

## Members Should Oppose S7078 / A9576

### The Bill Is An Unconstitutional Attempt To Overturn The U.S. Supreme Court's Decision in *Daimler v. Bauman* And Deny Fundamental Due Process Protections To Businesses Operating in New York

S7078—currently pending in the State Senate, and recently passed by the State Assembly as A9576—is an effort to reverse the U.S. Supreme Court's holding in *Daimler v. Bauman* and to deprive businesses operating in New York of protections conferred by the federal Constitution.

**S7078 is an unconstitutional and dangerous proposal.** If passed, it will deter investment in this State, will impose massive administrative waste on companies operating here, and provided a model that—if adopted by other States—will significantly injure New York-based businesses. Ultimately, S7078 will be struck down as a flagrant disregard of the U.S. Constitution.

- **Personal jurisdiction—the subject of this legislation—defines the scope of a court's power to hear and decide a claim against a particular defendant.**
  - There are two kinds of personal jurisdiction. Specific jurisdiction empowers a New York court to adjudicate claims relating to the defendant's conduct that occurs *in New York*. General jurisdiction permits a New York court to adjudicate claims against a defendant relating to any conduct *anywhere in the world*.<sup>1</sup>
- **The Due Process Clause of the U.S. Constitution limits the scope of personal jurisdiction a court may exercise.** Subjecting a defendant to jurisdiction may not offend “traditional notions of fair play and substantial justice.”
- **In January 2014, the U.S. Supreme Court ruled in *Daimler AG v. Bauman* that general jurisdiction is lawful *only* in a corporation's place of incorporation and its principal place of business, absent exceptional circumstances.** Standards providing for broader general jurisdiction, the Court said, are “unacceptably grasping.” The Court, with Justice Ginsburg writing the opinion, explained the fundamental unfairness associated with a broader rule: “exorbitant exercises of all-purpose jurisdiction would scarcely permit out-of-state defendants ‘to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.’”<sup>2</sup>
- S7078 would override the constitutional protection against expansive general jurisdiction just recognized by the Supreme Court in the *Daimler* decision.
  - **S7078 provides that any company authorized to do business in this State has “consented” to general jurisdiction in New York courts.** Because hundreds of thousands of non-New York companies are authorized to do business in New York, S7078 would transform the New York judiciary into global courts.
  - **S7078 does not protect New York residents.** It has always been, and always will be, the case that an out-of-state company doing business here can be sued in New York courts

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<sup>1</sup> See *Goodyear Dunlop Tires Ops., S.A. v. Brown*, 131 S. Ct. 2846, 2850 (2011).

<sup>2</sup> *Daimler AG v. Bauman*, 134 S. Ct. 746, 760-762 (2014).

for the business's conduct occurring *in New York*. This legislation does not alter this fundamental rule of *specific* jurisdiction.

- **Instead, S7078 aids *non-New-York* plaintiffs who are court-shopping.** Because S7078 is designed to authorize jurisdiction over a defendant's conduct anywhere, its real effect is to permit New York courts to adjudicate claims that have nothing to do with New York. Often, such claims have nothing at all to do with the United States.
- **The implications of general jurisdiction are extraordinary.** To take one example, Ford Motor Company is registered to do business in New York. If S7078 passes, someone who slips and falls on a wet floor in Ford's Dearborn, Michigan, headquarters could bring suit *in New York*. Likewise, a Chinese citizen, who claims that a defective Ford car injured him in China, could sue Ford *in New York*. Under S7078, any claim against Ford, regardless of where in the world it arose, could be brought in a New York court.
- **S7078 is expressly designed to overturn *Daimler* in New York.**
- **The report accompanying the legislation acknowledges that, because *Daimler* is a constitutional decision, New York cannot *directly* controvert it.** Instead, S7078 is designed to indirectly undermine the decision by requiring that a company "consent," as "a condition to doing business in New York," to general jurisdiction in this State.
- **S7078 cannot be justified on the ground that it "preserves pre-*Daimler* law."**
  - *First*, although many lower courts had permitted general jurisdiction in a broader range of situations than is lawful under the Supreme Court's *Daimler* decision, the Supreme Court had not addressed the matter. Now that the Supreme Court has spoken, it is clear that those pre-*Daimler* decisions were wrong. S7078 attempts to preserve those erroneous rulings.
  - *Second*, the jurisdiction-by-consent decisions on which the bill's proponents rely suffer from the same flaw. The factual circumstances in which registration was required – and therefore consent was obtained – resembled the factual circumstances in which general jurisdiction was permissible under the erroneous, pre-*Daimler* decisions. Now that the Supreme Court has clarified that general jurisdiction is *not* permissible in those circumstances, this argument too is simply an effort to preserve erroneous, pre-*Daimler* law.
- **S7078 is flatly unconstitutional.** Under the "unconstitutional conditions" doctrine, "the government may not deny a benefit to a person because he exercises a constitutional right."<sup>3</sup>
- **New York cannot condition the right to transact business in this State on a corporation's "voluntary" surrendering of its constitutional rights.** The U.S. Supreme Court has long recognized that a state may not "requir[e] [a] corporation, as a condition precedent to obtaining a permit to do business within the state, to surrender a right and

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<sup>3</sup> *Koontz v. St. Johns River Water Mgmt. Dist.*, 133 S. Ct. 2586, 2594 (2013) (quoting *Regan v. Taxation With Representation of Wash.*, 461 U.S. 540, 545 (1983)).

privilege secured to it by the constitution and laws of the United States.”<sup>4</sup> Over 120 years ago, in *Southern Pacific Co v. Denton*, the Supreme Court invalidated a Texas law that, as a condition to do business in Texas, forbid a company from removing a suit filed in state court to federal court.<sup>5</sup> That same analysis controls here: New York cannot condition the right to do business in this state on a corporation’s consent to waive its rights secured by the due process clauses of the U.S. Constitution.

- The bill’s supporters point to *Bagdon v. Philadelphia & Reading Coal & Iron Co.*, 217 N.Y. 432 (1916), and its progeny, for the contention that this kind of forced consent has a long history. But this misses the critical point: *Daimler* significantly restricted the circumstances in which general jurisdiction is available. Prior to *Daimler*, a corporation’s registration to do business in New York may in many circumstances have been sufficient to establish general jurisdiction under then-prevailing law. By expanding the scope of constitutional protection, *Daimler* reduced the kinds of conditions the State may impose on a corporation.
- **S7078 will have swift and severe negative repercussions for New York.**
  - **Defense of S7078 is futile.** Because S7078 is blatantly unconstitutional, passage of the Act will invite legal challenges that will mire the State in prolonged and expensive litigation that the State cannot reasonably hope to win. And federal law requires the State to pay the attorneys’ fees of those who successfully sue.
  - **S7078 provides an incentive not to do business in New York.** As the report accompanying the legislation makes clear, in order to avoid being subject to worldwide jurisdiction, companies may “surrender their authority to do business in New York at any time.” Such a result, during this time of economic recovery, would be devastating.
  - **S7078 will increase transaction costs for non-New York companies that conduct business in this State.** Even if upheld as constitutional, S7078 will have limited effect—companies will respond by deregistering parent companies from New York, and then will conduct all business via a specific New York subsidiary. This inevitable result, which brings no benefit to New York, is economic waste.
- **S7078 will affirmatively injure New York businesses that operate in other states.**
  - S7078 sets an extremely dangerous precedent. Because New York’s business laws are often a model across the country, enacting this legislation will encourage other states – like California, Illinois, Florida, and others—to do the same. The inevitable result would be that New York-domiciled companies authorized to do business in those states would necessarily become subject to *general* jurisdiction in multiple forums across the country, creating substantial cost and risk for New York’s businesses.

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<sup>4</sup> *Id.* at 2596 (quoting *Southern Pac. Co. v. Denton*, 146 U.S. 202, 207 (1892)).

<sup>5</sup> *Southern Pac.*, 146 U.S. at 207.