corporate consent jurisdiction); Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945).

[115] 95 U.S. 714 (1877).

[116] *See id.* at 733 (suggesting that nonresidents may be subject to personal jurisdiction in a state in which the "mode of service may be considered to have been assented to in advance").

[117] *Id.* at 735.

[118] *See id.* at 733.

[119] *Id.*

[120] 236 U.S. 115 (1915).

[121] *See id.* at 130.

[122] *See id.* A district court considered a similar question in *Smolik v. Philadelphia & Reading Coal & Iron Co.*, 222 F. 148 (S.D.N.Y. 1915). There, the plaintiff sued the defendant, a Pennsylvania mining company, in

A similar question arose in *Bagdon v. Philadelphia & Reading Coal & Iron Co.*,[123] where the court held that foreign corporations could be subject to general personal jurisdiction by complying with a state statute that conditioned doing business in the state upon appointing an agent for service of process.[124] The New York statute in question said that in order to do business in the state, foreign corporations needed to "obtain[] a certificate from the secretary of state."[125] These cases set the stage for *Mallory*'s predecessor.

In 1917, the Supreme Court in *Pennsylvania Fire Insurance Co. v. Gold Issue Mining & Milling Co.*[126] held that a corporation could be subject to general jurisdiction by consent.[127] Pennsylvania Fire was an insurance company that insured a building located in Colorado and owned by Gold Issue, an Arizona corporation.[128] When a fire destroyed the Colorado building and Pennsylvania Fire refused to indemnify it, Gold Issue sued Pennsylvania Fire in Missouri.[129] Because Pennsylvania Fire (a Pennsylvania corporation) wanted to sell insurance policies in Missouri, it complied with Missouri's requirement that it execute "a power of attorney consenting that service of process upon the superintendent should be deemed personal service upon the company so long as it should have any liabilities outstanding in the state."[130]

By executing a power of attorney, Pennsylvania Fire had taken a "risk" that the power would actually be relied on by the courts to confer general personal jurisdiction.[131] That voluntary act provided consent to jurisdiction consistent with the demands of the Due Process Clause even if it took Pennsylvania Fire by surprise.[132] In the following few decades, the Court relied on *Pennsylvania*

New York for an event that occurred outside of the forum. *See id.* at 150. Nonetheless, the court held that the defendant provided "actual consent" to jurisdiction for claims related to "any cause of action" because the New York law required that, as a condition of doing business in the state, corporations needed to appoint an agent for service of process. *Id.* at 150–51.

[123] 111 N.E. 1075 (1916).
[124] *See id.* at 1077.
[125] *Id.* at 1076.
[126] 243 U.S. 93 (1917).
[127] *See id.* at 95.
[128] *Id.* at 94.
[129] *Id.*
[130] *Id.*
[131] *Id.* at 96.
[132] *Id.* at 95.

Fire three times in extending general jurisdiction by registration to nonresident corporations.[133]

On a separate track entirely, the Court developed its personal jurisdiction jurisprudence in *International Shoe*, which overruled *Pennoyer* and transitioned to a relationship-based framework.[134] *International Shoe* did not, however, address *Pennsylvania Fire* or consent-based registration statutes.[135] What did this mean for the continued viability of consent by registration?[136]

When *International Shoe* overruled *Pennoyer*, it established a new paradigm for personal jurisdiction jurisprudence; the Court later said that all "state-court jurisdiction must be evaluated according to the standards set forth in *International Shoe* and its progeny."[137] Since *International Shoe*, the Court's subsequent decisions primarily focused on expanding specific personal jurisdiction but limiting general jurisdiction.[138]

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[133] *See* Neirbo Co. v. Bethlehem Shipbuilding Corp., 308 U.S. 165, 175 (1939) ("A statute calling for [the appointment of an agent for service of process] is constitutional, and the designation of the agent 'a voluntary act.'" (quoting *Pennsylvania Fire*, 243 U.S. at 96)); Louisville & Nash. R.R. Co. v. Chatters, 279 U.S. 320, 325 (1929) ("Even when present and amenable to suit it may not, unless it has consented, be sued on transitory causes of action arising elsewhere which are unconnected with any corporate action by it within the jurisdiction." (citations omitted)); Robert Mitchell Furniture Co. v. Selden Breck Constr. Co., 257 U.S. 213, 215–16 (1921) ("Of course when a foreign corporation appoints one as required by statute it takes the risk of the construction that will be put upon the statute and the scope of the agency by the State Court.").

[134] *See, e.g.*, Chavez v. Bridgestone Ams. Tire Operations, LLC, 503 P.3d 332, 340 (N.M. 2021) (describing the doubtful validity of *Pennsylvania Fire* after *International Shoe* based on a transition from a "presence-based jurisdictional framework . . . to a relationship-based framework").

[135] The relevant registration statute at the time was the Revised Code of Washington § 23.60.110. WASH. REV. CODE § 23.60.110 (1945) ("No corporation shall be permitted to commence or maintain any suit, action, or proceeding in any court of this state, without alleging and proving that it has paid or contracted to pay as hereinafter provided, all fees due the state of Washington under existing law or this chapter."). International Shoe Company was incorporated in Delaware. Int'l Shoe Co. v. Washington, 326 U.S. 310, 313 (1945).

[136] Until *Mallory*, the only Supreme Court case to rely on *Pennsylvania Fire*'s consent rule after *International Shoe* was *Perkins v. Benguet Consolidated Mining Co*. *See* 342 U.S. 437, 443 n.4 (1952).

[137] Shaffer v. Heitner, 433 U.S. 186, 212 (1977).

[138] Two more recent general jurisdiction cases are *Goodyear Dunlop Tires Operations, S.A. v. Brown* and *Daimler AG v. Bauman*. 564 U.S. 915, 919 (2011) ("A court may assert general jurisdiction over foreign (sister-state or foreign-country) corporations to hear any and all claims against them when their affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum State." (quoting *Int'l Shoe*, 326 U.S. at 317)); 571 U.S. 117, 139 (2014) (rejecting general jurisdiction over Daimler because neither it nor its related subsidiary "is incorporated in California, nor does either entity have its principal place of business there").

After the Court's holdings in *Goodyear Dunlop Tires Operations, S.A. v. Brown*[139] and *Daimler*, resistance to registration statute jurisdiction deepened.[140] In *Brown v. Lockheed Martin Corp.*,[141] for example, the Second Circuit considered whether a corporation's compliance with the Connecticut business registration statute established general jurisdiction.[142] Holding that it did not, the court concluded that *Pennsylvania Fire* was "at odds" with the Supreme Court's general jurisdiction jurisprudence under *Daimler*.[143]

Before *Daimler*, some jurisdictions followed *Pennsylvania Fire*. Delaware is a good example. In *Sternberg v. O'Neil*,[144] the Delaware Supreme Court held that *Pennsylvania Fire*'s "express consent by registration" and *International Shoe*'s "implied consent by minimum contact" were "neither inconsistent nor mutually exclusive."[145] In holding that express consent remained a valid way of obtaining general jurisdiction, the court relied on *Perkins v. Benguet Consolidated Mining Co*.,[146] suggesting that an implied minimum contacts analysis is only required when the corporation did not give express consent by appointing an agent for service of process in accordance with a state registration statute.[147] After *Daimler*, however, the Delaware Supreme Court overruled *Sternberg* in *Genuine Parts Co. v. Cepec*.[148]

Arizona courts offer another illustration of this resistance to *Pennsylvania Fire* after *Daimler*.[149] In 2007, the Arizona Court of Appeals held that *Pennsylvania Fire* remained dispositive when finding that a foreign corporation could be subject to consent-based general jurisdiction.[150] But after *Daimler*,

[139] 564 U.S. 915 (2011).

[140] *Goodyear* established that a state can only exercise general jurisdiction over foreign corporations "when their affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum State." *Id.* at 919 (quoting *Int'l Shoe*, 326 U.S. at 317). Corporations are "at home" in either their state of incorporation or principal place of business. *Id.* at 924.

[141] 814 F.3d 619 (2d Cir. 2016).

[142] *See id.* at 622.

[143] *Id.* at 638, 641.

[144] 550 A.2d 1105 (Del. 1988).

[145] *Id.* at 1110.

[146] 342 U.S. 437 (1952).

[147] *Sternberg*, 550 A.2d at 1111.

[148] 137 A.3d 123, 148 (Del. 2016) ("In light of the U.S. Supreme Court's clarification of the due-process limits on general jurisdiction in *Goodyear* and *Daimler*, we read our state's registration statutes as providing a means for service of process and not as conferring general jurisdiction.").

[149] *See* Bohreer v. Erie Ins. Exch., 165 P.3d 186, 194 (Ariz. Ct. App. 2007).

[150] *See id*.

Arizona courts held that registration statutes do not imply consent to general jurisdiction.[151]

C. Registration Statutes and Service of Process

Before *International Shoe*, the importance of physical presence caused a significant reliance on service of process due to a continued focus on territorial physical presence.[152] Service of process occurs when the plaintiff puts the defendant on notice of the lawsuit by delivering the complaint and summons to the defendant personally or, in some cases, constructively.[153] Because corporations are not humans who occupy only one place at a time, corporations are constructively present through agents registered with the state to accept such service of process.[154]

After *International Shoe*, the importance of service of process on a corporation's designated agent diminished as long-arm statutes proliferated[155]—except in the context of business registration statutes.[156] Service of process on a foreign corporation is still effected by delivering the summons and complaint to an agent of the corporation—a person authorized by appointment or by law to accept such service.[157] States require such an agent before they will allow any corporation—foreign or domestic—to do business.[158] State registration statutes also generally require foreign corporations to obtain a certificate of authority from the secretary of state.[159]

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151 *See, e.g.*, Wal-Mart Stores, Inc. v. Lemaire, 395 P.3d 1116, 1122 (Ariz. Ct. App. 2017).

152 *Cf.* Dodson, *supra* note 18, at 368 ("*Pennoyer*-era consent, to the extent it was manifested through voluntary appearance and was grounded in notions of physical presence and territorial power, is not the same as post-*International Shoe* variations of consent founded on due process rights and fairness.").

153 16 JAMES WM. MOORE, MOORE'S FEDERAL PRACTICE § 108.111 (3d ed. 2017).

154 *See* Pinney v. Nelson, 183 U.S. 144, 149 (1901) ("It is very true that a corporation can have no legal existence out of the boundaries of the sovereignty by which it is created. But although it must live and have its being in that State only, yet it does not by any means follow that its existence there will not be recognized in other places; and its residence in one State creates no insuperable objection to its power of contracting in another." (quoting Bank of Augusta v. Earle, 38 U.S. 519, 520 (1839))).

155 *See* Jason J. Jarvis, *Geometric Federalism*, 76 ALA. L. REV. 689, 702 (2025) (detailing the increasing importance and growth of long-arm statutes).

156 *See id.* at 708–10 (reviewing historical decline of the importance of service of process in the federal rules).

157 FED. R. CIV. P. 4(h)(1)(B).

158 *See, e.g.*, N.Y. BUS. CORP. LAW § 1301(a) (McKinney 2020) ("A foreign corporation shall not do business in this state until it has been authorized to do so as provided in this article.").

159 *See, e.g.*, CAL. CORP. CODE § 2101(b) (West 2025) (requiring certification before conducting business). The statutes most often prescribe these conditions in the following sequence: admission for certification;

Leading up to *Mallory*, courts sometimes held that a state's registration statute conferred general jurisdiction—but often did not.[160] But most statutes do not explicitly state that general jurisdiction is conferred by registering to do business; nonetheless, some courts still impliedly upheld general jurisdiction over the corporation.[161] Although only a limited number of state registration statutes currently read or are applied like Pennsylvania's, that seems likely to change.[162] Against this backdrop, the case of *Mallory* arose.

D. Mallory*'s Startling but Narrow Holding*

Plaintiff Robert Mallory worked for Norfolk Southern as a mechanic for nearly two decades in Ohio and Virginia.[163] He alleged that during his time with the company, he sprayed pipes with asbestos and handled chemicals.[164] After he left the company, Mallory was diagnosed with cancer and hired Pennsylvania lawyers to sue his former employer in Pennsylvania state court under the Federal Employers' Liability Act.[165] Mallory did not allege that he had suffered any cancer-causing exposure in Pennsylvania but sued Norfolk Southern in Pennsylvania court anyway, arguing that the court could exercise jurisdiction

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application procedure; appointment of a registered agent; and service of process. Those that do not follow this order generally impose the same requirements.

[160] *Compare* ARK. CODE ANN. § 4-20-115 (West 2025) (denying consent by registration explicitly), *and* D.C. CODE ANN. § 29-104.14 (West 2025) (denying consent by registration), *and* IDAHO CODE ANN. § 30-21-414 (West 2025) (registering an agent is not enough to confer personal jurisdiction), *and* Brown v. Lockheed Martin Corp., 814 F.3d 619, 623 (2d Cir. 2016) (denying general jurisdiction based on registration statutes), *and* Gray Line Tours v. Reynolds Elec. & Eng'g Co., 238 Cal. Rptr. 419, 421 (Cal. Ct. App. 1987) (noting California courts have consistently been against consent by registration statutes), *and* Allied Carriers Exch., Inc. v. All. Shippers, Inc., 1999 WL 35363796, at *3–4 (D. Colo. Sep. 22, 1999) (ruling that there still needed to be a minimum contacts analysis, even if the corporation was registered to do business in the state), *with* 15 PA. STAT. AND CONS. STAT. ANN. § 411(a) (West 2025) (requiring registration to do business in the state), *and* 42 PA. STAT. AND CONS. STAT. ANN. § 5301(a)(2)(i) (West 2025) (registering an agent confers general jurisdiction).

[161] United States cases upholding jurisdiction include *Cooper Tire & Rubber Co. v. McCall*, 312 Ga. 422 (Ga. 2021), the Georgia authority the Court contrasted with Pennsylvania in *Mallory*. *See* Mallory v. Norfolk S. Ry. Co., 600 U.S. 122, 127 (2023) (plurality opinion); *infra* note 162. Internationally, corporate registration statutes have different results for acquiring jurisdiction than the United States. Canadian courts reject that corporate registration alone can establish general jurisdiction when the suit does not arise from business transacted in the forum. *See, e.g.*, Pearlman v. Great W. Life Assurance Co., 1912 CarswellBC 182, para. 16–17 (Can. B.C.) (WL); Procon Mining & Tunnelling Ltd. v. Waddy Lake Res. Ltd., 2002 B.C.S.C.129, para. 35 (Can. B.C.). Similarly, the United Kingdom also rejects the notion that service on a registered agent satisfies general jurisdiction. *See, e.g.*, Companies Act 1907, 7 Edw. 7 c. 50, § 35 (Eng.); Emps. Liab. Assurance Corp. v. Sedgwick, Collins & Co. [1927] AC 95 (HL) 108–09 (Eng.) (Lord Blanesburgh concurred in the result).

[162] *Mallory*, 600 U.S. at 172 (Barrett, J., dissenting).

[163] *Id.* at 126 (plurality opinion).

[164] *Id.*

[165] *Id.*

over the Virginia-based company because it had registered to do business in Pennsylvania.[166]

The Supreme Court of Pennsylvania eventually ruled for Norfolk Southern, holding that although Mallory had correctly interpreted Pennsylvania law, the law itself violated due process.[167] The Supreme Court of Pennsylvania's conclusion directly conflicted with the Supreme Court of Georgia, which rejected a similar due process argument in 2021 in *Cooper Tire & Rubber Co. v. McCall*.[168] The Supreme Court granted certiorari to answer the question of whether a state registration statute for out-of-state corporations that purports to confer general personal jurisdiction over the registrant violates the Due Process Clause of the Fourteenth Amendment.[169]

Justice Gorsuch wrote the Court's plurality opinion and issued the judgment, which reversed the Supreme Court of Pennsylvania.[170] The plurality stated that Norfolk Southern had conceded that it registered to do business in Pennsylvania and thus understood that it could be subject to suit there on any claim.[171] Further, Pennsylvania law was explicit that "qualification as a foreign corporation" permitted its state courts to "exercise general personal jurisdiction" over registered corporations.[172] Although the Supreme Court of Pennsylvania had ruled for Norfolk Southern, it deduced that the Supreme Court had "implicitly overruled" *Pennsylvania Fire*; the Supreme Court disagreed.[173] The Court held that *International Shoe* did not displace consent-based jurisdiction: "To date, our personal jurisdiction cases have never found a Due Process Clause problem sounding in federalism when an out-of-state defendant submits to suit in the forum State."[174]

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166 *See id.* at 126–27.

167 *Id*. at 127.

168 863 S.E.2d 81, 92 (Ga. 2021).

169 *See* Petition for Writ of Certiorari, *Mallory*, 600 U.S. 122 (No. 21-1168).

170 *Mallory*, 600 U.S. at 146 (plurality opinion). Justice Gorsuch's opinion was joined by Justice Thomas, Justice Sotomayor, and Justice Jackson. Justice Alito concurred in the judgment. Justice Barrett dissented, joined by Chief Justice Roberts, Justice Kagan, and Justice Kavanaugh. *Id.* at 124.

171 *Id.* at 135 ("[Norfolk Southern] concedes that it registered to do business in Pennsylvania, that it established an office there to receive service of process, and that in doing so it understood it would be amenable to suit on any claim.").

172 *Id.* at 134.

173 *See id.* at 136.

174 *See id.* at 144.

Justice Jackson concurred but wrote separately to emphasize the concept of waiver.[175] The case was instructive, she wrote, because it confirmed a "simple truth"—the "due process 'requirement of personal jurisdiction' is an individual, waivable right."[176] Because that right belongs to a defendant, a defendant can "choose to 'subject [itself] to powers from which [it] may otherwise be protected.'"[177] According to Justice Jackson, submitting to a state's jurisdiction in return for voluntarily invoking certain benefits from a state is one way a defendant can waive its personal jurisdiction right.[178]

In his concurrence, Justice Alito agreed with the plurality that Norfolk Southern's Due Process Clause argument was "foreclosed by our precedent" and called the parallels with *Pennsylvania Fire* "undeniable."[179] Although Justice Alito concurred in the judgment, he expressed reservations about whether the Constitution permits the imposition of such submission-to-jurisdiction statutes—just not for due process reasons.[180] He reasoned that a state's assertion of jurisdiction over lawsuits without any real connection to the state likely violates the Dormant Commerce Clause.[181] However, because the Commerce Clause was not raised by the parties, Justice Alito concurred.[182]

In contrast, Justice Barrett's dissent asserted that the Due Process Clause forbids state courts from asserting general jurisdiction over foreign defendants merely because they do business in that state.[183] The plurality's reasoning in *Mallory*, according to the dissent, allowed states to work around that principle by compelling a corporation to register to conduct business and making this registration sufficient for suit on any case, even ones with no connection to the forum.[184]

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[175] *Id.* at 147 (Jackson, J., concurring). Justice Jackson relied primarily on *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*. *Id.*; 456 U.S. 694, 703 (1982). *Insurance Corp. of Ireland* was an odd case for Justice Jackson to rely on for this point, however, because the waiver was not by consent or laches but was the result of discovery abuse sanctions. *Ins. Corp. of Ir.*, 456 U.S. at 708. That is probably more appropriately called "forfeiture" than "waiver." *Mallory*, 600 U.S. at 144 (plurality opinion). No one argued that Norfolk Southern had abused some process and been denied a personal jurisdiction defense as punishment, and waiver is not the same thing as consent.

[176] *Id.* at 147 (Jackson, J., concurring) (quoting *Ins. Corp. of Ir.*, 456 U.S. at 703).

[177] *Id.* (alterations in original) (quoting *Ins. Corp. of Ir.*, 456 U.S. at 702 n.10).

[178] *See id.* at 148.

[179] *Id.* at 151–52 (Alito, J., concurring in part and concurring in the judgment).

[180] *Id.* at 150.

[181] *Id.*

[182] *Id.*

[183] *Id.* at 164, 166 (Barrett, J., dissenting) (summarizing personal jurisdiction as "the authority of a court to issue a judgment that binds a defendant" and going on to identify the various ways this can occur).

[184] *Id.* at 163–64.

Echoing the Supreme Court of Pennsylvania, the dissent cited *BNSF Railway Co. v. Tyrell*,[185] a case largely ignored by the plurality. In *Tyrell*, the plaintiff alleged that the railroad exposed him to toxic substances that caused his cancer, and like Norfolk Southern, BNSF had tracks and employees in the forum state, Montana, but was not incorporated or headquartered there.[186] The Court in *Tyrell* held that the Montana Supreme Court's assertion of specific personal jurisdiction over BNSF in the state of Montana was unconstitutional and reaffirmed the principle that for a court to exercise specific personal jurisdiction over a defendant, the defendant's contacts with the forum state must give rise to the plaintiff's claim.[187] Justice Barrett said *Tyrell* made it clear that simply doing business is not sufficient and that "[a]dding the antecedent step of registration does not change that conclusion."[188]

The dissent also rejected the plurality's analogy of registration jurisdiction to tag jurisdiction.[189] In *Burnham v. Superior Court of California*,[190] "tag"[191] or "transient" jurisdiction comported with "fair play and substantial justice" because it was both rooted in tradition and favored.[192] The dissent accordingly criticized the plurality for failing to cite a case supporting its tag jurisdiction parallel.[193] Finally, the dissent addressed *Pennsylvania Fire*.[194] Justice Barrett noted that while consent in *Pennsylvania Fire* was conferred by the registration document itself, here it was the statute that created jurisdiction rather than a registration document, and none of the registration forms used the word "agent" or hinted at "jurisdiction."[195]

185 581 U.S. 402 (2017).
186 *Id.* at 406.
187 *See id.* at 412–14.
188 *Mallory*, 600 U.S. at 166 (Barrett, J., dissenting).
189 *Id.* at 171–72.
190 495 U.S. 604 (1990).
191 "Tag" jurisdiction is the colloquial name for when a defendant is personally served with process in the forum. *See, e.g.*, Martinez v. Aero Caribbean, 764 F.3d 1062, 1067 (9th Cir. 2014).
192 "Transient" jurisdiction is where a defendant is physically served in the forum state by service of process. Regardless of the defendant's reason for being in the forum state, due process is satisfied by their decision to be physically present. *See Burnham*, 495 U.S. at 610.
193 *Mallory*, 600 U.S. at 173 (Barrett, J., dissenting).
194 *Id.* at 177.
195 *Id.* at 179.

Notwithstanding the reservations in the concurrences and confidence of the plurality, the dissent concluded that *Mallory* rendered *Daimler* and *Goodyear* practically obsolete.[196]

E. Registration Statute Scholarship

Even before *Mallory*, scholars previewed some of the issues the Court's holding would create;[197] but scholarship surrounding registration statutes often outpaced doctrine. Tracing the scholarship's history helps frame the issue of whether consent can be coerced in two important ways. First, it shows an increasing sensitivity to the concept of coerced jurisdiction. Second, it demonstrates that the majority of commentators believe there should be *some* limits on state demand for consent. A brief consideration of the scholarship that best exemplifies these concepts follows.

In 1990, Matthew Kipp illustrated the connection between registration statutes and general jurisdiction.[198] Kipp criticized *Pennsylvania Fire* for treating the appointment of an agent for service of process as express consent because the corporation was purportedly consenting to a future interpretation of the registration statute by the state court, thereby "agree[ing] to a condition before that condition ha[d] been established."[199] He identified three ways registration statutes are employed; they either: (1) establish a corporation's continuous presence in the state, (2) express consent to jurisdiction, or (3) still require sufficient contacts with the forum state.[200] After describing that states historically implemented registration statutes to establish specific jurisdiction, Kipp pointed out that courts began transforming registration statutes to establish general jurisdiction.[201]

That same year, another scholar offered the important initial insight that appointment of an agent could create "an unconstitutional condition on a foreign

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[196] *Id.* at 166 (suggesting that doing business does not render corporations subject to general jurisdiction and "[a]dding the antecedent step of registration does not change that conclusion [because] [i]f it did, 'every corporation would be subject to general jurisdiction in every state in which it registered, and *Daimler*'s ruling would be robbed of meaning by a back-door thief'" (quoting Brown v. Lockheed Martin Corp., 814 F.3d 619, 640 (2d Cir. 2016))).

[197] *See infra* notes 198–222 and accompanying text.

[198] *See* Matthew Kipp, *Inferring Express Consent: The Paradox of Permitting Registration Statutes To Confer General Jurisdiction*, 9 REV. LITIG. 1, 2–3 (1990).

[199] *Id.* at 20–21.

[200] *Id.* at 7–8.

[201] *Id.* at 10–20.

corporation's opportunity to transact business in the state."[202] According to Craig Lewis, *Pennsylvania Fire* obstructed the unconstitutional conditions doctrine's "proper limits on the state's bargaining role" because Missouri had "demanded [appointment] by the state as a condition of entry into the state to do business."[203] In an argument that did not (but should have) taken hold, Lewis argued that consent cannot supplant "what otherwise would have been an unconstitutional condition,"[204] especially amid bargaining power disparities.[205]

A short time later, Mitchell Berman developed Lewis's point.[206] Berman observed that "any given conditional governmental offer is (presumptively) unconstitutional if it is coercive."[207] Just like the unconstitutional conditions doctrine, a conditional offer "is coercive . . . if it would violate the Constitution for the state to carry out its threat."[208] Put another way, although having a constitutional right alone does not render a condition unconstitutional, a state's conditions would violate the Constitution where they are coercive.[209]

The "consent-by-registration" theory came next.[210] Kevin Benish advanced the argument started by Lewis and furthered by Berman by pointing out that general jurisdiction via registration statutes forces corporations to either forfeit their due process rights or forfeit their access to federal courts by way of diversity jurisdiction under said statutes' door-closing penalties,[211] which Benish likened to the unconstitutional condition posed by non-removal statutes.[212]

Other scholars more directly attacked the due process implications for registration statutes.[213] After summarizing how *Goodyear* and *Daimler*'s "at

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202 D. Craig Lewis, *Jurisdiction over Foreign Corporations Based on Registration and Appointment of an Agent: An Unconstitutional Condition Perpetuated*, 15 DEL. J. CORP. L. 1, 4 (1990).
203 *Id.* at 11, 17.
204 *Id.* at 35.
205 *Id.* at 38 & n.128.
206 *See* Berman, *supra* note 82, at 59.
207 *Id.* at 6.
208 *Id.* at 17.
209 *See id.*
210 Kevin D. Benish, Note, Pennoyer*'s Ghost: Consent, Registration Statutes, and General Jurisdiction After* Daimler AG v. Bauman, 90 N.Y.U. L. REV. 1609, 1610–11 (2015).
211 *Id.* at 1642.
212 *Id.* at 1643. Throughout this time, the scholarly discussion bore little fruit in the courts, partly explaining why *Mallory* was such a surprise.
213 *See generally, e.g.*, Monestier, *supra* note 37, at 1346 ("Registration to do business as a basis for general jurisdiction, however, rests on dubious constitutional footing.").

home" standard clarified general jurisdiction,[214] Tanya Monestier, for example, considered whether consent to jurisdiction via registration satisfies due process.[215] She made two key observations. First, Monestier asked whether "registration *equals* consent."[216] Consent-by-registration theory is different from traditional forms of consent, such as forum selection clauses and submission.[217] Traditional forms of consent concern "*a particular dispute* involving *a particular plaintiff*"—a relationship absent when courts interpret registration statutes to confer general jurisdiction that benefits an unknown plaintiff.[218] Consent requires notice of what one is consenting to, meaning consent-by-registration cannot amount to express consent.[219] Second, Monestier rightly observed that "refraining from doing business in the state is not really a viable one for most corporations."[220] Monestier analogized this to economic duress and contracts of adhesion.[221]

More recently, Jeffrey Rensberger approached registration-as-consent by focusing on whether certain fact patterns allow for a state's demand to be legitimate.[222] Rensberger addressed the ramifications of not registering[223] and what level of in-state activity prompts the need to register.[224] The penalty for failing to register is two-fold: door-closing and fines, though registering during litigation cures the former.[225] Most states impose a "doing business" threshold requiring registration and define "doing business" by listing examples of what it is not.[226] As to consent, Rensberger evaluated the validity of registration-as-consent by the reasonableness of the state's demand.[227] Rensberger's formulation is a helpful guidepost for this Article's eventual task of separating coercive from noncoercive registration demands.[228]

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[214] *Id.* at 1354–58.
[215] *Id.* at 1369–71.
[216] *Id.* at 1379.
[217] *See id.* at 1383.
[218] *Id.* at 1383–84.
[219] *See id.* at 1387–89, 1393–95.
[220] *Id.* at 1390.
[221] *Id.* at 1391–93.
[222] *See* Jeffrey L. Rensberger, *Consent to Jurisdiction Based on Registering To Do Business: A Limited Role for General Jurisdiction*, 58 S.D. L. REV. 309, 311 (2021).
[223] *Id.* at 325 (failure to register).
[224] *Id.* at 325–26 (level of activity).
[225] *Id.* at 325.
[226] *Id.* at 325–26.
[227] *Id.* at 362.
[228] *See* discussion *infra* Section IV.A.

Following *Mallory*, two important analyses of consent as a basis for jurisdiction have been published so far.[229] First, Robin Effron and Aaron Simowitz dove into the history of consent and concluded that its role as a basis for satisfying due process does not fit neatly within the *International Shoe* regime.[230] Consent does not, for example, satisfy a minimum contacts prong or even serve as its proxy.[231] Rather, consent is a form of deference—by the state to party compliance and by the party to state territorial power.[232] This interesting formulation suggests consent-based jurisdiction is supported by appropriate deferential limits on private action and public power.[233]

Scott Dodson did not deconstruct consent's origins as much as he described its permutations.[234] Rejecting a "monolithic" review of consent, Dodson explained how courts have wielded consent too bluntly to describe waiver, voluntary court appearance, prelitigation contracts, and, importantly for present purposes, conditional agreement to do business.[235]

These articles are both slightly critical of the Supreme Court's simplistic approach to consent but do not directly grapple with whether it is real consent when a corporation is threatened—i.e., coerced.[236] That said, the scholarship reflects an acknowledgement that states should not have carte blanche to condition doing business on consent to general jurisdiction. If consent-based jurisdiction has meaning, it also has limitations. Sometimes those limitations derive from consent's formulation.[237] Sometimes those limitations are in the degree of conditions.[238] And sometimes those limitations come from the respect states should have for interstate commerce and comity.[239]

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[229] *See supra* note 18.

[230] *See* Effron & Simowitz, *supra* note 18, at 234.

[231] *See id.*

[232] *See id.* at 236.

[233] *See generally id.* at 184 (discussing the "space where courts withdraw their constitutional scrutiny in deference to the intersection of volitional acts by private parties and exercises of statutory authority" by legislatures). Does deference in fact describe jurisdiction generally, however, and not just consent?

[234] *See* Dodson, *supra* note 18, at 349–66. Dodson focuses on the myriad of ways consent can be given.

[235] *See id.* at 366–71.

[236] Dodson acknowledges the unconstitutional conditions scholarship. *See id.* at 373.

[237] Dodson cleverly illustrates by hypothetical how the different kinds of consent may result in jurisdiction in either state or federal court in Pennsylvania versus other federal courts. *See id.* at 364 tbl. 1.

[238] *See supra* notes 198–204, 207.

[239] *See* discussion *infra* Section III.C.

III. THE CONSTITUTION AND CORPORATIONS

The scholarship illuminates the law's path from an early understanding of consent to a modern recognition of due process. But without a firm constitutional foundation, the pathway is little more than prudential. It is constitutional doctrine that makes or breaks corporations' right to be free from wrongful coercion.

Three constitutional principles in particular animate a corporation's right to be free from coercion: the Due Process Clause, the unconstitutional conditions doctrine, and the Commerce Clause's protection of interstate federalism.[240] After discussing those principles, this Part confronts some objections this Article will raise about what relevant rights corporations have in the first place and why they matter.

A. *Corporate Due Process Rights*

The first constitutional principle is due process.[241] Certainly corporations enjoy constitutional protections, including and especially due process rights.[242] Due process means freedom from the unfair administration of laws.[243] Corporations enjoy that freedom like individuals do, and the unfair administration of law violates corporate constitutional rights just as it does individuals.[244] As the Supreme Court observed in *First National Bank of Boston v. Bellotti*[245]:

> Corporate identity has been determinative in several decisions denying corporations certain constitutional rights, such as the privilege against compulsory self-incrimination, or equality with individuals in the enjoyment of a right to privacy, but this is not because the States are free to define the rights of their creatures without constitutional limit.

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[240] Whither the Commerce Clause? For reasons discussed *infra* notes 227–239 and accompanying text, the Commerce Clause alone does not render registration statutes coercive but rather works in conjunction with structural interstate federalism to guard against overreaching protectionism by states.

[241] *See* Pennoyer v. Neff, 95 U.S. 714, 733 (1877) ("[P]roceedings in a court of justice to deter mine the personal rights and obligations of parties over whom that court has no jurisdiction do not constitute due process of law."), *overruled by* Shaffer v. Heitner, 433 U.S. 186 (1977).

[242] Citizens United v. Fed. Election Comm'n, 558 U.S. 310, 342 (2010) (recognizing that "First Amendment protection extends to corporations").

[243] *Cf.* Int'l Shoe v. Washington, 326 U.S. 310, 319 (1945) ("Whether due process is satisfied must depend rather upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure.").

[244] Much of the Court's personal jurisdiction jurisprudence concerns corporations, not human beings.

[245] 435 U.S. 765 (1978).

> Otherwise, corporations could be denied the protection of all constitutional guarantees, including due process and the equal protection of the laws.[246]

The law attributes to corporations the human concept of liberty, and it likewise attributes to a business the human concept of consent. The Supreme Court has repeatedly noted that consent means voluntariness, including for corporations.[247] It is logical and consistent to ask when that consent was involuntary and coerced.

To be clear, neither the Contracts Clause nor the Takings Clause provide an affirmative constitutional right to do business in any particular way; instead, they protect contractual relationships and property rights.[248] But these clauses support the idea that business interests have value the government cannot unfairly impinge upon because the clauses limit the government's ability to take property or the federal government's ability to impair contractual relationships.[249]

B. How the Unconstitutional Conditions Doctrine Applies

The second constitutional principle is the unconstitutional conditions doctrine,[250] which protects constitutional rights "by preventing the government from coercing people into giving them up."[251] That means the government is not

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[246] *Id.* at 778 n.14 (citations omitted).

[247] *See* Nat'l Equip. Rental, Ltd. v. Szukhent, 375 U.S. 311, 316 (1964) (stating that defendants "may agree . . . to submit to the jurisdiction of a given court"); J. McIntyre Mach., Ltd., v. Nicastro, 564 U.S. 873, 880–81 (2011) (stating that "explicit consent" is among the "circumstances, or . . . course of conduct, from which it is proper to infer . . . an intention to submit to the laws of the forum").

[248] *See* U.S. CONST. art. I, § 10, cl. 1 ("No State shall . . . pass any . . . Law impairing the Obligation of Contracts . . . . "); Energy Rsrvs. Grp., Inc. v. Kan. Power & Light Co., 459 U.S. 400, 411–12 (1983); *see also* U.S. CONST. amend. V (Takings Clause); Pittman v. Chi. Bd. of Educ., 64 F.3d 1098, 1104 (7th Cir. 1995) (holding that the Takings Clause does not extend to contractual rights).

[249] *See, e.g.*, Penn Cent. Transp. Co. v. City of New York, 438 U.S. 104, 124 (1978) (holding that whether a state regulation constitutes a taking of private property for public use requires applying three factors, with the first two factors highlighting the importance of the companies' business plans, in which the court should consider: the economic impact of the regulation on the owner and the extent to which the regulation has interfered with the owner's reasonable investment-backed expectations); U.S. Tr. Co. of N.Y. v. New Jersey, 431 U.S. 1, 22–23 (1977) (holding that states have sovereign rights private actors cannot contract around but that there are limits to the amount states can impair contracts by social and economic regulations).

[250] Not a constitutional provision itself, the doctrine nevertheless guards against the government taking indirectly by unfair bargain what it cannot take away directly.

[251] Koontz v. St. Johns River Water Mgmt. Dist., 570 U.S. 595, 604 (2013); *see also* Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc., 570 U.S. 205, 214 (2013) ("[T]he Government 'may not deny a benefit to a person on a basis that infringes his constitutionally protected . . . freedom of speech even if he has no entitlement to that benefit.' In some cases, a funding condition can result in an unconstitutional burden on First Amendment rights." (quoting Rumsfeld v. F. for Acad. and Institutional Rts., Inc., 547 U.S. 47, 59 (2006))).

allowed to force persons to relinquish constitutional rights by "consent extracted through duress."[252] The government cannot do indirectly what it is forbidden to do directly.[253]

This Article does not need to delve too far into the "messy" unconstitutional conditions doctrine[254] because the basics are sufficient for its purposes.[255] For one thing, the concept that states *are capable* of coercing individuals as well as corporations is embedded in the doctrine.[256] Thus, the law guards against coercive waivers of either an individual's or a corporation's constitutional rights.[257] For another, the Court has already held that states cannot condition giving up due process rights in return for doing business.[258]

It is well established in Supreme Court precedent (unacknowledged in *Mallory*) that although a state can condition doing business for foreign corporations on their consent to jurisdiction, the conditions cannot violate the Constitution:

> A corporation of one state cannot do business in another state without the latter's consent, express or implied, and that consent may be accompanied with such conditions as it may think proper to impose. As said by this court in *Lafayette Ins. Co. v. French*, "these conditions must be deemed valid and effectual by other states and by this court, provided they are not repugnant to the constitution or laws of the

[252] Ryan C. Williams, *Unconstitutional Conditions and the Constitutional Text*, 172 U. PA. L. REV. 747, 754 (2024) (noting a textual and historical review of unconstitutional conditions reflects that "the ability of individuals to consent to the relinquishment of legal rights and protections in the eighteenth century did not extend to consent extracted through duress"); United States v. Am. Libr. Ass'n, 539 U.S. 194, 210 (2003) (noting the government cannot deny benefits to persons on a basis that infringes on their constitutional rights, even if there is no "entitlement to that benefit").

[253] Elrod v. Burns, 427 U.S. 347, 359 (1976).

[254] *See, e.g.*, All. for Open Soc'y Int'l, Inc. v. U.S. Agency for Int'l Dev., 678 F.3d 127, 132 (2d Cir. 2011) (Pooler, J., concurring) ("The unconstitutional conditions doctrine is messy and unsettled . . . .").

[255] Great credit is due to Craig Lewis, who illuminated over three decades ago the issue of whether it is constitutional to assert jurisdiction over a corporation which has complied with the registration and appointment requirements. *See* Lewis, *supra* note 202, at 6 (focusing on *Bendix Autolite Corp. v. Midwesco Enterprises, Inc.*, where the Court found an Ohio statute that created tolled limitation periods for foreign corporations was unconstitutional because it violated the Commerce Clause and created an "unconstitutional condition"). It is surprising that this view did not take hold. None of the competing opinions in *Mallory* even mentions it.

[256] *See* Williams, *supra* note 252, at 771 ("The distinction between lawful and unlawful threats in the Founding-era cases roughly tracks a distinction that modern scholars have drawn between 'coercion' and 'compulsion' in the unconstitutional conditions context.").

[257] *See supra* notes 95–97. One of the reasons the doctrine is "messy," however, is that regardless of the context, the Court has declined to find broad enough bright-line rules of per se unconstitutional conditions to apply in all circumstances.

[258] *See* Williams, *supra* note 252, at 774.

> United States or inconsistent with those rules of public law which secure the jurisdiction and authority of each state from encroachment by all others, or that principle of natural justice which forbids condemnation without opportunity for defense."[259]

Two other short observations before moving on from unconstitutional conditions. First, during the oral argument in *Mallory*, counsel for petitioner argued that the unconstitutional conditions doctrine has not been applied in the "procedural realm."[260] Not so.[261] In fact, unconstitutional conditions have long applied in the procedural realm, having first been recognized when the Court struck down non-removal statutes in the nineteenth century.[262]

Second, "legally significant forms of consent were limited to actions that reflected a 'free, fair, and serious exercise of the reasoning faculty' of the party to be bound."[263] Ryan Williams recently observed, however, that what constituted duress and coercion in the nineteenth century was more limited in nature than what constitutes duress and coercion today—a fact that militates in favor of a broader understanding of unconstitutional conditions.[264] Put another way, even applying the more narrow understanding of coercion from the nineteenth century, courts acknowledged the foundational principle that a state cannot condition doing business on the abandonment of constitutional rights.

C. *Interstate Federalism's Two Roles To Play*

The third constitutional principle is interstate federalism—and its partner the Commerce Clause. These doctrines have long been recognized as critical to

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259 St. Clair v. Cox, 106 U.S. 350, 359–60 (1882).

260 Transcript of Oral Argument at 17–22, Mallory v. Norfolk S. Ry. Co., 600 U.S. 122 (2023) (No. 21-1168).

261 To be fair, not everyone always agrees on what "procedural" means, and the Justices clearly did not think the case turned on the unconstitutional conditions doctrine anyway.

262 Ins. Co. v. Morse, 87 U.S. 445, 558 (1874) (holding that waiving the right of removal is "repugnant to the Constitution of the United States"); Terral v. Burke Constr. Co., 257 U.S. 529, 532–33 (1922) (holding that corporations should not have to waive the constitutional right to access federal courts). Non-removal statutes conditioned foreign corporations' right to do business on waiving the right to remove cases to federal court—a condition the Court held violated the defendant's right of removal. *Id.* at 532. Although the Court did not identify which specific provision in the Constitution was at issue, it is hard to see what it might otherwise be than due process. *See id.* at 531–33.

263 Williams, *supra* note 252, at 769 (quoting JOSEPH CHITTY, A PRACTICAL TREATISE ON THE LAW OF CONTRACTS NOT UNDER SEAL; AND UPON THE USUAL DEFENCES TO ACTION THEREON 4 (London, S. Sweet 1826)); *see also id.* at 754 (finding a textual and historical review of unconstitutional conditions reflects that "the ability of individuals to consent to the relinquishment of legal rights and protections in the eighteenth century did not extend to consent extracted through duress").

264 *Id.* at 769–70.

horizontal federalism.[265] In *World-Wide Volkswagen Corp. v. Woodson*,[266] the Supreme Court emphasized the importance of remaining faithful to interstate federalism in its personal jurisdiction jurisprudence.[267] To be sure, states have sovereign powers and a duty to protect their own citizens, and state sovereignty is an implied limitation, grounded in the Constitution, on all other states.[268] Yet the "reasonableness of asserting jurisdiction over the defendant must be assessed 'in the context of our federal system of government.'"[269] Thus, the Supreme Court held that the Due Process Clause may act to divest the state of its power to render a valid judgment, "[e]ven if the defendant would suffer . . . no inconvenience from being forced to litigate . . . [in] another State[,] . . . the forum State has a strong interest in applying its law[,] . . . [or] the forum State is the most convenient location."[270]

In *Mallory*, the dissent asserted that Pennsylvania's registration statute conferring jurisdiction over foreign corporations "infringes on the sovereignty of its sister States in a way no less 'exorbitant' and 'grasping' than attempts we have previously rejected."[271] The dissent further emphasized that allowing Pennsylvania to have authority over cases with no connection to the state intrudes on other states' ability "to adjudicate the rights of their citizens and enforce their own laws[,]" which upsets states' roles in our federal system.[272]

It is challenging but unnecessary to separate the Commerce Clause from the structural constitutional doctrine of interstate federalism.[273] As the Court explained in *World-Wide Volkswagen*,

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[265] *See, e.g.*, Allan Erbsen, *Horizontal Federalism*, 93 MINN. L. REV. 493, 569 (2008) (explaining how the principle of comity can help avoid interstate friction in the context of horizontal federalism by restraining aggressive assertions of authority).

[266] 444 U.S. 286 (1980).

[267] *See id.* at 293–94.

[268] *See id.* at 293.

[269] *Id.* at 293–94 (quoting Int'l Shoe Co. v. Washington, 326 U.S. 310, 317 (1945)).

[270] *Id.* at 294.

[271] Mallory v. Norfolk S. Ry. Co., 600 U.S. 122, 169 (2023) (Barrett, J., dissenting) (quoting Daimler AG v. Bauman, 571 U.S. 117, 121–22 (2014)).

[272] *Id.* at 170.

[273] Scholars have recently argued that the Commerce Clause is a poor provision on which to rest interstate federalism and have advocated, instead, to rely on the Privileges and Immunities Clause. *See, e.g.*, Martin H. Redish & Brandon Johnson, *The Underused and Overused Privileges and Immunities Clause*, 99 B.U. L. REV. 1535, 1543 (2019) ("[The Privileges and Immunities] Clause was included in the Constitution simultaneously to encourage interstate cooperation and deter interstate friction due to retaliatory discrimination. The type of interstate harmony contemplated by the Clause demands that states both recognize the limits of their own sovereignty and respect the sovereignty of their neighbors."). For an analysis of the interstate "common market" basis for the Commerce Clause, see generally Robert J. Pushaw, Jr., *The Original "Market" Understanding of*

> [W]e have never accepted the proposition that state lines are irrelevant for jurisdictional purposes, nor could we, and remain faithful to the principles of interstate federalism embodied in the Constitution. . . . In the Commerce Clause, [the Framers] provided that the Nation was to be a common market, a "free trade unit" in which the States are debarred from acting as separable economic entities.[274]

Interstate federalism supports Justice Alito's concurrence in *Mallory*, in which he noted that "one State's power to impose burdens on . . . interstate market[s] . . . is . . . constrained by the need to respect the interests of other States."[275] Because the Dormant Commerce Clause supported the right of an out-of-state corporation to do business in another state, the doctrine "may also limit a State's authority to condition that right."[276]

Interstate federalism is therefore supported by the Commerce Clause's guarantee of federal power over interstate commerce generally,[277] but it is probably better to acknowledge its dormant component is what protects interstate comity to the extent it requires a separate analysis in the first place.[278] And interstate comity supports free competition—long an embedded principle

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the Commerce Clause: Insights from Early Federal Government Practice and Precedent, 48 BYU L. REV. 535, 536–61 (2022).

[274] *World-Wide Volkswagen*, 444 U.S. at 293 (quoting H. P. Hood & Sons, Inc. v. Du Mond, 336 U.S. 525, 538 (1949)). The Court continued, "[t]he sovereignty of each State, in turn, implied a limitation on the sovereignty of all of its sister States—a limitation express or implicit in both the original scheme of the Constitution and the Fourteenth Amendment." *Id.*

[275] *Mallory*, 600 U.S. at 158 (Alito, J., concurring) (alteration in original) (quoting BMW of N. Am., Inc. v. Gore, 517 U.S. 559, 571 (1996)).

[276] *Id.*

[277] *See* T. Griffin Vincent, *Toward a Better Analysis for General Jurisdiction Based on Appointment of Corporate Agents*, 41 BAYLOR L. REV. 461, 482 (1989) ("Although the Commerce Clause has been used to declare unconstitutional a state's exercise of jurisdiction, commentators frequently view Commerce Clause protections as duplicative of those protections offered by the Due Process Clause under principles of interstate federalism." (footnote omitted)).

[278] Various members of the Court have criticized—in different fashions—the Dormant Commerce Clause, but they appear to agree that it exists not in a vacuum but as part of the structural Constitution. *See, e.g.*, Vega v. Tekoh, 597 U.S. 134, 157 (2022) (Kagan, J., dissenting) ("Compare the majority's holding today to [the Court's decision in *Dennis v. Higgins*] . . . . There, the Court held that a plaintiff could sue under § 1983 for a violation of the so-called dormant Commerce Clause, which safeguards interstate commerce. To the Court, it did not matter that the Commerce Clause might be viewed as 'merely allocat[ing] power between the Federal and State Governments' over interstate commerce, rather than as 'confer[ring] "rights."' Nor did it matter that the dormant Commerce Clause's protection is only 'implied' by the constitutional text. The dormant Commerce Clause, the Court said, still provides a 'right'—in the 'ordinary' sense of being '[a] legally enforceable claim of one person against another.'" (second, third, and fourth alterations in original) (citations omitted) (quoting Dennis v. Higgins, 498 U.S. 439, 447 & n.7 (1991))).

of American industry.[279] The Commerce Clause here operates as a guardrail for states eager to adopt protectionist policies that significantly burden out-of-state corporations by demanding they have the detriment of general jurisdiction without the benefit of local power.[280] Corporations which are "at home" in their state of incorporation or principal place of business have greater expectation of influence than foreign corporations do because they, at least in theory, can influence local authorities; conversely, consent-based business registration statutes make foreign corporations subject to general jurisdiction like they are based in a forum state but without the same expectation and influence of local corporations.[281]

In sum, the Court has long recognized the significance of protecting interstate relations and sovereignty in its personal jurisdiction jurisprudence.[282] The Court in *Ford Motor Co. v. Montana Eighth Judicial District Court*[283] carefully set these principles out before finding jurisdiction proper over foreign corporations: "[T]his Court has considered alongside defendants' interests those of the States in relation to each other. One State's 'sovereign power to try' a suit, we have recognized, may prevent 'sister States' from exercising their like authority."[284]

Interstate federalism principles not only serve as a guardrail for state legislatures who seek to impose general jurisdiction by consent on foreign

[279] *See* Roy Rothwell, *Small Firms, Innovation and Industrial Change*, 1 SMALL BUS. ECON. 51, 51 (1989) ("The essence of the American economic system of private enterprise is free competition." (quoting Small Business Act of 1953, Pub. L. No. 83-163, § 202, 67 Stat. 230, 232 (1953))).

[280] *Cf.* Jack F. Preis, *The Dormant Commerce Clause as a Limit on Personal Jurisdiction*, 102 IOWA L. REV. 121, 137 (2016) (discussing how courts determine if a law discriminates against interstate commerce). Preis points out that registration statutes have a "'practical effect' of discriminating against out-of-state companies" because of choice-of-law rules and local bias. *Id.* at 138. Preis argues that the nexus of a local injured resident nevertheless overcomes the otherwise discriminatory burden on foreign corporations and provides several helpful hypotheticals to illustrate how. *See id.* at 138–44.

[281] *Cf., e.g.*, Bendix Autolite Corp. v. Midwesco Enters., Inc., 486 U.S. 888, 893 (1988) (noting that discriminatory or impermissible burdens on foreign corporations violate the Commerce Clause).

[282] The one hundred year gap between *Pennsylvania Fire* and *Mallory* did not see much development of the idea of interstate federalism in consent-based jurisdiction, but the Court's emphasis on interstate federalism throughout its specific (and even general) jurisdiction cases reflects a deep concern for the respect states should have for each other's sovereignty. *See, e.g.*, Fuld v. Palestine Liberation Org., 606 U.S. 1, 14 (2025) (describing how due process protects not only defendants' individual rights but also interstate federalism).

[283] 592 U.S. 351 (2021).

[284] *Id.* at 360 (citing World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 293 (1980)); *see also* Adams v. Aircraft Spruce & Specialty Co., 345 Conn. 312, 316 (Conn. 2022) (interpreting *Ford* and noting that "[i]nterstate federalism concerns require that conduct or activity to provide the forum with a material interest in the litigation").

corporations,[285] they also have implications for the policy problems registration statutes can create between the several states.[286] Those policy problems are discussed at the end of the next Part, but, first, some important objections are confronted.

D. *What Relevant Rights Do Corporations Have?*

Although corporations are legal entities and not human, they have many of the same rights as humans.[287] The law has very good reason to indulge in the fiction that a corporation is a person[288]—after all, "[a] corporation is simply a form of organization used by human beings to achieve desired ends."[289] It allows for a straightforward, fair, and harmonious application of a myriad of laws and principles.[290]

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[285] It is beyond the scope of this Article but worth noting for future research that demanding consent to general jurisdiction *might* treat foreign corporations differently than domestic corporations in the sense that they are not similarly situated by virtue of their contacts (remote versus domestic) and expectations (of being sued at home for anything versus sued *away* from home for anything). This may be where Justice Alito thinks the issue is heading.

[286] *See* discussion *infra* Section IV.C.

[287] Corporations are the primary business entity examined here, but they are not the only business entity. These principles should apply with equal force to LLCs, LLPs, and other less common entities, such as investment trusts and any other form of foreign business that needs to register to do business in a state. Each state has slightly different requirements for when a business needs to register to do business, usually tied to tax implications. *Compare* IND. CODE ANN.§ 6-2.5-2-1 (West 2025) (requiring that foreign entities must register if they generate more than $100,000 in revenue in Indiana), *with* CAL. REV. & TAX. CODE § 23101(b)(2)–(4) (West 2025) (defining "doing business" in the state of California for nondomiciled businesses as: sales more than $500,000, ownership of property more than $50,000, or paying more than $50,000 of employee compensation), *and id.* § 25120(c), (e), (f)(2) (defining "compensation," "sales," and "gross receipts").

[288] Burwell v. Hobby Lobby Stores, Inc., 573 U.S. 682, 706–07 (2014) ("An established body of law specifies the rights and obligations of the *people* (including shareholders, officers, and employees) who are associated with a corporation in one way or another. When rights, whether constitutional or statutory, are extended to corporations, the purpose is to protect the rights of these people."); Smyth v. Ames, 169 U.S. 466, 522 (1898) ("By the Fourteenth Amendment it is provided that no State shall deprive any person of property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws. That corporations are persons within the meaning of this Amendment is now settled."). However, the Court has sometimes discussed corporate rights in the framework of protecting the individual shareholders the corporate form shelters. *See* Margaret M. Blair, *Of Corporations, Courts, Personhood, and Morality*, 25 BUS. ETHICS Q. 415, 422 (2016) ("[I]t is sometimes necessary or convenient to grant rights to a corporation in order to protect the rights of the individuals that the corporation represents."). Either way, corporations have rights.

[289] *Burwell*, 573 U.S. at 706.

[290] A related but more nuanced theoretical objection can be expressed as the human–corporation dichotomy that permits "tag" jurisdiction over individuals but not corporations. For that reason, either tag jurisdiction is infirm and should be rejected as coercive, or corporations should be considered "tagged" when they are present in a state. This objection is intriguing because it raises the same fundamental conundrums about the nature of coercion that this Article seeks to unravel, but tag jurisdiction is distinguishable. Because individuals can be "tagged," the initial assumption might be that this traditional basis of jurisdiction does not provide any coercion

Corporations invest time, energy, and resources into developing and pursuing business plans.[291] That matters to people with shares and investments, employment, and contracts. Although most corporations' ends are to achieve profits and shield shareholders from liability, the means are important too. To achieve permissible ends, corporations have both general statements of purpose[292] and more specific business plans.[293] The statements of purpose are traditionally quite broad to permit corporations to adjust as necessary to new plans or market forces.[294] But that does not mean making radical changes in a business plan is inexpensive or without risk.[295]

In other words, corporations and their owners have a keen interest in being able to pursue their goals without unwarranted government interference.[296] The law protects that interest: "[The] government cannot force a person into an entirely new business as a condition of doing business in the state."[297]

exception. Not so. Fraud and use of force are exceptions to the tag jurisdiction rule. *See, e.g.*, Burnham v. Superior Ct. of Cal., 495 U.S. 604, 613 (1990) (citing Wanzer v. Bright, 52 Ill. 35 (Ill. 1869)). That "force" vitiates tag jurisdiction supports the idea that coercion does too, including for individuals. Although it is beyond the scope of the present Article, future work will analyze whether individuals can be coerced into jurisdictional consent aside from fraud.

[291] Jamie Johnson, *18 Steps to Starting a Business*, U.S. CHAMBER OF COM., https://www.uschamber.com/co/start/startup/guide-to-starting-a-business [https://perma.cc/3UTS-MZX5] (last visited Dec. 22, 2025) (listing the following as steps to start a business: conduct market research, write a business plan, run a trademark search, choose the business structure, register your business name, register your business with local authorities, get an ID from the IRS, find funding, hire employees, and market your business).

[292] Statements of corporate purpose are often incredibly broad, stating no more than the corporate purpose as "any lawful business" or "any lawful purpose or purposes." HARRY G. HENN & JOHN R. ALEXANDER, LAWS OF CORPORATIONS § 121, at 277 (3d ed. 1983). But some jurisdictions require or encourage more specificity: "the nature and scope of the business" that are "definite enough to curb excursions into unauthorized ventures and yet sufficiently general to permit reasonable operations and expansion without the necessity of future amendment of the articles of incorporation." *Id.* at 278.

[293] Adam Hayes, *Comprehensive Guide To Crafting a Winning Business Plan*, INVESTOPEDIA (Aug. 19, 2025), https://www.investopedia.com/terms/b/business-plan.asp [https://perma.cc/L8L8-Y9ZK] ("A business plan serves as a strategic roadmap detailing a company's goals and the methods to achieve them. For startups, it attracts lenders and investors; for established businesses, it aligns growth objectives.").

[294] *See id.*

[295] *See, e.g.*, Kevin T. Dugan, *Zuckerberg Has Burned $500 Billion Turning Facebook to Meta*, N.Y. MAG.: INTELLIGENCER (Feb. 18, 2022), https://nymag.com/intelligencer/2022/02/zuckerberg-has-burned-usd500-billion-turning-facebook-to-meta.html [https://perma.cc/45LX-QZ6N].

[296] *Cf.* 17A WILLIAM MEADE FLETCHER, FLETCHER CYCLOPEDIA OF THE LAW OF CORPORATIONS ch. 67, § 8446, at 11 (rev. ed. 2023) ("The provisions of a state statute imposing conditions upon foreign corporations doing or seeking to do business in the state will not be deemed invalid on the mere ground that they operate harshly *if no provision of the state or United States Constitution is violated*." (emphasis added)).

[297] Insurers' Action Council, Inc. v. Markman, 490 F. Supp. 921, 925 (D. Minn. 1980); *see, e.g.*, Frost & Frost Trucking Co. v. R.R. Comm'n of Cal., 271 U.S. 583, 599 (1926) (holding that private carriers could not be forced into common carrier business as a condition to use of highways); Midwest Video Corp. v. United States, 441 F.2d 1322, 1328 (8th Cir. 1971) (holding that FCC could not force cablecasters into the entirely new

Corporations are not always required to comply with certain regulations, for example, when compliance conflicts with a business necessity.[298]

E. Then You Can Take Your Business Elsewhere!

What about the argument that corporations that are not happy with what they might see as a Faustian bargain are free to walk away or realign their business plan? After all, do they not have the right to "take their business elsewhere"?[299] Yes, theoretically, but such is a relatively clear violation of law and economics principles—it might be a "right" per se, but it is not one that businesses exercise absent coercion or that policymakers should encourage.

For one thing, changing business plans is inefficient. Realigning business strategies incurs significant transaction costs, consuming valuable time and resources.[300] Similarly, changing to accommodate state registration laws has opportunity costs, as management could have directed time and resources at optimizing current operations instead of developing unnecessary new plans.[301] Frequent changes in business plans can lead to strategic misalignment within the organization, causing confusion among employees, diluting the company's focus, and weakening the coherence of its long-term strategy.[302] Moreover, constant changes can negatively affect market perception because investors

business of program origination as a condition of entering CATV business), *rev'd on other grounds*, 406 U.S. 649 (1972); Midwest Video Corp. v. FCC, 571 F.2d 1025, 1050–52 (8th Cir. 1978) (holding that FCC mandatory access rules unconstitutionally forced cablecasters to offer services as common carriers).

[298] *See, e.g.*, Griggs v. Duke Power Co., 401 U.S. 424, 431 (1971) (finding that a business necessity constitutes a defense to disparate-impact claims under Title VII of the Civil Rights Act of 1964); Coffey v. Norfolk S. Ry. Co., 23 F.4th 332, 339–41 (4th Cir. 2022) (finding the railroad made a lawful request as a business necessity for otherwise unobtainable medical records under the ADA).

[299] The line of economic duress case law also would call this objection into question. *See supra* note 70 and accompanying text; Jamestown Farmers Elevator, Inc. v. Gen. Mills, Inc., 552 F.2d 1285, 1291 (8th Cir. 1977); Applied Genetics Int'l, Inc. v. First Affiliated Sec., Inc., 912 F.2d 1238, 1239 (10th Cir. 1990).

[300] *See, e.g.*, ROBERT S. KAPLAN & DAVID P. NORTON, ALIGNMENT: USING THE BALANCED SCORECARD TO CREATE CORPORATE SYNERGIES 13 (2006) (describing the importance of aligning leadership's strategy and value propositions with each business unit).

[301] *See, e.g.*, Ian Ayres & Robert Gertner, *Strategic Contractual Inefficiency and the Optimal Choice of Legal Rules*, 101 YALE L.J. 729, 732–33 (1992) (analyzing the transaction costs and market power effects that strategic decision-making should consider).

[302] *See* Vikas Mittal, Alessandro Piazza & Ashwin Malshe, *Is Your Company as Strategically Aligned as You Think It Is?*, HARV. BUS. REV. (May 1, 2023), https://hbr.org/2023/05/is-your-company-as-strategically-aligned-as-you-think-it-is [https://perma.cc/F76L-T897] (explaining the importance of strategic alignment and how misalignment is inefficient).

often value stability and predictability; frequent changes may lead to reduced investment or higher costs of capital.[303]

Aside from registration statutes themselves, compliance and regulatory challenges also add to inefficiencies, as significant legal and administrative efforts are required to ensure new business activities comply with existing laws and regulations.[304] Although adapting to market conditions is necessary and corporate theory calls on businesses to be adaptable and proactive, there are distinct inefficiencies associated with changing business plans for unwarranted reasons, such as unfair government coercion.[305]

F. What About the Constitutional Right To Do Business?

Another possible objection to this Article's premise is that corporations have no moral "right" to conduct business at all or at least that corporations have no constitutional right to do business in any particular state. In other words, states can make whatever conditions they want on the right to do business because there is no normative reason a corporation should be able to do business in any particular state. There are at least two problems with this objection.

The first problem is that it misapprehends the relevant right at issue in business registration statutes. The issue is not whether a corporation is allowed to do business or not; it is whether a state can demand that a corporation waive its due process rights. The right at issue is the corporation's right to argue that the Due Process Clause protects it from being improperly haled into court—and it is a right all defendants should have.

The second problem is that it is unconstitutional for a state to completely prohibit foreign corporations from doing business.[306] If the state cannot completely prohibit a foreign corporation from doing business, that means there

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[303] *See, e.g.*, Zohar Goshen & Richard Squire, *Principal Costs: A New Theory for Corporate Law and Governance*, 117 COLUM. L. REV. 767, 803–04 (2017) (exploring the connection between long-term stability and investor confidence in management).

[304] For example, corporations that adjust which states they intend to do business in must contend with what might be a whole new regulatory or tax scheme.

[305] Martin Reeves & Mike Deimler, *Adaptability: The New Competitive Advantage*, HARV. BUS. REV., July–Aug. 2011, at 135, 141 (exploring the challenges big businesses face to become "adaptive competitor[s]").

[306] W. Union Tel. Co. v. Kansas, 216 U.S. 1, 21 (1910) ("To carry on interstate commerce is not a franchise or a privilege granted by the State; it is a right which every citizen of the United States is entitled to exercise under the Constitution and laws of the United States; and the accession of mere corporate facilities, as a matter of convenience in carrying on their business, cannot have the effect of depriving them of such right, unless Congress should see fit to interpose some contrary regulation on the subject.").

is some limit on what a state can and cannot do.[307] If the state's powers have some limits, then the question is one of degree not kind.[308]

In sum, corporations do not have a constitutional right to do business however they want, but they do have the right to conduct business without having their constitutional rights infringed. Sometimes that means prohibiting a state from conditioning doing business on giving up due process rights. With these constitutional provisions in mind and objections addressed, the pieces are now in place for a working theory of coercive jurisdiction.

IV. A THEORY OF COERCIVE JURISDICTION

Is it sufficient from a constitutional standpoint to say that a state can *never* condition doing business on waiving a due process defense against the imposition of general jurisdiction? Perhaps. It is certainly simpler. But such a conclusion is too extreme. If a corporation can easily resist doing business in a particular state, then at least under an objective coercion test, the state's demand is not wrongful.[309] The "threat" element necessary to find coercion does not exist, and the registration statute is not truly coercive.[310] What is more, real

[307] This is not to say that a state's inability to refuse foreign corporations the right to do business creates an affirmative due process right or other right on the part of the corporation. The corporation's right is based on the due process all defendants are afforded. There is no express constitutional right to make money.

[308] *See, e.g.*, Nebbia v. New York, 291 U.S. 502, 525 (1934) ("[T]he guaranty of due process, as has often been held, demands only that the law shall not be unreasonable, arbitrary, or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained. It results that a regulation valid for one sort of business, or in given circumstances, may be invalid for another sort, or for the same business under other circumstances, because the reasonableness of each regulation depends upon the relevant facts.").

[309] Some philosophers (though not Joel Feinberg) might consider the intensity of the wrongfulness irrelevant to whether there is a threat or not. If I tell my three-year old that she will not be allowed screen time for a five-minute timeout if she does not say "please" and "thank you," is that any less coercive from her perspective than if I send her to bed without dinner? (No, I never do that). But I am taking away something she perceives as a right under the first scenario—one she probably cares more about than dinner! I am also taking away something she (and objectively the rest of the world) would perceive as a right in the second scenario. They are both coercive from her perspective. Only the latter is coercive from all our perspectives. Is the real distinction between a threat and an offer whether the threat is objective as opposed to individual?

[310] Note that under the subjective approach, it is still wrongful. Why? Because it does not matter if the coercee has the self-control or power to resist if the threat would still put them in a worse position than they might be. My suggestion that you walk my dog for five dollars might be insufficient to motivate you to accept, but my threat that my dog might bark during the day is still a threat even if it is an empty one because you are at work all day. The fact neither scenario motivates you to action does not, under the subjective test, change the character of the situation.

consent is a legitimate means of establishing jurisdiction, and who knows what unforeseen consequences could arise if courts adopted a per se prohibition.[311]

Does there not need to be some way to determine whether the state's threatened outcome (a refusal to allow a corporation to do business) constitutes more than a "take-it-or-leave-it" offer between equally powerful bargaining parties? Whether a state can or cannot condition the right to do business for specific defendants, are there prudential or normative reasons that support a limiting principle as a matter of policy, even one beyond personal jurisdiction?

This Part answers those questions. First, it uses the industry of the corporation as a proxy for its "need" to be in a given state; second, it compares the relative bargaining power of the corporation and the relevant state in an equation designed to quantify the coercion analysis; and third, it looks at practical application and potential problems.

A. Potential Model for Detecting Coercion

While no test is going to be perfect because every coercive dynamic will depend on individual actors and their circumstances, the model advanced here has the advantage of using broad contours and context-specific flexibility.[312]

The first theoretical parameter is the relevant corporation's industry. Companies whose business models depend on a national infrastructure are at greater risk of necessity in certain states because of the nature of their industry. Transportation companies (e.g., shipping, distribution, railroads, trucking, and airlines) all need to use roads, waterways, railways, and air travel to move goods through interstate commerce. Likewise, utility companies need to move information, power, water, gas, oil, garbage, etc., some of which rely on the national infrastructure and commensurate ability to "do business" in each—or at

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[311] Would plea bargains containing appellate waivers be coercive? Jury trial waivers? The short answer is yes; they would if the state threatened removing a constitutional right in return for some privilege citizens should already have. However, the full implications of a per se rule of unconstitutionality of all registration statute consent is not an issue this Article seeks to resolve, since there is a better and more nuanced way forward.

[312] This comports with how the Supreme Court has described the personal jurisdiction inquiry in general, rejecting "talismanic jurisdictional formulas" and instead requiring that "'the facts of each case . . . be weighed' in determining whether personal jurisdiction would comport with 'fair play and substantial justice.'" Burger King Corp. v. Rudzewicz, 471 U.S. 462, 485–86 (1985) (quoting Kulko v. Cal. Superior Ct., 436 U.S. 84, 92 (1978)).

least most—of the fifty states.[313] Doing so is an existential issue for these companies. They could not exist in their form without that ability, and this puts tremendous pressure on them to register to do business in numerous states—even those from which they might otherwise not generate significant revenue.

Industries that depend on a national footprint but do not need a physical presence, including (but not limited to) media companies, broadcast entities,[314] internet companies, and the like, also have little choice but to register to do business in all states from an information–transmission standpoint if the relevant state law demands such acquiescence.[315]

To be even more specific, courts may wish to consider whether a particular corporation falls within one of five categories of industry. Loosely based on the U.S. Department of Labor's North American Industry Classification System,[316] these categories are in *descending order of risk of coercion*: (1) transportation companies; (2) utilities; (3) communication companies; (4) smaller or niche for-profit companies and nonprofits; and (5) major retailers and service-based corporations.

Transportation. The first category representing those most likely to be threatened by the need to do business in various states are corporations whose business is transportation-based. This includes shipping, distribution, railways, trucking, airlines, etc.[317] Transportation businesses almost always access

[313] Regional utilities and similar companies are at risk—such as the Delaware radio station from the Introduction—because they have the least amount of bargaining power relative to the amount of geography they *must* reach.

[314] Note the radio station from the Introduction needs *some* physical footprint, and that helps illustrate how these categories require flexibility and a case-by-case analysis.

[315] Manufacturing, insurance, and the health care system are all massive national industries unlikely to be affected by bargaining power disparity because they lack the same national footprint and would not be motivated by the existential need to do business in a state that they do not otherwise generate revenue from directly. In other words, Travelers Insurance can still be Travelers Insurance even if it chooses not to do business in New Jersey, although it is based in Connecticut, because there is nothing inherently threatening to its existence to refrain from business in a neighboring state. Southern California Edison (SCE), by contrast, receives significant power from nearby states and could not exist in its constituted form without registering to do business in those nearby states.

[316] *See Overview of BLS Statistics by Industry*, U.S. BUREAU OF LAB. STAT. (Sep. 15, 2025), https://www.bls.gov/bls/industry.htm [https://perma.cc/BV94-JD7S] (classifying industries based on workplace principal product or activity).

[317] Transportation companies may be massive or small; the larger companies likely have more extensive contacts and, as a result, it may feel less unfair to hold them accountable for consent-based general jurisdiction. But that does not change their nature or susceptibility to coercion. Put another way, there is a difference between the question of coercion and whether imposing jurisdiction is "fair" based on contacts. Coerced jurisdiction

multiple states—it is inherent to their business model. They are, therefore, at the highest risk of being threatened by a refusal to permit them to do business in the forum state without acquiescing to general jurisdiction.

Utilities. The next highest risk category includes "physical" utility companies, which need to move power, water, gas, oil, garbage, etc. and rely on a national infrastructure and commensurate ability to "do business" in multiple states.[318] There is also something uniquely important about transportation and utility companies in that they provide essential services to society.[319] If transportation companies have to reroute around certain states, this would harm society through added expenses on goods and services passed onto consumers. If utility companies remove themselves from a state, the consumers are ultimately harmed by a reduction in services or competition.

Communications. Different perhaps only because of their greater potential to avoid being forced to register to do business are companies in industries that depend on a national footprint but do not need a physical presence. These communication companies include internet companies, mass media companies, or broadcast entities where information is transmitted across state borders but physical presence is limited. If they are required to register to do business, then communications companies would be at the same relatively high risk of threat to their corporate existence that a utility company would be. Consider SpaceX and its "Starlink" satellite system. If it "enters" every state, should it be required

violates due process, but nothing stops states from exercising specific jurisdiction where contacts are far-reaching and extensive (and relate to the claim at issue).

[318] *See* Sara Hoff, *U.S. Electric System Is Made Up of Interconnections and Balancing Authorities*, U.S. ENERGY INFO. ADMIN. (July 20, 2016), https://www.eia.gov/todayinenergy/detail.php?id=27152 [https://perma.cc/N4LV-RDF3] (reporting that there are "nearly 160,000 miles of high-voltage power lines" joining 145 million customers across the country). Few states have utility companies that generate and deliver their own utilities purely intrastate.

[319] *Public Transportation Facts*, AM. PUB. TRANSP. ASS'N, https://www.apta.com/news-publications/public-transportation-facts/ [https://perma.cc/UWS3-GPB9] (last visited Dec. 23, 2025) ("Every $1 invested in public transportation generates $5 in economic returns. Every $1 billion invested in public transportation supports and creates approximately 50,000 jobs. Every $10 million in capital investment in public transportation yields $30 million in increased business sales. Every $10 million in operating investment yields $32 million in increased business sales.").

to register to "do business" in all fifty states?[320] What about Sprint or Comcast?[321] Or a small Delaware radio station?[322]

Smaller retailers. Smaller retailers (whether service- or product-based corporations) that either depend on regional sales, satisfy a niche market, or are too small to resist selling into limited markets are the next most at risk.[323] This group would include nonprofit corporations that often lack the market power to exist outside their spheres of interest or are bound to specific regions by their mission. Any such corporation may lack the wherewithal to refuse to do business in a particular state. This group includes not only general manufacturing, service companies, and smaller retailers but also industries so specific to particular markets or states, such as localized agriculture, longshoremen, commercial fishing interests, products specific to only one part of the country, etc., such that they have limited ability to refuse to do business where their existence in essence depends on it.[324]

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[320] SpaceX presumably has extensive registrations for reasons other than its low-orbit geosynchronous satellites, but in the famous case of *Grace v. MacArthur*, the court held that personal service at 20,000 feet was "within" the state's jurisdiction. 170 F. Supp. 442, 444 (E.D. Ark. 1959) ("The narrow question for us to decide is whether for service purposes, the passengers on a commercial aircraft are within the territorial limits of the State over which the plane happens to be flying at a particular time."). For a fascinating exploration of space jurisdiction, see Frans G. von der Dunk, *Effective Exercise of 'In-Space Jurisdiction': The US Approach and the Problems It Is Facing*, 40 J. SPACE L. 147, 155–59 (2015).

[321] Before satellite communications dominated the industry, Sprint built hundreds of miles of underground fiberoptic cables that formed the backbone of the communications array; it was later acquired by T-Mobile and then sold to Cogent Communications, but the underlying cabling is often still thought of as Sprint-based. *See, e.g.*, Diana Goovaerts, *T-Mobile Sells Sprint Fiber Assets to Cogent for $1*, FIERCE NETWORK (Sep. 7, 2022, at 10:10 ET), https://www.fierce-network.com/telecom/t-mobile-strikes-1-deal-sell-sprint-fiber-assets-cogent [https://perma.cc/LR8V-87LE]. Comcast Cable (d.b.a. Xfinity) is the second largest provider of cable TV. *See* Luke Bouma, *Comcast Is No Longer the Largest Cable TV Company in the United States*, CORD CUTTERS NEWS (Feb. 3, 2024), https://cordcuttersnews.com/comcast-is-no-longer-the-largest-cable-tv-company-in-the-united-states/ [https://perma.cc/PZF2-MGTU]. Such large companies seem unlikely to be coerced, and, yet, the physical connections required mandate registration in states even where they stand to gain very little revenue or market share.

[322] This could apply, for example, when businesses employ remote employees paid more than the threshold for business registration. *See supra* note 287. Another example of guidance for businesses determining whether they need to register involves remote employee tax implications under the "convenience of employer" tax rule. *See, e.g.*, Reyes v. Quality Logging, Inc., No. 5:14-CV-21, 2017 WL 10646615, at *8 (S.D. Tex. Mar. 31, 2017).

[323] Small and medium enterprises (SMEs) comprise the majority of the U.S. gross domestic product (GDP). *See* John P. Hayes, Sudhir K. Chawla & Yunus Kathawala, *A Comparative Study of Problems Encountered in the Development of Small Businesses in the U.S. and Mexico*, 49 J. DEVELOPING AREAS 395, 396 (2015).

[324] For example, a local surfboard company in California would likely earn the vast majority of its revenue from California, with limited sales elsewhere. Another example where geography is not relevant to the product but still limits the reach is *World-Wide Volkswagen Corp. v. Woodson*, where the named defendant famously sold cars in only the tristate area near New York. 444 U.S. 286, 289 (1980).

Major retailers. Finally, and although not without any risk, the likelihood is that major retailers (whether service- or product-based corporations), which sell broadly on the national level, can choose to avoid any particular state they wish because they can make an uncoerced decision to decline to do business. Examples of major retailers include Amazon, Walmart, JPMorgan Chase Bank, Big Pharma, and a host of other major sellers and servicers that might not want to register to do business in other states—but could survive without doing so. The fact such companies could *survive* rejecting the state's demand does not mean the demand is per se noncoercive, but it is harder to see.

The purpose of categorizing these industries and businesses is not to create rigid bright-line rules but rather to offer a basic framework—one that will inform the next stage of analysis. If coercion means wrongful threats from the coercee's perspective because they unfairly limit choice,[325] then the kind of business is critically important to detecting threats. Some of that power might be based on size, market share, revenue sources, and geography, but much of it might depend on the industry.[326]

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325 *See supra* notes 90–92 and accompanying text.

326 Corporations that are small enough to evade registration but must still make use of the state's physical geography are subject to jurisdiction by their minimum contacts.

One way to visualize the push and pull of market forces between states and businesses is with the following four quadrants:

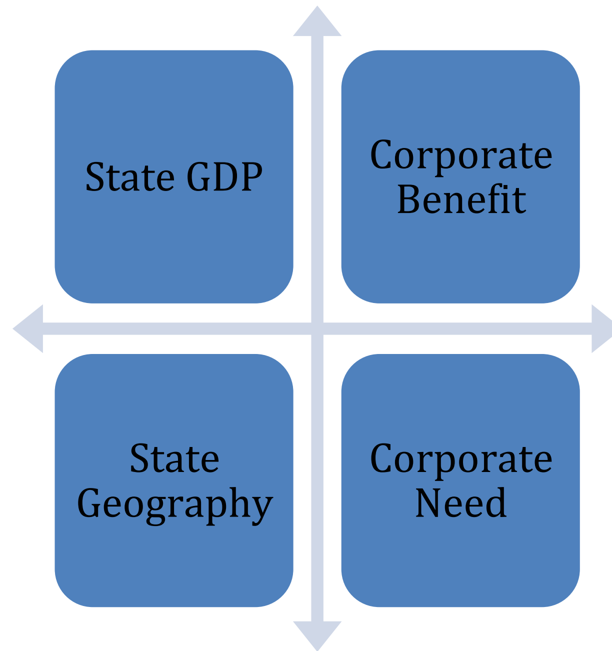

Figure 1.

Figure 1 reflects a quadrant continuum with state revenue and state geography pulling in favor of coercion to the left, and corporate need and corporate benefit pulling to the right. The risk of coercion is greater the further left and down in the matrix the bargain pulls and is reduced the farther up and to the right in the matrix the exchange is found.

State gross domestic product (GDP) is probably too simplistic of a measure of a state's potential benefit to corporations, but anything more complicated is unlikely to be usable by a court attempting to determine whether to apply a

state's registration statute.[327] In GDP's favor, it has recent and accessible data and serves as a simple measure.[328]

State geography is both intuitive and subjective, but there are some objective measures machine learning and artificial intelligence may eventually be able to help corporations understand.[329] Corporate need reflects the subjective importance *to that particular corporation* of doing business in a particular state.[330] This is not intended as a measure of how much the corporation will benefit (most often in terms of revenue or some other benefit) but rather how desperate the corporation is to do business *in that particular state* if it wants to follow the business plan it intends. Consider the following hypothetical.

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[327] Consider that to an avocado wholesaler or even a power company, GDP might be a reasonable means of anticipating revenue. But to a lumber distributor, the fact that New York has an extremely high GDP, but a lesser proportion of it relates to new home construction than its GDP might otherwise suggest, reflects one of the limitations of using GDP.

[328] GDP is merely a starting point. It is limited first by the fact that individual corporations might not care about a state's overall GDP depending on its particular service or product and source of revenue. It is also limited by the fact that absolute GDP is probably more important than relative GDP. That is because the coercion test is relative only between the state and the corporation, not between all other states. The fact that larger and higher GDP-generating states have greater bargaining power vis-à-vis other states is relevant to the policy concerns discussed *infra* Section IV.C. There is likely some important and fascinating empirical and theoretical research that could be done in the economics discipline, which is beyond the scope of this Article.

[329] In theorizing these measures, I employed artificial intelligence tools to generate the number of intersections each state has by employing a Python script to draw a line from the center of each of the forty-eight contiguous states to the center of the other forty-seven states. I then calculated how many lines crossed each state. (Alaska and Hawaii have unique geography vis-à-vis the rest of the United States, and because their locations make employing the geographic element ineffective, they were eliminated). While specific results were sometimes confusing, as expected, central and eastern states had greater numbers of intersections than western states or those at the northern and southern edges of the country. One limitation of this attempt to quantify geography was the failure of this geometric approach to account for certain built-in geographic realities (e.g., the Mississippi and Colorado Rivers, historical rail lines, or various deep-water ports) as well as the specifics of certain industries (e.g., Hollywood and Big Tech in California and Wall Street in New York).

[330] For example, it is known that California buys more new cars than any other state in the country. *See Car Sales by State*, F&I TOOLS, https://www.factorywarrantylist.com/car-sales-by-state.html [https://perma.cc/MBR7-H2G4] (last visited Dec. 23, 2025) ("California ranked #1 in new car sales by state for 2024 delivering 1,759,141 vehicles."). Firearms manufacturers know more guns are bought in Texas than any other state (narrowly more than Florida). Sara Chernikoff & C.A. Bridges, *Americans Bought 5.5 Million Guns To Start 2024: These States Sold the Most*, USA TODAY (June 28, 2024), https://www.usatoday.com/story/news/nation/2024/06/28/states-with-most-guns-per-capita/74211520007/ [https://perma.cc/F2TN-6J4B]. Louisianans consume more crawfish than the rest of the country. *On National Crawfish Day, Study Shows Louisiana Is Top Crawfish-Loving State*, SHREVEPORT TIMES (Apr. 17, 2020, at 11:02 CT), https://eu.shreveporttimes.com/story/news/local/louisiana/2020/04/17/its-national-crawfish-day-and-louisiana-ranks-no-1-love-bugs/5151752002/ [https://perma.cc/62GY-JQML]. A crawfish farming enterprise in Mississippi has intense *need* to sell to Louisiana, whereas a major seafood retailer might not have an existential need, even if one of its product lines is crawfish.

The Tennessee Valley Authority (TVA) is one of the country's largest producers of electricity, which it delivers to several states throughout the Southeast.[331] Much of its power is generated in Tennessee itself (though not all).[332] If the TVA decided that it wanted to deliver power to Louisiana, it *must* have power lines in Mississippi.[333] But Mississippi does not buy that much power from the TVA. Mississippi has favorable geography for the TVA since it borders Tennessee, but it does not generate significant revenue for the TVA. The TVA absolutely has to register to do business there even though it does not secure much revenue from Mississippi. Thus, a court should find that any consent by the TVA to general jurisdiction in Mississippi was coerced and invalid. The same might not be true in Louisiana, however, where the TVA wants to be because of its revenue potential, not because of its location.[334]

Consider another hypothetical—this time of a nonprofit corporation. Assume a small foster youth transition program named Kids' Hope is based in Cincinnati, Ohio, but wants to help foster youth in bordering states where there are less services.[335] Kids' Hope does not need to do business in Kentucky or Indiana to exist in the first place. Kids' Hope will not generate revenue from being in those states, and neither Kentucky nor Indiana have any particular geographic benefit aside from their proximity to Ohio. But Kids' Hope has more funding than related counterparts in those states' regions, which are close to Cincinnati.[336] It

[331] *See Top Ten Largest U.S. Electric Utility Companies*, CERTREC (July 18, 2022), https://www.certrec.com/blog/certrec-market-research/top-ten-largest-u-s-electric-utility-companies/ [https://perma.cc/HBH3-DHPJ] (ranking the TVA the sixth largest power producer in the United States by terms of generation capacity).

[332] *See A Guide to Information About the Tennessee Valley Authority*, TENN. VALLEY AUTH., https://www.tva.com/information/freedom-of-information/a-guide-to-information-about-the-tennessee-valley-authority [https://perma.cc/J6TU-96GP] (last visited Jan. 12, 2026).

[333] *Cf. Tennessee State Energy Profile*, U.S. ENERGY INFO. ADMIN. (Dec. 18, 2025), https://www.eia.gov/state/print.php?sid=TN [https://perma.cc/T3W5-WEZA] ("About 19,000 megawatts, or about 91%, of Tennessee's utility-scale (1 megawatt or larger) electricity generating capacity, including the 10 largest power plants in the state by capacity and 9 by actual annual generation, are owned and operated by TVA.").

[334] This analysis tracks the "reduced choices" paradigm more than the "threat" paradigm. *See supra* notes 91–94 and accompanying text.

[335] Foster youth generally "age out" of the foster system when they turn eighteen absent a state law extension. There are several nonprofits designed to ease that difficult transition, some operating by county and others by state or region. For a sampling of these programs, see CHILD.'S BUREAU, WORKING WITH YOUTH TO DEVELOP A TRANSITION PLAN 8 (2018), https://cwig-prod-prod-drupal-s3fs-us-east-1.s3.amazonaws.com/public/documents/transitional_plan.pdf [https://perma.cc/77XW-GDDP].

[336] This hypothetical is fictional. Although there is some evidence that Kentucky and Indiana have fewer foster youth services than Ohio, they may also have smaller populations. *See, e.g.*, *U.S. Foster Care Statistics 2025*, CHRISTIAN ALL. FOR ORPHANS (Nov. 5, 2025), https://cafo.org/foster-care-statistics/?utm_medium=email&utm_source=substack [https://perma.cc/9F3D-FTW9] (stating that Indiana has

is not hard to see how Kids' Hope's mission is fulfilled in reaching more foster youth, especially in places lacking adequate partners.

Accordingly, Kids' Hope has "need" even if it is not pecuniary and some bargaining power to resist "doing business" there because the consumers of their services—foster youths aging out—are in need. If Kentucky or Indiana clarify their registration statutes and subject foreign corporations to general jurisdiction by consent, Kids' Hope could be sued in Indiana for matters unrelated to their primary business purpose in Indiana—even for something that has nothing to do with Indiana, Kentucky, or Ohio. An Indiana court might not find coercion per se, but it should evaluate how much the state "pulls" at Kids' Hope versus how much Kids' Hope would "benefit" from being in Indiana.

One way of describing the coercion model is to look at the state and corporation's relative bargaining powers.[337]

4,531 foster homes and Kentucky has 5,185, while Ohio has 7,349); *Data by State*, ADMIN. FOR CHILD. & FAMS., https://cwoutcomes.acf.hhs.gov/cwodatasite/byState/ [https://perma.cc/DR6A-KTC3] (last visited Dec. 23, 2025) (looking at statistics for each state's 2023 caseworker visits and showing Kentucky is behind Ohio, which in turn is behind Indiana for several categories).

[337] One significant limitation of this model is that jurisdictional boundaries and economic statistical evidence do not neatly overlap. Generalized GDP data for each state is not the favored mechanism for economic analysis of market power. Many relevant analyses focus on Metropolitan Statistical Areas (MSAs). *See, e.g.*, *GDP by County, Metro, and Other Areas*, BUREAU OF ECON. ANALYSIS (Aug. 29, 2025), https://www.bea.gov/data/gdp/gdp-county-metro-and-other-areas [https://perma.cc/4LXQ-WY4U] (explaining MSAs); *see also Regional Data: GDP and Personal Income*, BUREAU OF ECON. ANALYSIS, https://apps.bea.gov/itable/?ReqID=70&step=1 [https://perma.cc/2P9C-BA9W] (last visited Jan. 12, 2026) (examining GDP of MSAs). MSAs may contain cities, municipalities, or counties but do not always align with state jurisdictional boundaries. This makes straightforward application of economics data to jurisdictional questions complex. Furthermore, the field of spatial economics tends to look at urban versus suburban and rural comparisons; there is some research into international comparative market power by nation states. *See generally, e.g.*, Enrico Moretti & Daniel Wilson, *The Effect of State Taxes on the Geographical Location of Top Earners: Evidence from Star Scientists* 1 (Nat'l Bureau of Econ. Rsch., Working Paper No. 22120, 2015) (tracking the effect on scientist migration based on state tax regimes); Gennaro Bernile, Stefanos Delikouras, George M. Korniotis & Alok Kumar, *Geography of Firms and Propagation of Local Economic Conditions*, 41 REV. FIN. ECON. 437 (2023) (considering publicly traded corporate production effects from state GDP).

Figure 2 is a visualized equation:

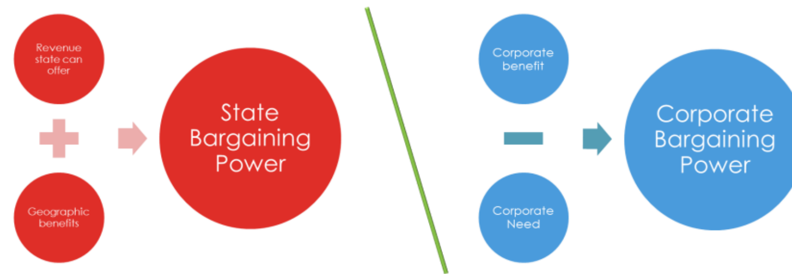

Figure 2.

Here is how it works: The state's relative GDP[338] and its relative geographic importance to the corporation[339] are added to reflect the State Bargaining Power (SBP). SBP is measured against Corporate Bargaining Power (CBP), which is a measure of the benefit the corporation will gain from doing business in the foreign jurisdiction minus the corporate need to be in the jurisdiction.[340] This element of the test is subtle but necessary. Understanding the difference between corporate *benefit* and corporate *need* goes to the very heart of corporate *coercion*.[341]

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338 The Appendix constitutes four maps, the first of which reflects the state GDPs as of 2023. *See infra* note 383 and accompanying materials.

339 At the most fundamental level, geography is intuitive and apparent. But in application it is far more complicated. The maps in the Appendix help visualize how certain states may have greater geographic importance not because of their latitude and longitude—or size—but because of the happenstance of history and geological features. For example, the railway system is historical but based on geography. The distribution network for the center of the country is heavily influenced by the Mississippi River. This Article does not seek to encompass every geographic variation or issue of importance. The maps are non-exhaustive examples.

340 Beyond the scope of this Article but interesting for further study would be an economic model based on the Nash Bargaining Solution and its modern permutations whereby corporations and states were engaged in a two-party bargaining problem. For two excellent studies on how these might apply, see generally, for example, Roger B. Myerson, *Two-Person Bargaining Problems with Incomplete Information*, 52 ECONOMETRICA 461 (1984); Ken Binmore, Ariel Rubinstein & Asher Wolinsky, *The Nash Bargaining Solution in Economic Modeling*, 17 RAND J. ECON. 176 (1986).

341 "Corporate benefit" should be defined as that which improves corporate outcomes and profits; "corporate need" could be defined as those minimum resources which permit a corporation to pursue its necessary business plan. While most business literature either defines success by mathematical economics metrics or by distinguishing between profits and benefits on a social or moral axis, some theorists have explained that the purpose of a company is both more than making minimal profits and less than achieving socially moral aims. *See, e.g.*, Charles Handy, *What Is a Company For?*, 139 ROYAL SOC'Y ARTS MFG. & COM. 231, 233 (1991) ("The principal purpose of a company is not to make a profit—full stop. It is to make a profit in order to continue to do things or make things, and to do so even better and more abundantly."). Later in his remarks, after rejecting

A corporation theoretically benefits from any state from which it either derives immediate or long-term revenue.[342] But there are states a corporation *needs* to operate in regardless of the net benefit.[343] Consider the following hypothetical.

A California corporation, Aguacates Para Ustedes (APU), farms organic avocados. Its plan is to sell organic avocados in the Southwest but outside of California, assuming the market is already saturated. APU not only wants to do business in Arizona because there are numerous potential customers but also because Arizona is important geographically as a platform to sell to the Texas market, given the fragility of organic avocados.[344] Arizona is therefore necessary for APU because it can use Arizona as a distribution base not only to Arizonans but also to New Mexico and Texas.

Arizona cannot completely deny APU the right to sell avocados in Arizona because that would violate the Commerce Clause.[345] Arizona can condition the sale of avocados with a facially neutral requirement—for example, on their being not only organic but also non-GMO—that would apply with equal force to domestic and foreign avocados.[346] APU does not have a right to sell organic avocados, and it has no right to be situated more favorably than domestic avocado producers. If, by the legal mechanism of a business registration statute, however, Arizona seeks to impose general jurisdiction by consent on APU, then APU should argue against the imposition of general jurisdiction.

From APU's perspective it is presented with the "offer" to do business in Arizona. The offer is this: "Yes, APU, you are permitted to sell your avocados in Arizona. In return, you agree to (1) register with the secretary of state,

more formalistic definitions, Professor Handy opines that a corporation's purpose "is to fulfil itself, to grow and to develop to the best that it can be, given always that every other corporation is free to do the same." *Id.* at 236.

[342] Of course, it is more complicated than that. But this Article does not need to review the entire field of corporate strategy. The short version necessary to the theory of corporate threat is that corporations will receive either revenue or some other benefit in the states in which they operate. *See* discussion *supra* Section IV.A.

[343] *See* Rensberger, *supra* note 222, at 365–66 (observing that firms in network industries, such as railroads, cannot realistically avoid doing business in certain states, illustrating how consent-by-registration may coerce corporations that must operate there regardless of net benefit).

[344] *See Shipping Avocados Has Never Been Easier (Explained)*, EUROLOG PACKING GRP., https://epgna.com/shipping-avocados-has-never-been-easier-explained/ [https://perma.cc/82L3-Y6A9] (last visited Dec. 23, 2025) (noting that the fragility of avocados makes efficient distribution and proximity to markets essential).

[345] *Cf.* Nat'l Pork Producers Council v. Ross, 598 U.S. 356, 370 (2023) ("In fact, petitioners *disavow* any discrimination-based claim, conceding that Proposition 12 imposes the same burdens on in-state pork producers that it imposes on out-of-state ones.").

[346] *See id.* at 377–78.

(2) appoint an agent for service of process, and (3) consent to jurisdiction for all purposes in any court in this state." As to (3) is APU threatened? Again, the threat is not "You cannot do business here at all." The threat is also not to treat APU worse than a domestic corporation because domestic corporations are *already subject to general jurisdiction*.[347] The threat is that, unlike domestic corporations whose due process rights are not threatened by the imposition of general jurisdiction where they are at home, Arizona demands that APU cannot argue against the imposition of general jurisdiction.[348] From APU's perspective, it therefore has to either give up a constitutional argument or refuse to do business. From a need-versus-benefit perspective, Texas provides an example of the greater benefit while Arizona provides an example where need exceeds benefit.[349]

The point of this model is not to reach an "answer" to a mathematical certainty. It is designed to detect disparities—and if the disparity is undetectable, then there is no coercion. For example, Joel Feinberg offers an excellent description of how the delta between the threat and the benefit clarifies whether there is coercion or not.[350] He offers a list of demands *A* might make of *B* in comparison to the threats *A* might make to *B* if *B* refuses *A*'s demands—e.g., "[a]ssassinate my rival for the Mafia leadership" versus "[p]our me a cup of coffee," or *A* will "burn down [*B*]'s house" or "tell all [*B*'s] friends what a mean person [*B* is]."[351] "Assassinate my rival or I will tell people you are mean" is not very coercive; "pour me a cup of coffee or I will burn down your house" is coercive. Feinberg helpfully describes these "simplified" assumptions as "differential coercive pressure."[352]

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347 *See* Daimler AG v. Bauman, 571 U.S. 117, 133 n.11 (2014).

348 Justice Barrett's dissent in *Mallory* alludes to this problem. *See* Mallory v. Norfolk S. Ry. Co., 600 U.S. 122, 172 (2023) (Barrett, J., dissenting). Following *Mallory,* it would appear that state business registration statutes effectively make every foreign corporation "at home" in every state where it is forced to register and appoint an agent for service of process. *See id.* If that was the Court's intent, it should have said so; but it is unclear whether the Court's plurality opinion actually mandates such a conclusion, since it seems to have confined its holding to Norfolk Southern and Pennsylvania. *See id.* at 167.

349 This distinction is subtle and a limitation of the relative bargaining power test, but it also gets to the heart of how litigants and courts should try to distinguish between an offer and a fair bargain versus a threat and coercion. *See* discussion *supra* Section IV.A (distinguishing "corporate benefit" as revenue potential from "corporate need" as geographic or existential necessity).

350 *See* FEINBERG, *supra* note 38, at 199.

351 *Id.* at 199–200.

352 *Id.* at 202. Despite warning against arbitrary numbers, however, Feinberg attempts to do just that in his treatise. *See id.* at 206–08. The philosophical literature is useful for context but begins to break down as the philosophy becomes increasingly theoretical while the jurisdictional question becomes more imminent.

Moreover, this model is not an attempt to create integer representations for each of the quadrants or variables.[353] It is a means of visualizing—in the parlance of state jurisdictional statutes and corporate business plans and needs—whether the state is demanding an assassination versus a cup of coffee and threatening to say something mean rather than to burn down the corporation's house.[354] That said, no model is meaningful if it cannot be applied in actual litigation or analyzed by state legislatures considering changes. The next section analyzes procedure and process.

B. Application in Litigation and Legislation

There are probably as many permutations of creative litigants and their strategies as there are corporations, but a few principles should guide the coercion analysis in courts.

First, evaluating personal jurisdiction at the outset of a case is neither new nor unreasonably burdensome.[355] Parties make arguments under Federal Rule of Civil Procedure 12(b)(2) and its state corollaries as often as personal jurisdiction is at issue.[356] The number of times consent-based jurisdiction arises will increase following *Mallory*, but it seems unlikely to run amok. Even if it becomes a

[353] "We must, of course, avoid the mistake of taking our arbitrary number assignments too seriously." *Id.* at 201.

[354] Need versus benefit is a difficult distinction to draw because a corporation with a business plan that involves significant (even existential) revenue is still receiving the "benefit" of that revenue. The distinction, again, comes down to survival. *See* Handy, *supra* note 341, at 233, 236. Can the Delaware radio station survive as constituted without the towers in Pennsylvania? If so, even if its revenue is reduced significantly, the demand for registration is not a threat.

[355] This rule statement from a district court in Massachusetts is representative:

> The burden lies with the Plaintiffs to establish the existence of jurisdiction where, as here, the Defendants challenge personal jurisdiction via a Rule 12(b)(2) Motion. When the court considers a 12(b)(2) motion without holding an evidentiary hearing, the "prima facie standard" applies to its analysis. Under the prima facie standard, "plaintiffs may not rely on unsupported allegations in their pleadings but are obliged to adduce evidence of specific facts." The court must "in turn, take those 'specific facts affirmatively alleged by the plaintiff[s] as true . . . and construe them in the light most congenial to the plaintiff[s'] jurisdictional claim." The Court may also "add to the mix facts put forward by the defendants, to the extent that they are uncontradicted."

Tassinari v. Salvation Army Nat'l Corp., 610 F. Supp. 3d 343, 353 (D. Mass. 2022) (alterations in original) (citations omitted) (first quoting Cossart v. United Excel Corp., 804 F.3d 13, 18 (1st Cir. 2015); then quoting Clinton-Brown v. Hardick, No. 1:20-CV-11694, 2021 WL 1427635, at *2 (D. Mass. Apr. 15, 2021); then quoting Platen v. HG Bermuda Exempted Ltd., 437 F.3d 118, 134 (1st Cir. 2006); and then quoting Mass. Sch. of L. at Andover, Inc. v. Am. Bar Ass'n, 142 F.3d 26, 34 (1st Cir. 1998)).

[356] *See* 2 MOORE'S FEDERAL PRACTICE § 12.31(1), (3) (2025).

common argument, consent will rarely serve as the *only* ground for a 12(b)(2) motion; few defendants will be in the same situation as Norfolk Southern, with a nondiverse plaintiff from another state suing in a consent-based jurisdiction.[357] More likely, consent will be one of multiple issues on a 12(b)(2) motion, adding little new litigation burden.

Second, the litigation process would be straightforward. Defendants would argue under this Article's proposed model—or some other model—that they have been coerced into waiving their due process rights because the consent was involuntary. They would concurrently introduce by affidavit statements of corporate need and benefit (and industrial impact) and attach simple documentation of state revenue and geographic benefit.[358] Plaintiffs would object. To the extent there was insufficient publicly available information, limited jurisdictional discovery could occur.[359]

Third, it is true that corporations would not know the result before registration and that might have a chilling effect, but there is little alternative since any attempt to have the coercion tested without a lawsuit might be premature.[360]

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[357] Mallory v. Norfolk S. Ry. Co., 600 U.S. 122, 126–27 (2023) (plurality opinion).

[358] This is little different than regular personal jurisdiction and anticipated jurisdictional discovery. *See, e.g.*, KAREN L. STEVENSON & JAMES E. FITZGERALD, FEDERAL CIVIL PROCEDURE BEFORE TRIAL § 3:413, at 143 (national ed. 2025) ("Plaintiffs should anticipate that a motion to dismiss will be made and therefore try to obtain the jurisdictional proof *before* filing an action against a nonresident defendant: Hire an investigator, check with state licensing authorities, review website information and social media, and examine directories and trade publications for listings and advertisements, etc."). The guide further advises that when "a motion to dismiss is made, plaintiff should consider propounding jurisdictional discovery; and certainly should seek such discovery if the defendant's declarations raise serious questions as to the jurisdictional facts." *Id.* (citing GTE New Media Servs. Inc. v. BellSouth Corp., 199 F.3d 1343, 1351 (D.C. Cir. 2000)).

[359] *See, e.g.*, Am. W. Airlines, Inc. v. GPA Grp., Ltd., 877 F.2d 793, 801 (9th Cir. 1989) ("[W]here pertinent facts bearing on the question of jurisdiction are in dispute, discovery should be allowed."); Wells Fargo & Co. v. Wells Fargo Express Co., 556 F.2d 406, 431 (9th Cir. 1977) (noting that "[d]iscovery . . . 'should be granted where pertinent facts bearing on the question of jurisdiction are controverted . . . or where a more satisfactory showing of the facts is necessary'" (quoting Kilpatrick v. Tex. & Pac. Ry., 72 F. Supp. 635, 638 (S.D.N.Y. 1947))).

[360] More specifically, it might not be ripe absent a declaratory relief action, which corporations at risk seem unlikely to pursue. *See, e.g.*, Reno v. Cath. Soc. Servs., Inc., 509 U.S. 43, 57–58 (1993) (recognizing challenges to regulations "the impact of which could not 'be said to be felt immediately by those subject to it in conducting their day-to-day affairs,' . . . would not be ripe before the regulation's application to the plaintiffs in some more acute fashion, since 'no irremediabl[y] adverse consequences flow[ed] from requiring a later challenge'" (alterations in original) (quoting Toilet Goods Ass'n v. Gardner, 387 U.S. 158, 164 (1967)) (citing Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871, 891 (1990))).

As to legislatures, states should weigh the importance of providing a forum for remote defendants and plaintiffs versus the possibility that they chill corporations wanting to do business there, while also keeping in mind the statute might end up being found unconstitutional. These are complex policy dynamics for state legislatures to weigh. It may behoove states to make no changes to their registration statutes unless they are concerned that in a post-*Mallory* world they open up state courts to greater use than the state would prefer.[361] In other words, aside from the chilling effect on foreign registration and business and the constitutional and comity policy concerns, there is an inherent cost to the states of providing a forum for remote litigants—a cost borne by the state or federal court systems in those states and without much concomitant benefit.

C. The Hidden Policy Problem of Coerced Jurisdiction

Although establishing a framework for detecting corporate coercion takes a little theoretical dexterity, it can and must be done. Otherwise, due process for corporate defendants begins to lose its meaning. If a corporation cannot decline a state's "Hobson's choice"[362] without facing potential extinction or a radical reworking of its business model, it has been coerced and its consent was ineffective, which means there is no constitutional basis for extending general jurisdiction. The state has created an unconstitutional condition by asking the corporation to consent in return for its abandonment of a due process argument.

It is important, however, to distinguish between two applications of the pernicious violation of horizontal federalism that smaller or less geographically central states may suffer. On the one hand, states with less bargaining power relative to the specific corporation are less likely to coerce corporations because they simply cannot offer as much. Smaller states that are less geographically central and with lower GDPs may have less overall bargaining power but that does not mean there could still not be a detectable disparity with a corporation sufficient to satisfy a coercive jurisdiction test.[363]

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[361] Many state statutes are ambiguous and subject to interpretation by courts, which have not always agreed on whether they subject foreign defendants to general jurisdiction. *See supra* note 160 and accompanying text.

[362] A "Hobson's choice" is no choice at all. *See, e.g.*, Benjamin G. Shatz, *Choosing Hobson's Choice*, MANATT (Nov. 20, 2016), https://www.manatt.com/insights/articles/2016/choosing-hobson-s-choice [https://perma.cc/D3U7-F8UQ].

[363] For example, New Mexico has an inauspicious geographic location and a relatively low GDP. *See* Matthew D. Mitchell & Paul Gessing, *A Deep Dive into New Mexico's Lack of Economic Freedom*, FRASER INST. (Apr. 15, 2025), https://www.fraserinstitute.org/commentary/deep-dive-new-mexicos-lack-economic-freedom [https://perma.cc/KJW7-NNSC]. But consider if SCE is buying excess power from Texas oil and gas refineries and power systems, which *must* be delivered through power substations in New Mexico. Even if SCE

On the other hand, the position of these states in comparison to larger or more geographically important states illustrates a policy problem inherent in allowing coerced jurisdiction to expand unabated. Put differently, aside from the effect on individual corporations, there is a structural problem with allowing consent-based registration statutes to proliferate. States with powerful revenue enticement or geographic centrality will be able to wield greater pressure on businesses. Conversely, smaller or less geographically central states will not be able to apply similar pressure. This dynamic is unhealthy because it hurts some states while empowering others. States with relatively smaller GDPs or less strategic geography will suffer effects that interstate federalism was intended to prevent.

As it concerns a corporation's need to access land, the market power of Hawaii, Oregon, or North Dakota, for example, may be far less than the market—and thereby bargaining—power of a central or larger state like Illinois, Missouri, or Texas.[364] The fact that a geographically central state can condition doing business on consent to general jurisdiction but smaller states may not be able to get away with it from a market-power standpoint, reflects an unfairness not only to defendants but also to less "powerful" states. States with less "favorable" geography should not be disadvantaged vis-à-vis larger or more geographically powerful states. Part of what interstate federalism does is shield smaller states from resulting economic or political disadvantage.[365]

There is a related and broader policy problem as well, which is why states are prohibited from denying foreign corporations the right to do business in the first place. That is, it flies in the face of a national economy—where consumers

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derives little to no economic benefit from registering to do business in New Mexico, New Mexico's leverage over SCE is probably sufficient to find a disparity sufficient to make its threat to refuse SCE the right to do business coercive. *See* Rensberger, *supra* note 222, at 361–63 (explaining that corporations often lack a viable choice to avoid registration because refraining from doing business in a state is rarely realistic and suggesting that consent to jurisdiction may be coerced even where penalties for nonregistration are modest).

[364] Geographically based economic power does not appear to be an area of thorough exploration in economics literature. *See, e.g.*, Ross Gittell, Allen Kaufman, Marvin Karson & Ron McChesney, *The New Economic Geography of the States*, 14 ECON. DEV. Q. 182, 182 (2000) (opining that most analysis of the geographic impact on economies has been on the nation–state scale); Gary L. Gaile & Richard Grant, *Trade, Power, and Location: The Spatial Dynamics of the Relationship Between Exchange and Political-Economic Strength*, 65 ECON. GEOGRAPHY 329, 334–35 (1989) (applying a location-based analysis to trade power dynamics). But as far as the literature supports it, evaluating states by economic buying power is addressed in Section IV.A.

[365] *Cf.* TED CRUZ & MARIO LOYOLA, TEX. PUB. POL'Y FOUND., SHIELD OF FEDERALISM: INTERSTATE COMPACTS IN OUR CONSTITUTION 1 (2010), https://healthlaw.org/resource/shield-of-federalism-interstate-compacts-in-our-constitution/ [https://perma.cc/T32X-9FFT] (arguing that interstate compacts may become useful "as a shield against federal overreach").

should have choice and corporations can compete—to countenance a protectionist or isolationist paradigm where some states have market power to condition foreign registration and others do not. This hurts consumers in all markets but especially in less wealthy or favorably situated states.

Reaching beyond personal jurisdiction, a final policy problem concerns the widening gulf between federal and state law on subjects where emotions run high and divisions run deep—and where total deference to consent-based registration statutes may have implications beyond short-term jurisdictional effects. Simply put, where corporations are vulnerable to illegal governmental coercion, more is at stake than personal jurisdiction. Recent state action as to abortion and climate change are illustrative.[366]

Following *Dobbs v. Jackson Women's Health Organization*,[367] a group of Texas state legislators sent a letter to Lyft Corporation demanding that the corporation rescind its policy of providing travel to employees in Texas seeking out-of-state abortions.[368] Local Texas jurisdictions have tried to stop women from traveling to nearby states for abortions, and the Texas Attorney General has opposed granting exceptions even when there is a "substantial impairment of a major bodily function," which is allowed even by Texas's strict statutes.[369] In this regard, Texas officials are aggressively advancing a position not affirmatively supported by federal law but no longer constrained by *Roe v. Wade*.[370]

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[366] There are more examples in the culture wars and, as Administrations change, state responses as well. Consider diversity, equity, and inclusion (DEI) and critical race theory, which were under attack at the state level during the Biden Administration. *See, e.g.*, Matt Papaycik & Forrest Saunders, *Florida's Governor Signs Controversial Bill Banning Critical Race Theory in Schools*, WPTV (Apr. 22, 2022, at 17:29 ET), https://www.wptv.com/news/education/floridas-governor-to-sign-critical-race-theory-education-bill-into-law [https://perma.cc/6UR4-2VCN]; Monique Welch, *Explainer: Texas' DEI Ban Is in Full Effect. Here's How It Impacts Colleges, Universities*, HOU. LANDING (Aug. 24, 2023, at 04:00 ET), https://www.houstonlanding.org/texas-anti-dei-law-is-wreaking-havoc-before-it-takes-effect-next-year-heres-what-to-know/ [https://perma.cc/PRU6-4CZ9]. Some states are now aligning *against* federal policy. *See* Sheila M. Abron, Regina A. Petty & Jennifer B. Sandberg, *States Take Stand Against Trump's Anti-DEI Actions: What Employers Need To Know*, FISHER PHILLIPS (Feb. 17, 2025), https://www.fisherphillips.com/en/news-insights/states-take-stand-against-trumps-anti-dei-actions.html [https://perma.cc/H894-GASN].

[367] 597 U.S. 215 (2022).

[368] Daniel Marin, *Texas Lawmakers Look at Banning Companies that Help Employees Seek Abortions*, KXAN (June 24, 2022, at 11:07 CT), https://www.kxan.com/news/texas-politics/texas-lawmakers-look-at-banning-companies-that-help-employees-seek-abortions/ [https://perma.cc/7DLW-QK5F].

[369] Selena Simmons-Duffin, Diane Webber & Michel Martin, *5 Things To Know About the Latest Abortion Case in Texas*, NPR (Dec. 13, 2023, at 14:25 ET), https://www.npr.org/sections/health-shots/2023/12/13/1218953788/texas-abortion-ban-supreme-court-kate-cox [https://perma.cc/CM6U-QA9X].

[370] 410 U.S. 113 (1973); *see Dobbs*, 597 U.S. at 231.

In another example, the State of New York recently passed its Climate Change Superfund Act.[371] The Act requires fossil fuel companies to contribute seventy-five billion dollars over twenty-five years into a fund intended to pay for climate change damage.[372] Numerous Republican-led attorneys general sued to enjoin the Act on the basis that it is unconstitutional and is preempted by the Clean Air Act.[373] Here, New York was attempting to protect the climate not even necessarily in opposition to federal policy but in opposition to specific industry business interests.[374]

Together, these exercises of state power are relevant to coerced corporate consent because of the risk that empowering state legislatures to demand unfavorable compliance from foreign corporations creates. Whether the individual state is advancing an agenda contrary to the current federal administration, current federal law, or sister-state preferences, *Mallory*'s tacit approval of consent-based jurisdiction created a powerful incentive for states to weaponize registration statutes, disrupting the "normal" economic cost-benefit analysis corporations enter into when deciding whether to operate in a given state.[375] Again, states with more geographic and economic power will have an outsized ability to make political demands on foreign businesses, as Texas may do in its efforts to stop businesses from supporting employee reproductive health.[376] New York's power to compel fossil fuel companies to pay into its state-based climate change superfund is also outsized.[377] New York could amend

[371] *See* Hilary Howard, *22 States Sue To Block New York Climate Law*, N.Y. TIMES (Feb. 8, 2025), https://www.nytimes.com/2025/02/06/nyregion/climate-change-superfund-act-lawsuit.html [https://perma.cc/6E3Z-8PVA].

[372] Kathy Hochul, the governor of New York, signed SB 2129B on December 26, 2024. *See New York Passes Second-in-the-Nation Climate Change Superfund Act*, SIDLEY (Jan. 2, 2025), https://environmentalenergybrief.sidley.com/2025/01/02/new-york-passes-second-in-the-nation-climate-change-superfund-act/ [https://perma.cc/DC29-8LCY].

[373] *See id.*

[374] Whether the Clean Air Act actually preempts—or needs to preempt—the New York statute has not yet been resolved. *See* Complaint for Declaratory and Injunctive Relief at 3, United States v. New York, No. 1:25-CV-03656 (S.D.N.Y. May 1, 2025).

[375] *See* Mallory v. Norfolk S. Ry. Co., 600 U.S. 122, 168–70 (2023) (Barrett, J., dissenting).

[376] *See id.* at 157–62 (Alito, J., concurring). Creative Texas legislators could, for example, require as part of a foreign corporate registration statute that businesses comply with federal and state abortion law. While corporations interested and powerful enough to seek to do business in Texas might also be able to battle the state over the Commerce Clause implications of such a statute, the most harmful effects would never be seen. Smaller companies or nonprofits, which lack the resources to make an unfair choice between their moral imperatives and their need to do business, would suffer silently either in compliance or by inability to do business in Texas.

[377] The "big company versus big state" dynamic in Texas also exists in New York. *See* Howard, *supra* note 371. Large fossil fuel companies, which apparently do not even need to fight their own battles—but have twenty-two states doing it for them—are able to confront New York's law. *See id.* But what about smaller companies

its business registration statute not to change personal jurisdiction rules but to require fossil fuel fee compliance.[378] Increased tension between individual state and unified federal law is not always a bad thing; and it is true that legal compliance with local state law is unremarkably appropriate for foreign corporations.[379] The distinction, however, is that if defendants' due process rights to argue against personal jurisdiction are subject to analysis free from any consideration of whether the consent was actually voluntary, the door is left wide open to other forms of consent-based conditions.[380] Not all of them will be as narrow as personal jurisdiction over corporations.

In sum, although the Commerce Clause may ultimately prove adequate, *Mallory* weakened due process guardrails—a situation that raises troubling federalism concerns aside from the economic bargaining disparities that exist between small and medium enterprises and many states.[381]

CONCLUSION

A corporation's business plan and overarching goals may be at existential risk unless it does business in certain states. Where the corporation stands to benefit greatly from its business in a particular state but is also powerful or flexible enough to avoid doing business there, the state's "threat" of requiring acquiescence to general jurisdiction lacks "necessity" or any "wrongful" aspect from the corporation's perspective. Where, however, the corporation needs to do business in a particular state from which it also derives minimal benefit, there may be a threat against corporate necessity. In those cases, the foreign

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that depend importantly, yet indirectly, on the coal and oil industry? They lack the political savvy and connections to encourage such a massively supported effort to overturn New York's Climate Change Act, creating yet more inequities for smaller companies. Most smaller states that lack the power to make these demands are also left out in the cold, unable to absorb tax revenue loss while still being able to adopt laws befitting their views. *See* Anil Menon, Katie Nissen & Iain Osgood, *Climate Regulation's Effects on Businesses and Public Support for Climate Action*, POL. SCI. RSCH. & METHODS, Oct. 2025, at 1, 5–6.

378 Interestingly, New York attempted to amend its registration statute, but the governor vetoed it. *See* Taylor Bourguignon, *Vetoed New York State Legislation Maintains Status Quo To Favor Out-of-State Defendants: No Consent to Jurisdiction by Registration*, MARSHALL DENNEHEY (Mar. 1, 2024), https://marshalldennehey.com/articles/vetoed-new-york-state-legislation-maintains-status-quo-favor-out-state-defendants-no [https://perma.cc/76WD-PN6D].

379 *See* Nat'l Pork Producers Council v. Ross, 598 U.S. 356, 375 (2023); *see also supra* note 341.

380 Unfairly imposed personal jurisdiction does not appear to raise hackles or taste as bitter as other forms of due process violations, but that makes it no less unconstitutional. *See generally* Dodson, *supra* note 18 (arguing that the complexities of establishing personal jurisdiction following *Mallory* should be embraced rather than ignored).

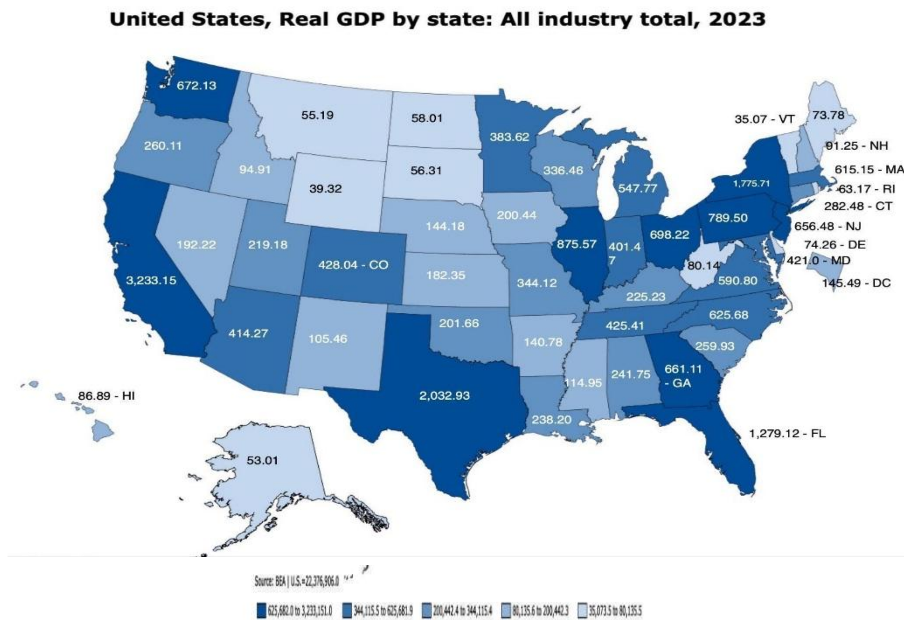
381 *Mallory*, 600 U.S. at 163–64 (Barrett, J., dissenting).

corporation's consent by registration statute is coerced and invalid. Put another way, coerced corporate consent is an unconstitutional conditioning of the waiver of a defendant's due process rights.

Accordingly, courts should consider the nature of the defendant's need to do business in a given state against the relative bargaining power of the state at issue. If there is a detectable disparity in the state's favor, the court should not apply the registration statute's jurisdictional requirement. If there is no obvious delta, then the registration statute should be upheld.

APPENDIX – MAPS[382]

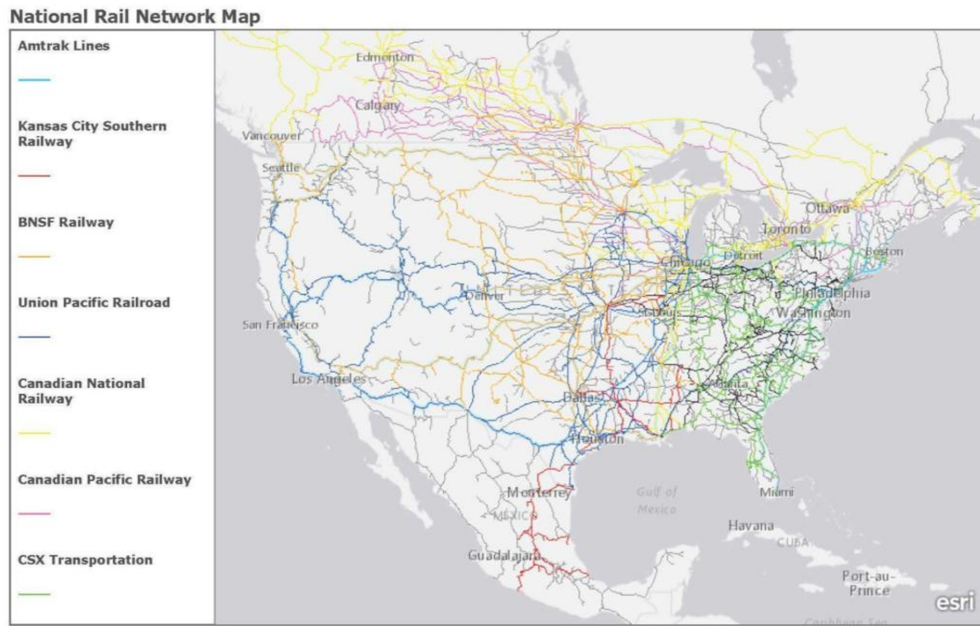
Figure 3. Visualization of GDP[383]



[382] These four maps are designed to illustrate some of the principles discussed in section IV.A. They are not exhaustive. But they should help orient states and corporations around some of the geographic concerns raised by consent-based jurisdiction schemes.

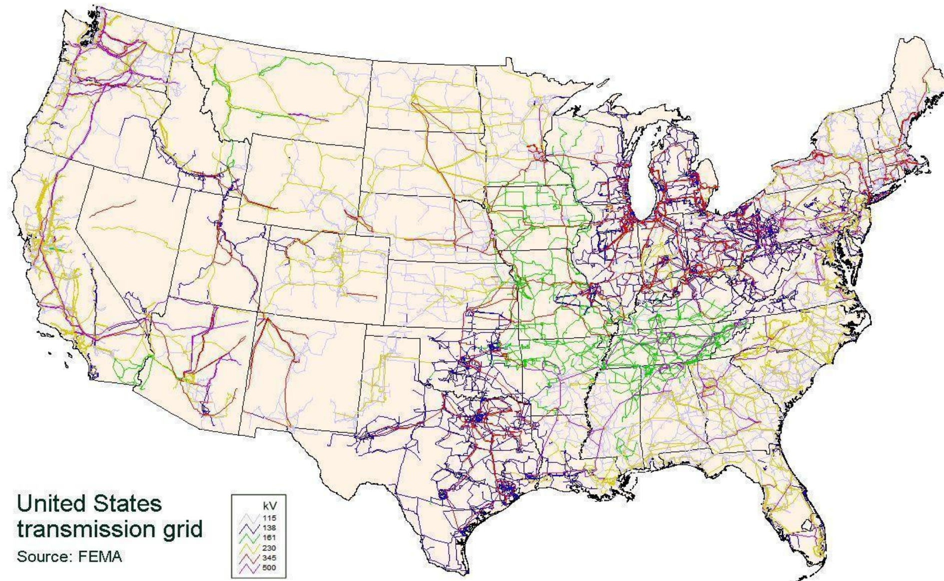
[383] The first map is a visualization of GDP and can be generated from the Bureau of Economic Analysis "tools" and interactive data website. *See Interactive Data Application*, BUREAU OF ECON. ANALYSIS (June 30, 2025), https://www.bea.gov/itable/ [https://perma.cc/3956-XY98].

Figure 4. National Railway Map[384]



[384] This national railway map derives from ArcGIS Online. *National Rail Network Map*, ARCGIS ONLINE, https://www.arcgis.com/apps/mapviewer/index.html?webmap=96ec03e4fc8546bd8a864e39a2c3fc41 [https://perma.cc/M6SN-86PJ] (last visited Jan. 12, 2026).

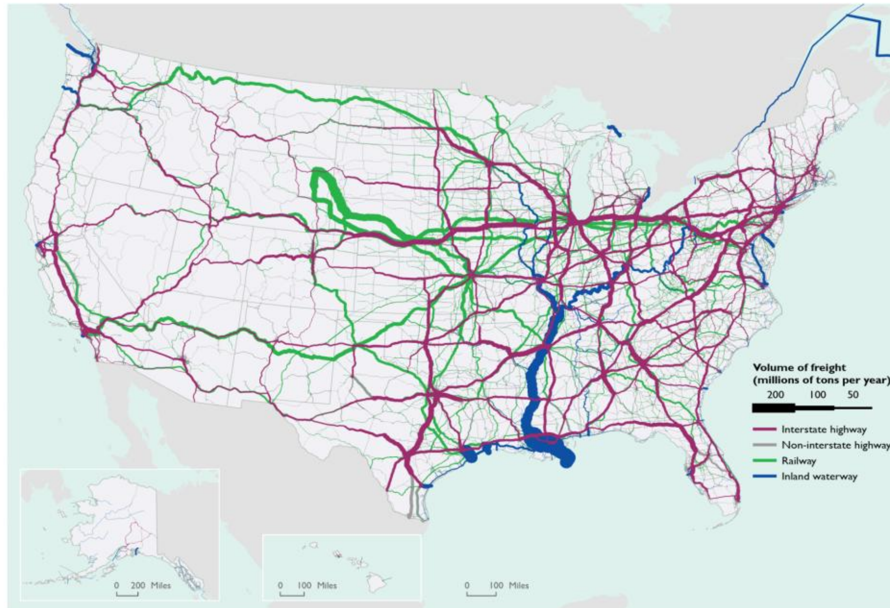
Figure 5. Transmission Grid[385]



[385] This transmission grid illustration is generated from FEMA data, but this particular map is derived from Horvath Research. *Power Line Monitoring System*, HORVATH RSCH., https://www.horvathresearch.com/plms/ [https://perma.cc/4R99-J6KT] (last visited Jan. 12, 2026)

Figure 6. Freight Volumes[386]

Freight Flows by Highway, Railway, and Waterway: 2018



NOTE: Highway flows depicted in this map are based on the Freight Analysis Framework (FAF) data for 2015—the latest year for which the FAF network flow data is available.
SOURCES: Highway—U.S. Department of Transportation, Bureau of Transportation Statistics and Federal Highway Administration, Freight Analysis Framework, version 4.3.1, 2015. Rail—Based on Surface Transportation Board, Annual Carload Waybill Sample and rail freight flow assignment done by Oakridge National Laboratory, 2018. Inland Waterways—U.S. Army Corps of Engineers, Institute of Water Resources, Annual Vessel Operating Activity and Lock Performance Monitoring System data, 2018.

[386] This freight volume demonstrative is from the Bureau of Transportation Statistics. *Freight Flows by Highway, Railway, and Waterway: 2018*, BUREAU OF TRANSP. STAT., https://www.bts.gov/geography/geospatial-portal/freight-flows-highway-railway-and-waterway-2018 [https://perma.cc/E7R2-RM3S] (last visited Jan. 17, 2026).