IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

GABRIEL ARTURO RASCON
RODRIGUEZ, *et al.*,
Plaintiffs-Respondents,
v.

FORD MOTOR COMPANY and
COOPER TIRE & RUBBER COMPANY,
Defendants-Petitioners,
and

No. S-1-SC-37490

FERNANDO GAYTAN BUSTOS,
Defendant-Respondent,
and
FERNANDO GAYTAN BUSTOS,
Cross-Plaintiff-Respondent,
v.

FORD MOTOR COMPANY and
COOPER TIRE & RUBBER COMPANY,
Cross-Defendants-Petitioners.

CONSOLIDATED BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICUS CURIAE* SUPPORTING DEFENDANT-PETITIONER

Benjamin Allison
Bardacke Allison LLP
141 E. Palace Avenue
Santa Fe, NM 87501
(505) 995-8000
ben@bardackeallison.com

Attorney for *Amicus Curiae*

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MANUEL EDEL NAVARRETE
RODRIGUEZ, Individually and as
Personal Representative of the ESTATE
OF EDGAR NAVARRETE RODRIGUEZ,
Deceased,

Plaintiff-Respondent, No. S-1-SC-37491

v.

FORD MOTOR COMPANY,

Defendant-Petitioner,

and

LUIS A. PONCE,

Defendant.

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INTEREST OF THE *AMICUS CURIAE*

The Chamber of Commerce of the United States of America is the world's largest business federation, representing 300,000 direct members and indirectly representing the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. The Chamber represents the interests of its members in matters before the courts, Congress, and the Executive Branch. To that end, the Chamber regularly files *amicus curiae* briefs in cases that raise issues of concern to the Nation's business community, and has participated as *amicus curiae* in numerous cases addressing jurisdictional issues.[1]

Most Chamber members are registered to do business in States other than their State of incorporation and State of principal place of business (the forums in which they are subject to general personal jurisdiction, *see Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014)). They therefore have a substantial interest in the rules governing the extent to which a State can subject nonresident corporations to general personal jurisdiction by virtue of their registering to do business in the State.

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[1] Pursuant to N.M. R. App. P. 12-320(C), *amicus* affirms that no counsel for a party authored this brief in whole or in part and that no person other than *amicus*, its members, and its counsel made a monetary contribution to its preparation or submission.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Court of Appeals held below that every foreign corporation that registers to do business in New Mexico consents to general personal jurisdiction by the act of registration. But as numerous courts have recognized, compelling foreign corporations to consent to general jurisdiction in this manner is incompatible with the due process limits on general jurisdiction that the Supreme Court articulated in *Daimler AG v. Bauman*, 571 U.S. 117 (2014). Requiring such consent from foreign corporations also does not benefit New Mexico citizens—indeed, it is more likely to harm New Mexico consumers and corporations by discouraging investment here and encouraging other states to attempt to impose similar consent requirements. This Court should therefore reverse the decision below and hold that only corporations that are incorporated or have their principal place of business in New Mexico may be subject to general jurisdiction here.

"The Due Process Clause of the Fourteenth Amendment sets the outer boundaries of a state tribunal's authority to proceed against a defendant." *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 923 (2011). This limitation on a court's authority "protects [the defendant's] liberty interest in not being subject to the binding judgments of a forum with which he has established no meaningful 'contacts, ties, or relations.'" *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 471-72 (1985) (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945)).

Applying this due process principle, the U.S. Supreme Court has recognized "two categories of personal jurisdiction." *Daimler*, 571 U.S. at 126. Specific jurisdiction empowers courts to adjudicate claims relating to the defendant's in-forum conduct and exists when "the suit 'aris[es] out of or relate[s] to the defendant's contacts with the forum.'" *Id.* (quoting *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 n.8 (1984)).

General jurisdiction, by contrast, permits courts to adjudicate claims against a defendant arising out of actions occurring anywhere in the world (subject, of course, to any limits specific to a particular cause of action). It exists "where a foreign corporation's 'continuous corporate operations within a state [are] so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities.'" *Daimler*, 571 U.S. at 127 (quoting *Int'l Shoe*, 326 U.S. at 318). "'[S]pecific jurisdiction has become the centerpiece of modern jurisdiction theory, while general jurisdiction [plays] a reduced role.'" *Id.* at 128 (quoting *Goodyear*, 564 U.S. at 925). For that reason, *Daimler* held that, in the absence of exceptional circumstances, general personal jurisdiction over a corporation is available only "where it is incorporated or has its principal place of business"—because those places are the "paradigm all-purpose forums" where the corporation may be "fairly regarded as at home." *Id.* at 137 (quotation marks omitted).

The Court of Appeals below, following its earlier decision in *Werner v. Wal-Mart Stores, Inc.*, 1993-NMCA-112, 116 N.M. 229, 861 P.2d 270, held that all foreign corporations that register to do business in New Mexico thereby consent to general jurisdiction as a condition of doing business in the State, which—in the absence of due process constraints—would make these corporations subject to suit in New Mexico on any claim.[2] But such a consent requirement would clearly be unconstitutional in light of *Daimler*. *Daimler* emphasized that corporations should be able to structure their primary conduct to avoid being subject to expansive, all-purpose jurisdiction in multiple forums. Allowing New Mexico to impose general jurisdiction on all companies registered to do business in New Mexico would undermine that principle: every other State could follow the same course, and companies would be subject to nationwide general personal jurisdiction—the precise result that *Daimler* rejected as forbidden by the Due Process Clause because a defendant cannot be "at home" in all 50 states.

A consent requirement for corporate registration also runs afoul of the doctrine of "unconstitutional conditions." That doctrine forbids states from conditioning the availability of government benefits on the forfeiture of

[2] The analysis in this brief would apply equally to the other pending cases in which the Court of Appeals relied on the same reasoning: *Chavez v. Bridgestone Americas Tire Operations, LLC*, No. S-1-SC-37489, and *Furman v. Goodyear Tire & Rubber Co.*, No. S-1-SC-37536.

constitutional rights. For New Mexico to condition the benefit of doing business lawfully in the State upon the surrender of a corporation's due process right to limit the forums in which it may be sued would be unconstitutional.

Finally, the compelled consent requirement discourages foreign investment in New Mexico, because out-of-state companies have less incentive to operate in New Mexico if by doing so, they become subject to suit here for claims arising anywhere in the world. And the statute's expansive approach to general jurisdiction is unnecessary to protect New Mexico citizens from injury by foreign corporations: such companies likely can be sued in New Mexico on a specific jurisdiction theory when their conduct targeted towards New Mexico causes harm to New Mexico residents. As Justice Ginsburg explained in *Daimler*, that is the function of specific personal jurisdiction. In short, asserting general jurisdiction over all foreign companies registered to do business in New Mexico causes harm to the State's economy, with no corresponding benefit to the State or its citizens.

ARGUMENT

I. New Mexico May Not Subject Foreign Corporations To General Jurisdiction Based Solely On Their Registration To Do Business.

The test for general jurisdiction that the Supreme Court announced in *Daimler* is demanding: because of its extraordinary reach, general jurisdiction ordinarily may be exercised over a defendant only by those states in which the corporate defendant

is considered "at home"—its state of incorporation and its principal place of business. *Daimler*, 571 U.S. at 137.

Petitioner is incorporated in Delaware and has its principal place of business in Michigan; therefore, as a constitutional matter, it is not "at home" in New Mexico. But the Court of Appeals concluded that petitioner should nonetheless be deemed subject to general personal jurisdiction in New Mexico because it registered to do business in the State. As petitioner explains, that holding lacks any foundation in the text of the registration statute, which does not so much as suggest that a foreign corporation is consenting to general jurisdiction when it registers to do business in New Mexico. BIC 9-22. But even if this Court believes that the statutory text permits that reading, it should hold that the statute does not require consent to general jurisdiction, because a contrary interpretation would raise at least two significant constitutional concerns: *First*, the contacts between a foreign corporation and New Mexico that trigger the registration requirement are plainly insufficient under *Daimler* to permit the assertion of general jurisdiction. *Second*, subjecting foreign corporations to general jurisdiction as a condition of doing business in New Mexico violates the doctrine of unconstitutional conditions. (The Chamber also agrees with petitioner's argument that compelling foreign corporations to consent to general jurisdiction in order to do business in New Mexico would impose burdens on interstate commerce that outweigh any putative benefit to New Mexico. BIC 35-

37). Given these constitutional bars to compelled consent, the registration statute should not be construed to require foreign corporations to consent to general jurisdiction in New Mexico courts in order to do business in the State. *See, e.g.*, *State, City of Albuquerque v. Pangaea Cinema LLC*, 2013-NMSC-044, ¶ 18, 310 P.3d 604 ("'[W]e seek to avoid an interpretation of a statute that would raise constitutional concerns.'") (quoting *Chatterjee v. King*, 2012–NMSC–019, ¶ 18, 280 P.3d 283).

A. *Daimler* Bars The Assertion Of General Jurisdiction Over A Corporation That Merely "Does Business" Within A State.

1. *Daimler*'s logic shows that general jurisdiction cannot be based on mere registration to do business.

The plaintiffs in *Daimler* argued that general jurisdiction was available "in every state in which a corporation engages in a substantial, continuous, and systematic course of business." 571 U.S. at 138 (internal quotation marks omitted). But in an opinion by Justice Ginsburg, the U.S. Supreme Court rejected "[t]hat formulation" of the standard as "unacceptably grasping." *Id.* It explained that "[a] corporation that operates in many places can scarcely be deemed at home in all of them." *Id.* at 139 n.20. A corporation therefore may not be subject to general

jurisdiction outside its state of incorporation and its principal place of business, except in an "exceptional case."[3]

By restricting general jurisdiction to places in which a corporation is "at home," *Daimler* precludes general jurisdiction based merely on the level of corporate activity that is sufficient to trigger business registration. If the rule were otherwise, virtually every state and federal court would become an all-purpose forum with respect to every corporation registered to do business, because "[e]ach of the fifty states has a registration statute." Tanya J. Monestier, *Registration Statutes, General Jurisdiction, and the Fallacy of Consent*, 36 Cardozo L. Rev. 1343, 1345 (2015). That would deprive a nonresident business of its due process right to be able to "'structure [its] primary conduct with some minimum assurance as to where that conduct will and will not render [it] liable to suit.'" *Daimler*, 571 U.S. at 139 (quoting *Burger King Corp.*, 471 U.S. at 472).

[3] *Daimler*, 571 U.S. at 139 n.19. The only example that *Daimler* gave of an "exceptional case" was one in which a State had become a "surrogate" for the company's place of incorporation or headquarters. *Id.* at 130 & n.8 (citing *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437, 448 (1952), where the corporation had temporarily moved its headquarters from the Philippines to Ohio during World War II).

2. U.S. Supreme Court decisions permitting general jurisdiction based on registration and appointment of an agent are no longer good law.

More than a century ago, the Supreme Court held in *Pennsylvania Fire Insurance Co. v. Gold Issue Mining & Milling Co.* that registering to do business in a forum *was* sufficient to render a foreign corporation subject to general jurisdiction. 243 U.S. 93, 94-95 (1917). But the *Pennsylvania Fire* decision was a product of the "strict territorial approach" to personal jurisdiction adopted in *Pennoyer v. Neff*, 95 U.S. 714 (1877). *Daimler*, 571 U.S. at 126. *Pennoyer*'s approach was discarded seven decades ago by the "canonical" decision in *International Shoe Co. v. Washington* (*id.*); indeed, the Supreme Court has stated that decisions relying on *Pennoyer* have been overruled. *Shaffer v. Heitner*, 433 U.S. 186, 212 & n.39 (1977) (holding that "[t]o the extent that prior decisions are inconsistent with [the *International Shoe*] standard, they are overruled"); *see also Daimler*, 571 U.S. at 138 n.18 (cases "decided in the era dominated by *Pennoyer*'s territorial thinking . . . should not attract heavy reliance today"). The compelled consent theory of general jurisdiction cannot be upheld on the basis of that now-rejected doctrine.

Pennoyer held that a tribunal's personal jurisdiction "reache[d] no farther than the geographic bounds of the forum." *Daimler*, 571 U.S. at 125. The theory of "consent" by registration to do business was therefore necessary to subject a foreign corporation to any personal jurisdiction at all.

But *International Shoe* brought about a sea change: "'the relationship among the defendant, the forum, and the litigation . . . became the central concern of the inquiry into personal jurisdiction.'" *Daimler*, 571 U.S. at 126 (quoting *Shaffer*, 433 U.S. at 204). Under *Daimler* and other post-*International Shoe* rulings, a state's assertion of personal jurisdiction "*must* be evaluated according to the standards set forth in *International Shoe* and its progeny." *Shaffer*, 433 U.S. at 212 (emphasis added); *see also Daimler*, 571 U.S. at 138 n.18; Lea Brilmayer et al., *A General Look at General Jurisdiction*, 66 Tex. L. Rev. 721, 758 (1988) (noting that neither pre-*International Shoe* cases addressing general jurisdiction, such as *Pennsylvania Fire*, nor "their underlying theories seem[] viable under today's due process standard").

The outmoded notion that a corporation consents to general jurisdiction simply by registering to do business or designating an agent for service of process violates the due process principles set forth in *International Shoe* and its progeny. As the U.S. Court of Appeals for the Second Circuit has put it, "the holding in *Pennsylvania Fire* cannot be divorced from the outdated jurisprudential assumptions of its era" and "has yielded to the doctrinal refinement reflected in *Goodyear* and *Daimler*." *Brown v. Lockheed Martin Corp.*, 814 F.3d 619, 639 (2d Cir. 2016).

The Court of Appeals concluded that *Daimler* had no impact on the consent rule of *Pennsylvania Fire* because *Daimler* did not "explicitly overrule[]" the earlier

decision. *Rodriguez v. Ford Motor Co.*, 2019-NMCA-023, ¶ 17. But although *Daimler* did not expressly discuss *Pennsylvania Fire*, the general jurisdiction framework that it put in place leaves no room for the kind of compelled-consent rule that *Pennsylvania Fire* recognized. *Daimler* squarely held that even a "substantial, continuous, and systematic course of business" in a State is not a sufficient basis for general jurisdiction over a foreign corporation in that State's courts. 571 U.S. at 138 (internal quotation marks omitted). Yet under a compelled-consent rule, a corporation would be subject to general jurisdiction wherever it does *any* business, since State registration statutes generally require a corporation to register before doing any business in the State. Monestier, *supra*, at 1389. As the U.S. Court of Appeals for the Second Circuit put it, that result would mean that "*Daimler*'s ruling would be robbed of meaning by a back-door thief." *Brown*, 814 F.3d at 640. Thus, *Pennsylvania Fire* cannot be considered good law after *Daimler*. As the Delaware Supreme Court explained, "*Daimler*[] made a major shift in our nation's personal jurisdiction jurisprudence—a shift that undermines the key foundation upon which prior federal cases like . . . *Pennsylvania Fire* relied." *Genuine Parts Co. v. Cepec*, 137 A.3d 123, 133 (Del. 2016).

The Court of Appeals also noted that *Daimler* (and *International Shoe*) "recognized that consent present[s] a distinct avenue for jurisdiction." *Rodriguez*, 2019-NMCA-023, ¶ 17. But the offhand references to "consent" in *Daimler* and

International Shoe reflect nothing more than the uncontroversial principle that a defendant can *voluntarily* consent to personal jurisdiction—for example, by agreeing in a contract to litigate disputes in that State's courts, or by appearing and participating in a particular lawsuit after it has been filed. *See Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 703-04 (1982) (discussing methods of waiving the requirement of personal jurisdiction). Nothing in *Daimler* suggests that in addition to these limited, voluntary forms of consent, the Due Process Clause permits States to *compel* foreign corporations to consent to personal jurisdiction in their courts, and to do so with respect to all claims arising everywhere.

Courts around the country in recent years have acknowledged that subjecting out-of-state corporations to general jurisdiction based on registration to do business would raise due process concerns under *Daimler*—and have therefore construed the relevant state registration statutes not to require consent to general jurisdiction.[4] This Court should do the same and reverse the decision below.

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[4] *See, e.g.*, *Aybar v. Aybar*, 93 N.Y.S.3d 159, 170 (App. Div. 2019); *Waite v. All Acquisition Corp.*, 901 F.3d 1307, 1322 n.5 (11th Cir. 2018); *DeLeon v. BNSF Ry.*, 426 P.3d 1, 9 (Mont. 2018); *Wal-Mart Stores, Inc. v. LeMaire*, 395 P.3d 1116, 1120 (Ariz. Ct. App. 2017); *Aspen Am. Ins. Co. v. Interstate Warehousing, Inc.*, 90 N.E.3d 440, 447 (Ill. 2017); *Dutch Run-Mays Draft, LLC v. Wolf Block, LLP*, 164 A.3d 435, 446 (N.J. App. Div. 2017); *Segregated Account of Ambac Assur. Corp. v. Countrywide Home Loans, Inc.*, 898 N.W.2d 70, 82 (Wis. 2017); *Brown*, 814 F.3d at 640; *Bristol-Myers Squibb Co. v. Superior Court*, 377 P.3d 874, 884 (Cal. 2016), *rev'd on other grounds*, 137 S. Ct. 1773 (2017); *Cepec*, 137 A.3d at 142.

B. The Unconstitutional Conditions Doctrine Forbids States From Requiring Foreign Corporations To Consent To General Personal Jurisdiction.

The Court of Appeals' rule is also unconstitutional because it requires foreign corporations to consent to general jurisdiction as a condition of doing business in New Mexico. That compelled "consent" does not provide a valid basis for jurisdiction.

As noted above, parties may *voluntarily* consent to jurisdiction in a particular forum in a variety of ways—such as by entering into a contract with a forum selection clause, *Nat'l Equip. Rental, Ltd. v. Szukhent*, 375 U.S. 311, 316 (1964), or by appearing voluntarily in court, *Ins. Corp. of Ireland*, 456 U.S. at 703. But although voluntary consent is a permissible basis for personal jurisdiction, the doctrine of "unconstitutional conditions" prohibits jurisdiction based on involuntary, *compelled* consent.

The unconstitutional conditions doctrine holds that a state may not "requir[e] [a] corporation, as a condition precedent to obtaining a permit to do business within [a] State, to surrender a right and privilege secured to it by the Constitution." *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 607 (2013) (quoting *S. Pac. Co. v. Denton*, 146 U.S. 202, 207 (1892)). In *Denton*, for example, the Supreme Court invalidated a Texas law that, as a condition of doing business in Texas, barred a company from exercising its right to remove to federal court a suit filed in state

court. 146 U.S. at 206-07 (citing 1887 Tex. Gen. Laws 116-17). Describing the statute's "attempt to prevent removals" as "vain," the Court concluded that the law "was unconstitutional and void." *Id*. at 207.

Subjecting foreign corporations to general jurisdiction in New Mexico solely on the basis of registration to do business imposes precisely the same kind of unconstitutional choice that the Court held impermissible in *Denton*: an out-of-state company must surrender its federal due process right to avoid general personal jurisdiction in states other than its state of incorporation and principal place of business, or else completely avoid doing business in New Mexico. The Constitution therefore bars New Mexico from invoking the state's registration law as a basis for compelling consent to general jurisdiction. *See, e.g., Siemer v. Learjet Acquisition Corp.*, 966 F.2d 179, 183 (5th Cir. 1992) ("[A] foreign corporation that properly complies with the Texas registration statute only consents to personal jurisdiction where such jurisdiction is constitutionally permissible."); *Wilson v. Humphreys (Cayman) Ltd.*, 916 F.2d 1239, 1245 (7th Cir. 1990) (it would be "constitutionally suspect" to subject a corporation to general jurisdiction as a consequence of registering to do business in the state).

II. Compelled Consent To General Jurisdiction Harms New Mexico Citizens And Companies.

Compelled consent to general jurisdiction is not only unconstitutional but also—if it is upheld by this Court—threatens to have negative consequences for New

Mexico citizens and corporations. Such a rule makes it far less attractive for out-of-state corporations to operate in New Mexico, thereby threatening investment here, and also imposes increased burdens on the State's court system. For both reasons, therefore, the statute imposes serious costs on the State and its citizens.

The due process limits on personal jurisdiction confer "'a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.'" *Burger King Corp.*, 471 U.S. at 472 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)). A corporation's place of incorporation and principal place of business—the jurisdictions in which it is subject to general jurisdiction under *Daimler*—"have the virtue of being unique." *Daimler*, 571 U.S. at 137. "[T]hat is, each ordinarily indicates only one place"—a forum that is "easily ascertainable." *Id.* *Daimler*'s rule thus allows corporations to anticipate that they will be subject to general jurisdiction in only a few (usually one or two) well-defined jurisdictions. This "[p]redictability is valuable to corporations making business and investment decisions." *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010).

The approach to general jurisdiction embodied in the decision below undermines that predictability, making it impossible for corporations to structure their affairs to limit the number of jurisdictions in which they can be haled into court

on any claim by any plaintiff residing anywhere. Many corporations do some amount of business in a large number of states; thus, if merely registering to do business in a forum were deemed sufficient to give rise to general jurisdiction, a corporation could be sued throughout the country on claims arising from anywhere. "Such exorbitant exercises of all-purpose jurisdiction would scarcely permit out-of-state defendants" to structure their affairs to provide some assurance regarding where a claim might be asserted. *Daimler*, 571 U.S. at 139. Indeed, a corporation would be completely unable to predict where any particular claim might be brought.

Because a compelled consent rule, if adopted by this Court, would require companies to face all-purpose liability merely by virtue of doing business in New Mexico, any rational business would have little choice but to weigh carefully the benefits of investing in New Mexico in light of the substantial risk of being sued here on claims arising anywhere in the world. That risk will likely result in the movement of jobs and capital investment away from New Mexico and an aversion to future investment in the State.

For similar reasons, the Delaware Supreme Court—recognizing the importance of investment by out-of-state companies to the citizenry of that State—refused to interpret Delaware's corporate registration statute to compel consent to general jurisdiction there. As that court convincingly explained, "[o]ur citizens benefit from having foreign corporations offer their goods and services here. If the

cost of doing so is that those foreign corporations will be subject to general jurisdiction in Delaware, they rightly may choose not to do so." *Cepec*, 137 A.3d at 142. By contrast, companies that *do* currently operate in New Mexico will be forced to pass on their increased legal costs to New Mexico consumers, increasing the financial burden on New Mexico residents.

Subjecting all foreign corporations registered to do business in New Mexico to general jurisdiction also imposes burdens on the State's court system. It encourages forum-shopping by out-of-state plaintiffs, like plaintiff here, by enabling them to bring cases in New Mexico that lack any connection to the State. New Mexico courts are accordingly less able to deliver speedy justice to plaintiffs—such as New Mexico residents—whose claims are properly brought here.

There are no countervailing benefits to New Mexico from imposing these significant costs on the court system and the State's economy. If a nonresident corporation creates meaningful contacts with New Mexico and its in-state conduct harms a New Mexico resident, it likely may be sued in New Mexico on a specific jurisdiction theory. *See, e.g.*, *Walden v. Fiore*, 571 U.S. 277, 284 (2014). And New Mexico corporations, by virtue of being incorporated here, can already be sued in New Mexico on any cause of action arising anywhere without resort to any compelled consent theory. *See Daimler*, 571 U.S. at 137.

Compelling corporations to "consent" to general jurisdiction is therefore not necessary to ensure that companies that are incorporated in New Mexico or that conduct business here may be held accountable for their conduct *in New Mexico*. Rather, it serves only to consume the resources of the courts of this State in deciding disputes that—like this case—have nothing to do with New Mexico.

CONCLUSION

The decision of the Court of Appeals should be reversed

Respectfully submitted,

BARDACKEA ALLISON LLP

By: _/s/ Benjamin Allison_
Benjamin Allison
141 E. Palace Avenue, 2d Floor
Santa Fe, NM 87501
Telephone: (505) 995-8000
Facsimile: (505) 672-7037
ben@bardackeallison.com

Attorney for Amicus Curiae *The Chamber of Commerce of the United States of America*

CERTIFICATE OF COMPLIANCE

As required by Rule 12-318(G), we certify that the foregoing brief complies with the type-volume limitation of N.M. R. App. P. 12-318(F)(3). According to Microsoft Office Word 2016, the body of this brief, as defined by Rule 12-318 (F)(3), contains 4161 words.

BARDACKE ALLISON LLP

/s/ *Benjamin Allison*
Benjamin Allison

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of August, 2019, a true and correct copy of the foregoing *Consolidated Brief of the Chamber of Commerce of the United States of America as* Amicus Curiae *Supporting Defendant-Petitioner* was served upon all Counsel entitled to receive notice via the Court's e-file and serve system, as more fully described in the Notice of Electronic Filing.

BARDACKE ALLISON LLP

By: */s/ Benjamin Allison*
Benjamin Allison