

**IN THE SUPREME COURT  
FOR THE STATE OF GEORGIA**

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**SUPREME COURT CASE NO. S20C1368**

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**COOPER TIRE & RUBBER COMPANY,**

**Petitioner,**

**v.**

**TYRANCE MCCALL,**

**Respondent.**

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**MOTION FOR LEAVE TO FILE AMICUS BRIEF ON BEHALF OF THE  
GEORGIA DEFENSE LAWYERS ASSOCIATION IN SUPPORT OF  
PETITION FOR WRIT OF CERTIORARI**

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ELISSA B. HAYNES, CHAIR  
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**MOTION FOR LEAVE OF THE COURT**

Pursuant to the Supreme Court of Georgia Rule 23(3), Amicus Curiae the Georgia Defense Lawyers Association (“GDLA”) respectfully requests leave of the Court to file an Amicus Brief in support of Cooper Tire & Rubber Company’s Petition for Writ of Certiorari. The COVID-19 global pandemic prevented the filing of this Amicus Brief within the 10-day window set forth in Rule 23(1). Therefore, pursuant to Rule 23(3) of this Court, the proposed brief is attached hereto as Exhibit 1.

Amicus Curiae shows that the pending Petition is one of great importance to this State and its citizens, especially litigators and the members of the GDLA. In preparing the proposed amicus brief that accompanies this Motion, Amicus Curiae has reviewed the Order of the Court of Appeals, the filings of the Parties, and Petitioner’s Brief in Support of the Petition. The GDLA has endeavored to address issues raised by the Petition without making redundant arguments, as well as to offer a unique perspective on the issues raised by this case.

Therefore, Amicus Curiae respectfully requests that this Honorable Court grant this Motion and permit the filing of the Amicus Curiae Brief that is attached as Exhibit 1.

Respectfully submitted, this 3<sup>rd</sup> day of September, 2020.

[ signature on following page ]

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**AMICUS BRIEF OF THE GEORGIA DEFENSE LAWYERS  
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## I. INTRODUCTION

This case provides the perfect opportunity for this Court to revisit the almost thirty-year-old decision of *Allstate Ins. Co. v. Klein*,<sup>1</sup> which analyzed general personal jurisdiction under the “minimum contacts” standard set forth in *International Shoe, Inc.*<sup>2</sup> Since *International Shoe*, the United States Supreme Court has issued three separate rulings narrowing and clarifying the scope of general personal jurisdiction over foreign corporations. The proper analysis for general jurisdiction is now the “at home” analysis. Georgia should follow suit.

Allowing any corporation to be sued in a Georgia court merely because they are registered in the state is an antiquated practice that should be ended. This Court should grant *certiorari* and give clear direction that Georgia will follow the “at home” test when analyzing general personal jurisdiction. Doing so will protect Georgia and its judiciary from overcrowding, forum shopping, economic hardship, and Fourteenth Amendment due process violations.<sup>3</sup> Sister jurisdictions have already begun amending their personal jurisdiction jurisprudence to align with Supreme Court precedent. Georgia should not remain an outlier—it is not in the state’s interest to be an aberration.

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<sup>1</sup> *Allstate Ins. Co. v. Klein*, 262 Ga. 599 (1992).

<sup>2</sup> *International Shoe Co. v. State of Wash.*, 326 U.S. 310 (1945).

<sup>3</sup> *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 2549 (2017); *Daimler AG v. Bauman*, 571 U.S. 117 (2014).  
*Goodyear Dunlop Tires Ops., S.A. v. Brown*, 564 U.S. 915 (2011).

Ultimately, this Court should mandate that general personal jurisdiction in Georgia can only be conferred over foreign corporations that are considered “at home” in this State, i.e. when Georgia is the corporation’s place of incorporation, principal place of business, or in exceptional cases where the corporation’s contacts are so great with this State that it renders the corporation essentially at home in Georgia.<sup>4</sup>

## II. STATEMENT OF INTEREST

In 1967, the Georgia Defense Lawyers Association (“GDLA”) was founded by a group of civil defense attorneys to create a forum to network, make improvements, and share ideas. Today, among other things, it focuses on advocating and working to improve the justice system by eliminating court congestion and delays in civil litigation, to promote justice, and to increase the quantity and quality of the service and contribution that the legal profession provides the community, State, and nation.

As such, the GDLA is especially well-suited to discuss the importance of the issue currently before this Court and can provide keen insight about its implications for the State of Georgia and its residents.

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<sup>4</sup> *Id.*

Amicus Curiae GDLA respectfully submits this brief in support of Cooper Tire & Rubber Company's Petition for Writ of Certiorari ("the Petition"), requesting that the Court clarify this State's standard for asserting personal jurisdiction over foreign corporations to ensure that Georgia Courts conform with recent United States Supreme Court precedent.

### **III. RESTATEMENT OF THE CASE AND THE PRECEDENT**

#### **A. Relevant Statement of Facts and Procedural Posture.**

GDLA briefly restates the pertinent facts central to the issues in this case. The Petitioner, Cooper Tire & Rubber Company ("Cooper"), is a Delaware Corporation with its principle place of business in Ohio. The Respondent, Mr. Tyrance McCall ("Respondent" or "Mr. McCall"), is a Florida resident, and the accident in question occurred in Florida. Finally, the tires that allegedly failed were manufactured in Arkansas. Yet, under *Klein*, Mr. McCall decided to file his claim in Gwinnett County, Georgia.

The trial court properly granted Cooper's motion to dismiss after determining that there was no personal jurisdiction over Cooper under United States Supreme Court case, *BNSF Ry. Co. v. Tyrrell*. On appeal—and relying exclusively on the interpretation of general personal jurisdiction and the long-arm statute set forth in *Klein*—the Court of Appeals reversed the trial court's judgment, finding that simply

being registered to do business in Georgia was a sufficient basis for personal jurisdiction.

**B. *Allstate Ins. Co. v. Klein*, 262 Ga. 599 (1992).**

The sole case on which the Court of Appeals based its reversal is *Klein*.<sup>5</sup> This decision—issued 28 years ago—has now been rendered obsolete by three subsequent United States Supreme Court decisions. This Court should take this opportunity to reconsider the *Klein* decision and ensure conformity with binding Supreme Court precedent.

As a threshold matter, it is important to note that general personal jurisdiction was not the issue decided in the lower courts in *Klein*. Rather, as the plaintiff filed the action in the state where claim arose, the trial court asserted specific personal jurisdiction over the defendant corporation, Allstate.<sup>6</sup> This Court was the first in that case to determine that general personal jurisdiction existed due to Allstate’s registration to transact business in Georgia and under the definition of a nonresident pursuant to O.C.G.A. § 9–10–90.<sup>7</sup>

When this Court issued its ruling in *Klein*, it applied the “minimum contacts” standard to general personal jurisdiction in a footnote to the main decision.<sup>8</sup> Under

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<sup>5</sup> *Allstate Ins. Co. v. Klein*, 262 Ga. 599 (1992).

<sup>6</sup> *Id.* at 600.

<sup>7</sup> *Id.* at 600-601.

<sup>8</sup> *International Shoe Co. v. State of Wash.*, 326 U.S. 310, 316 (1945)

this standard, the controlling question was whether the corporation had “certain minimum contacts with [the state] such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’”<sup>9</sup> Without distinguishing between specific and personal jurisdiction—and because the action was filed in the state where the claim arose—this Court found that registration in Georgia was sufficient to satisfy the “minimum contacts” test under then applicable Supreme Court precedent and the action could proceed in this state.<sup>10</sup>

In three subsequent decisions, the United States Supreme Court reformed the controlling test for general personal jurisdiction. The Supreme Court clarified that the “minimum contacts” standard only applied to specific jurisdiction and the “at home” standard governed general jurisdiction.<sup>11</sup> Pursuant to this controlling standard, merely registering to transact business in a state is insufficient to subject a corporation to unrelated lawsuits in that state. This proposition is soundly supported by law and policy. As will be described in further detail below, this Court should use the Petition to review the decision in *Klein* and adopt the appropriate standard for general personal jurisdiction.

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Goodyear Dunlop Tires Ops., S.A. v. Brown*, 564 U.S. 915, 924 (2011) (“the paradigm forum for the exercise of general jurisdiction is the individual’s domicile; for a corporation, it is an equivalent place, one in which the corporation is fairly regarded as at home”); *see also BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 2549 (2017); *Daimler AG v. Bauman*, 571 U.S. 117 (2014).

#### IV. ARGUMENT AND CITATION OF AUTHORITY

##### A. Georgia's Long Arm Jurisprudence is now Unconstitutional.

###### 1. Due Process Violations.

The underlying facts in the Petition accentuate the injustice of modern application of *Klein*. A *Florida* resident, purportedly injured in an automobile accident in *Florida* as a result of tires constructed in *Arkansas* by a *Delaware* company headquartered in *Ohio*, sues the tire company in *Georgia*. This Petition is a perfect vehicle for this Court to abolish the outdated “minimum contacts” standard and to align our laws with Supreme Court precedent.

The implications of this Petition on the constitution right of due process are thoroughly addressed in Petitioner's brief and Amicus Curiae will not repeat those arguments herein. However, due process was only tangentially discussed in *Klein* and recent cases before the Court of Appeals—i.e. *Ward v. Marriott International, Inc.*<sup>12</sup>, which is discussed in detail below. Indeed, in most cases the Court of Appeals is forced to explicitly disregard the issues of due process as not properly raised at the trial court level.<sup>13</sup> And in *Klein*, this Court opined that the due process implications did not require complete consideration as the constitutionality of the definition of a “nonresident” was not challenged.<sup>14</sup> This Court in *Klein* merely noted

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<sup>12</sup> See, e.g., *Ward v. Marriott International, Inc.*, 352 Ga. App. 488 (2019).

<sup>13</sup> *Ward*, 352 Ga. App. 488, n. 3 (2019).

<sup>14</sup> *Klein*, 262 Ga. 599, n. 3 (1992).

that the definition “appeared” to fall in line with the “minimum contacts” standard.<sup>15</sup> Because the basis for this decision has been specifically reformed by the United States Supreme Court, this Court should revisit the *Klein* decision pursuant to the updated constitutional interpretation.

The Petition before this Court presents the perfect opportunity for such a review. Unlike *Klein* and recent petitions to this Court, the implications on due process have been explicitly briefed, preserved, and raised in the instant Petition. Accordingly, this Court should grant the writ of certiorari, address the novel issues presented by the Petition, and align Georgia law with that of the United States.

## 2. Under *Klein*, Georgia Law is an Unconstitutional Outlier.

The ruling of the United States Supreme Court in *BNSF Ry. Co. v. Tyrrell* specifically limited an individual state’s ability to confer general jurisdiction over foreign corporations.<sup>16</sup> This decision—paired with those in *Goodyear* and *Daimler*—is a clear instance of the Supreme Court performing its function of guardian and interpreter of the Constitution. When such an interpretation is made, it is the duty of the states to follow the supreme law of the land. Under the current precedent of this State, Georgia is advancing jurisprudence specifically found to be unconstitutional.

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<sup>15</sup> *Id.*

<sup>16</sup> *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 149, 1552-53 (2017).

Georgia should follow the trend of eight sister states and four federal circuit courts and update the State's precedent according to the recent constitutional interpretation. Otherwise, Georgia will continue to be a forum for "jackpot justice" as the remainder of jurisdictions abolish out-of-date precedent. Indeed, each of the eight state supreme courts that have taken up this issue have affirmatively aligned with the United States Supreme Court: the Alabama Supreme Court, the California Supreme Court, the Delaware Supreme Court, the Illinois Supreme Court, the Missouri Supreme Court, the Montana Supreme Court, the Nebraska Supreme Court, and the Wisconsin Supreme Court.<sup>17</sup> Similarly, circuit and district courts in the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 9<sup>th</sup>, and 11<sup>th</sup> circuits have also ruled that mere registration is insufficient under the new Supreme Court opinions.<sup>18</sup> Georgia should follow the lead

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<sup>17</sup>*Lanham v. BNSF Ry. Co.*, 305 Neb. 124, 134 (2020); *Facebook, Inc. v. K.G.S.*, No. 1170244, 2019 WL 2710235, \*7-8 (Ala. June 28, 2019), *cert. denied*, No. 19-910, 2020 WL 2105265 (U.S. May 4, 2020); *DeLeon v. BNSF Railway Co.*, 426 P.3d 1, 8 (Mont. 2018); *Aspen Am. Ins. Co. v. Interstate Warehousing, Inc.*, 90 N.E.3d 440, 446-48 (Ill. 2017); *State ex rel. Bayer Corp. v. Moriarty*, 536 S.W.3d 227, 232-33 (Mo. 2017); *State ex rel. Norfolk S. Ry. Co. v. Dolan*, 512 S.W.3d 41, 51 (Mo. 2017); *Genuine Parts Co. v. Cepec*, 137 A.3d 123, 127 (Del. 2016); *10 Bristol-Myers Squibb Co. v. Super. Ct.*, 377 P.3d 874, 884 (Cal. 2016); *Segregated Account of Ambac Assurance Corp. v. Countrywide Home Loans, Inc.*, 376 Wis. 2d 528, 546 (2017).

<sup>18</sup>*Orafol Americas, Inc. v. DBi Servs., LLC*, No. 1:16-CV-3516-SCJ, Case S20C1368 Filed 06/22/2020 Page 20 of 39 9074074.3 20 2017 WL 3473217 (N.D. Ga. July 20, 2017); *Hinkle v. Cirrus Design Corp.*, 775 Fed. Appx. 545, 550-51 (11th Cir. 2019); *Cook v. Montanez*, No. CV 619-109, 2020 WL 2449346, \*1-3 (S.D. Ga. May 15, 2020); *Brown v. Ford Motor Co.*, No. 3:18-CV-127-TCB, 2018 WL 5858123, \*2 (N.D. Ga. Nov. 9, 2018); *Fidrych v. Marriott Intl., Inc.*, 952 F.3d 124, 134-36 (4th Cir. 2020); *AM Trust v. UBS AG*, 681 Fed. Appx. 587, 588- 89 (9th Cir. 2017); *Brown v. Lockheed Martin Corp.*, 814 F.3d 619, 640 (2nd Cir. 2016); *Reynolds v. Turning Point Holding Co., LLC*, No. 2:19-CV-01935-JDW, 2020 WL 953279, \*4-5 (E.D. Pa. Feb. 26, 2020); *Howe v. Samsung Elec. Am., Inc.*, No. 1:16CV386-RH/GRJ, 2018 WL 2212982, \*5 (N.D. Fla. Jan. 5, 2018); *Gulf Coast Bank v. Designed Conveyor Sys., LLC*, No. CV 16-412-JJB-RLB, 2017 WL 120645, \*4 (M.D. La. Jan. 12, 2017); *Display Works, LLC v. Bartley*, 182 F. Supp. 3d 166, 179 (D.N.J. 2016); *U.S. ex rel. Imco General Constr., Inc. v. Insur. Co. of Penn.*, No. C14-0752RSL, 2014 WL 4364854, \*3 (W.D. Wash. Sept. 3, 2014).

of our neighboring states, the states across the county, and the federal courts to protect the United States Constitution. For this reason, and for each of the reasons advanced in the sections herein, this is simply not an instance where being an outlier jurisdiction confers any benefit to our State, and Georgia should revisit *Klein* to align our State with the United States Constitution

**B. The Petition is the Appropriate Vessel for this Alignment.**

As briefly addressed above, the Petition presents a procedurally unique opportunity to ensure that Georgia law conforms with recent Supreme Court decisions. This opportunity was tangentially presented to this Court in a recently refused Petition for Writ of Certiorari in the case of *Ward*. However, the *Ward* Petition was understandably denied. The *Ward* Petition presented a completely distinct issue to this Court and touted a complex fact pattern that far exceeds the issues in the Petition at bar. The denial of the writ in *Ward* does not indicate denial here, but rather highlights the opportune fact pattern presented herein.

In *Ward*, the plaintiff brought suit against Marriott International, Inc. (“Marriott”) for injuries sustained by her husband at one of the Marriott’s locations in Dallas, Texas.<sup>19</sup> Marriott is a Delaware corporation with its principal place of business in Maryland.<sup>20</sup> The *Ward* plaintiff—a Georgia resident—served Marriott’s

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<sup>19</sup> *Id.*

<sup>20</sup> *Ward v. Marriott Int’l, Inc.*, 2019 GA App. Ct. Briefs LEXIS 190, at 26.

registered agent in Georgia, asserting proper jurisdiction over Marriott under the *Klein* precedent.<sup>21</sup> Marriott accepted service but failed to file an answer until nineteen (19) days after the allotted grace period to avoid a default judgment.<sup>22</sup> In an attempt to avoid default, Marriott submitted multiple documents to the trial court, including a motion to dismiss for lack of personal jurisdiction.<sup>23</sup> The trial court granted the motion to dismiss and denied the motion for a default judgment.<sup>24</sup>

Importantly, the pertinent issue presented by *Ward* was entirely distinct from the issue presented to this Court in the current Petition. In *Ward*, the Court of Appeals asked, “can a foreign corporation registered and authorized to do business in Georgia avoid default by filing a motion to dismiss for lack of personal jurisdiction after its time to open default as a matter of right has passed?”<sup>25</sup> The Court of Appeals determined that Marriott could not assert lack of personal jurisdiction because they did not file a motion to open default.

Thus, the fact pattern in *Ward* procedurally barred the question of whether Marriott, a foreign corporation, could be sued in Georgia. Even assuming, *arguendo*, that Marriott was not in default in *Ward*, the implications of due process that permeate the current Petition were not even raised until the appellate level. In

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<sup>21</sup> *Ward v. Marriott Int’l, Inc.*, 2018 GA App. Ct. Briefs LEXIS 1483, at 2.

<sup>22</sup> *Ward v. Marriott Int’l, Inc.*, 352 Ga. App. 488, 490 (2019).

<sup>23</sup> *Id.* at 491.

<sup>24</sup> *Id.* at 489.

<sup>25</sup> *Id.*

stark contrast to *Ward*, the Petition at hand presents a clean fact pattern wherein the claims as to Cooper have no connection with the State of Georgia. Moreover, the dramatic implications on due process that were not fully explored in *Klein* have been extensively briefed by the parties in this case and thus are squarely before this Court.

### **C. Public Policy Demands that *Klein* be Overturned.**

#### **1. Overcrowding of Georgia Courts and Undue Expense**

Allowing the Court of Appeals' decision in this case to stand will fundamentally subject Georgia courts to overcrowding and massive undue expense, which will only increase exponentially as other states rapidly adhere to recent United States Supreme Court interpretations of the United States Constitution. Until such a change is enacted in our judiciary, plaintiffs will flock to the Georgia courts regardless of whether the underlying claim or parties have any connection to our State.

An overcrowded court has been equated to cars entering the freeway. The first car to enter has no issues merging. However, it is the second, third, and following cars that will all enter more slowly, thus creating issues. This will cause traffic jams, accidents, and ultimately will dissuade local drivers from ever utilizing the freeway despite it oftentimes being their best option for arriving at their destination.<sup>26</sup> An

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<sup>26</sup>Bruce L. Hay, Christopher Rendall-Jackson & David Rosenberg, *Litigating BP's Contribution Claims in Publicly Subsidized Courts: Should Contracting Parties Pay Their Own Way?* 64 Vand. L. Rev. 1919, 1931 (2011).

overcrowded docket “(1) [imposes] a direct cost to litigants by decreasing the time value of litigation; and (2) [imposes] an indirect cost to litigants by undermining the deterrence effect and other social benefits of civil liability.”<sup>27</sup>

The case at hand involves a non-resident plaintiff who was involved in an accident in his home state of Florida. The claims as to Cooper have no relation to the state of Georgia. The only semblance of a connection to this State is the fact that Cooper is registered to transact business in Georgia. This lawsuit is a perfect example of a case that acts as a needless traffic jam in the Georgia courts. Allowing the decision of the Court of Appeals to stand will send a clear message to litigants nationwide that any business is subject to suit in Georgia simply if it is registered to do business here. This will result in cases that have no benefit to Georgia citizens—and indeed concern no Georgia citizens—flooding our courthouses and inevitably hampering lawsuits that do concern this State and our citizens. If even one Georgia citizen’s right to the courts is impeded as a result of this decision of the Court of Appeals, a grave disservice to justice will have been performed.

Ancillary to judicial overcrowding are the negative economic implications that are too great to ignore. Allowing literally anyone to bring suit in this State against a company registered to transact business in Georgia will deeply impact to

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<sup>27</sup> *Id.* at 1931-32.

Georgia taxpayers and businesses. An influx of lawsuits will necessitate taxpayer dollars being redirected in order to fund the system for claims that have no bearing on our state. Moreover, savvy business owners and corporate lawyers will certainly reconsider registering their businesses in Georgia, knowing full well that they may be hauled into court in Georgia even if they never make a single sale in this state. This hesitancy to conduct business in Georgia will naturally impact interstate commerce and the Georgia economy, but will also limit Georgia citizens to the access of goods that will be available in other states. There is simply no benefit from this ruling that can outweigh these costs.

## 2. Forum Shopping.

The ruling in *Klein*, extended to the ruling in this case, encourages forum shopping—there is not a more apt example than the case at bar. Georgia’s seat belt law was undoubtably the motivating factor in Respondent filing suit in this state. No other connection to Georgia exists, and Georgia’s seat belt law is a clear outlier that is significantly more friendly to Respondent than the equivalent laws of other states. While choice of venue is a plaintiff’s right, limits must exist to conform with constitutional due process. For example, a plaintiff can sue a company in the place where the corporation is incorporated, where the corporation holds its principal place of business, where the action arose so long as defendant’s contacts with the state are sufficiently related to the incident, or in exceptional cases where the corporation has

extensive contacts with a jurisdiction so it can be deemed “at home” in that state.<sup>28</sup> Each of the above-mentioned venues are all valid fora in which a plaintiff could file suit, as the corporation is naturally benefiting from those states.

But forum shopping becomes unacceptable when the plaintiff is unfairly seeking an advantage to their case, to the detriment of the defendant. With registration being the only prerequisite for liability in a state, a corporation can be subject to suit in a state where they have no contacts and have never once sold—and never may sell—a product. Under the current interpretation, Georgia is one of the only states where a plaintiff can haul a company into court without that company ever benefiting from or conferring a benefit onto our State.

## **V. CONCLUSION**

Georgia is constitutionally obligated to align its general personal jurisdiction jurisprudence with the acceptable limits of the U.S. Constitution—there is no benefit to Georgians to remaining an outlier state. Further, businesses should not fear being haled into court in Georgia for events that have no connection to this state. Georgia courts should be reserved for cases and issues that actually impact Georgia’s citizens. This Court should grant *certiorari* to overturn precedent that is no longer applicable and has been specifically repudiated by the United States Supreme Court.

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<sup>28</sup> See *Supra*, n. 3.

Respectfully submitted, this 3<sup>rd</sup> day of September, 2020.

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