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U.S. Supreme Court Upholds Law Requiring Companies Registered To Do Business In Pennsylvania To Consent To Suit There

Supreme Court Holds that the Due Process Clause Permits States To Require Corporations To Consent to General Personal Jurisdiction as a Condition of Registering To Do Business in the State

SUMMARY

On June 27, 2023, the U.S. Supreme Court voted 5-4 in *Mallory v. Norfolk Southern Railway Co.* to uphold a Pennsylvania law that requires out-of-state corporations that register to do business in Pennsylvania to consent to be sued there in any case—including cases that did not arise out of conduct in Pennsylvania.¹ The Court reversed the Pennsylvania Supreme Court's decision, which held that Pennsylvania's law violated the Due Process Clause of the U.S. Constitution and impermissibly compelled out-of-state corporations to submit to personal jurisdiction.² The Court's decision opens the door for other States to enact and apply similar laws to effectively exercise general jurisdiction over corporations that register to do business and conduct extensive activities within the State. The Court did not decide, however, whether such laws might violate other provisions of the Constitution.

BACKGROUND

Robert Mallory worked for Norfolk Southern as a freight-car mechanic in Ohio and Virginia. After Mallory retired, he was diagnosed with cancer. Mallory then brought a workers' compensation claim under the Federal Employers' Liability Act against his former employer in Pennsylvania state court, seeking damages for alleged workplace negligence that exposed him to carcinogens.

At the time Mallory filed his complaint, Norfolk Southern was incorporated and headquartered in Virginia, and Mallory also lived in Virginia. Mallory had worked for Norfolk Southern only in Ohio and Virginia, and

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his complaint alleged exposure to carcinogens only in Ohio and Virginia. Norfolk Southern argued that on those facts, the Pennsylvania state court's exercise of personal jurisdiction over it would violate the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution.³

A Pennsylvania statute, however, requires out-of-state companies that register to do business in Pennsylvania to consent to the Commonwealth's exercise of general personal jurisdiction. The statute provides that a registered out-of-state corporation must appear in Pennsylvania courts in response to "any cause of action," not only in suits that arise out of the corporation's contacts with Pennsylvania.⁴ Norfolk Southern had been registered to do business in Pennsylvania since 1998. Mallory thus argued that the Pennsylvania court had personal jurisdiction over Norfolk Southern.

The Pennsylvania Supreme Court ruled for Norfolk Southern. The court held that Pennsylvania's law violated the Due Process Clause under the U.S. Supreme Court's personal-jurisdiction precedents.⁵

THE SUPREME COURT'S DECISION

The U.S. Supreme Court vacated the Pennsylvania Supreme Court's decision and held that the Due Process Clause permits States to pass laws requiring out-of-state corporations to consent to general personal jurisdiction as a condition of registering to do business in the State.

In an opinion authored by Justice Gorsuch, and joined in relevant part by Justices Thomas, Alito, Sotomayor, and Jackson, the Court held that the case was controlled by *Pennsylvania Fire Ins. Co. of Philadelphia v. Gold Issue Mining & Milling Co.*,⁶ a 1917 decision that upheld a Missouri law similar to Pennsylvania's.⁷ The dispute in *Pennsylvania Fire* arose out of events that took place in Colorado and pitted a Pennsylvania and Arizona corporation against each other. The Court concluded that its facts were analogous to *Mallory*, where the cause of action arose out of events that took place in Virginia and Ohio between a Virginia resident and a Virginia corporation.

Writing for only a plurality (not joined by Justice Alito), Justice Gorsuch also responded to Norfolk Southern's argument that the Court's decision in *International Shoe Co. v. Washington*⁸ had effectively overruled *Pennsylvania Fire*. Since *International Shoe*, the Court has identified two categories of personal jurisdiction: "specific jurisdiction," which permits suits that "arise out of or relate to" a corporate defendant's activities in the forum State, and "general jurisdiction," which permits any suit against a corporation but only in the States where the corporation is incorporated or has its principal place of business.⁹ The plurality explained that *International Shoe*'s two categories of personal jurisdiction are relevant only for out-of-state defendants that have *not* consented to in-state suits. In the plurality's view, *International Shoe* did not disturb *Pennsylvania Fire*'s holding that an out-of-state corporation that *has* consented to in-state suits as a condition of registering to do business in a particular State may be sued there.

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Finally, the plurality opinion concluded that Pennsylvania's exercise of personal jurisdiction here was consistent with conceptions of "fair play and substantial justice" in light of Norfolk Southern's extensive activities in Pennsylvania for over 20 years.¹⁰ Norfolk Southern, for example, employed nearly 5,000 people in Pennsylvania, and maintained over 2,000 miles of track there.¹¹

In a separate concurring opinion not joined by any other Justice, Justice Alito agreed that *Pennsylvania Fire* controlled, but emphasized that his conclusion was "due to the clear overlap" between the facts of the two cases.¹² Justice Alito further agreed with the plurality that *Pennsylvania Fire* survived *International Shoe*, which governs only suits where the defendant has not consented to jurisdiction.¹³ He also explained that the company's "extensive operations" in Pennsylvania and its past suits in Pennsylvania courts made Mallory's suit in Pennsylvania "not so deeply unfair that it violates the railroad's constitutional right to due process."¹⁴ After concluding that Pennsylvania's law did not violate the Due Process Clause, however, Justice Alito wrote that consent laws like Pennsylvania's may violate another provision of the Constitution. He explained that there is "reason to believe that Pennsylvania's registration-based jurisdiction law discriminates against out-of-state companies" in violation of the Dormant Commerce Clause.¹⁵ Norfolk Southern will be free to raise a Dormant Commerce Clause challenge to the law before the Pennsylvania Supreme Court on remand, as the majority opinion noted in a footnote.¹⁶

In a dissenting opinion joined by Chief Justice Roberts, Justice Kagan, and Justice Kavanaugh, Justice Barrett wrote that the majority's approach will allow States to "manufacture 'consent' to personal jurisdiction" in a way that is inconsistent with the Court's precedents on both general and specific jurisdiction.¹⁷ The dissent did not expressly address the Dormant Commerce Clause, but it asserted that Pennsylvania's law "infringes on the sovereignty of its sister States."¹⁸

IMPLICATIONS

As an immediate consequence of the decision, corporations registered to do business in Pennsylvania with "extensive activities" there are now subject to suit in Pennsylvania courts, including for conduct entirely unrelated to Pennsylvania. According to the parties, no other State currently has a law like Pennsylvania's on the books.¹⁹ But all States currently require companies to register with the State in order to do business there.²⁰ Georgia has interpreted its registration law to subject out-of-state companies to general jurisdiction.²¹ And other States, by legislation or judicial interpretation, may similarly say that corporations registered to do business in the State will be subject to general jurisdiction there.

Mallory will mean that, in Pennsylvania and potentially elsewhere, plaintiffs will attempt to engage in greater forum shopping. Plaintiffs suing corporations that are registered to do business in several States may choose to bring their suits in the most favorable jurisdiction available under the governing substantive law, not where the corporation is based or where the facts of the suit arose. Plaintiffs should still have to show,

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however, that the defendant's activities in the forum state are "extensive" and that it would not be "deeply unfair" to subject the defendant to general jurisdiction there.²²

Mallory also leaves open whether laws like Pennsylvania's violate the Dormant Commerce Clause. Justice Alito provided the crucial fifth vote for the *Mallory* majority and wrote that the law was likely unconstitutional on Dormant Commerce Clause grounds. Justice Alito's opinion, combined with the dissent's assertion that Pennsylvania's law offends the sovereignty of other States, allows for the possibility that a majority of the Court could strike down a law like Pennsylvania's on Dormant Commerce Clause grounds in a future case.

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ENDNOTES

- 1 600 U.S. ____, 2023 WL 4187749 (2023).
- 2 266 A.3d 542 (Pa. 2021).
- 3 U.S. Const. amend. XIV.
- 4 42 Pa. Cons. Stat. § 5301(a)(2)(i), (b) (2019).
- 5 *Mallory*, 266 A.3d at 565.
- 6 243 U.S. 93 (1917).
- 7 Slip op. at 8-11 (majority opinion); *id.* at 24 (plurality opinion).
- 8 326 U.S. 310 (1945).
- 9 *See Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014).
- 10 Slip op. at 20 (plurality opinion).
- 11 *Id.*
- 12 Slip op. at 5 (Alito, J., concurring in part and concurring in the judgment).
- 13 *Id.* at 4.
- 14 *Id.* at 4-5.
- 15 *Id.* at 12.
- 16 *Id.* at 4 n.3 (majority opinion).
- 17 Slip op. at 1 (Barrett, J., dissenting).
- 18 *Id.* at 7.
- 19 Tr. of Oral Arg. at 47. The Missouri Supreme Court revisited the law at issue in *Pennsylvania Fire* and no longer interprets its registration statute to constitute consent to general jurisdiction. *See State ex rel. Norfolk Southern R. Co. v. Dolan*, 512 S.W.3d 41, 52-53 & n.11 (Mo. 2017).
- 20 Slip op. at 1 (Barrett, J., dissenting).
- 21 *Cooper Tire & Rubber Co. v. McCall*, 863 S.E.2d 81, 92 (2021).
- 22 Slip op. at 4-5 (Alito, J., concurring in part and concurring in the judgment).

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