

Welcome to Pennsylvania? U.S. Supreme Court Upholds Consent-to-Jurisdiction-By-Registration Law

The Bottom Line

- The U.S. Supreme Court upheld a Pennsylvania statute that requires out-of-state corporations to consent to personal jurisdiction there for any lawsuit as a condition of doing business in the state.
- The decision may prompt other states to adopt similar regimes and has the potential of broadening personal jurisdiction over out-of-state companies even when the allegations in a lawsuit lack a nexus to the state.
- While the decision upholds Pennsylvania's consent-by-registration statute for now, Justice Alito's concurring opinion suggests the statute may be vulnerable to a constitutional challenge under the Dormant Commerce Clause on remand.

On June 27, 2023, the U.S. Supreme Court issued a highly anticipated decision in [Mallory v. Norfolk Southern Railway Co.](#) concerning a state court's power to exercise jurisdiction over an out-of-state company in a dispute arising outside the state. In a fractured decision, the Court upheld the constitutionality of Pennsylvania's consent-by-registration statute, which requires a company to consent to the general jurisdiction of Pennsylvania courts for all lawsuits, regardless of where the dispute arose, as a condition of doing business in the state.

What Does This Mean?

The immediate implication of the Court's decision is that out-of-state corporations that have registered to do business in Pennsylvania have consented to general jurisdiction and may be subject to suit there on *any* claim. In light of this decision, companies should consider where they are registered to do business as an out-of-state corporation and understand whether those states have registration regimes that make them susceptible to the exercise of personal jurisdiction in that state.

The jurisdictional issue, however, may not be settled. In his concurring opinion, Justice Alito hinted that a consent-by-registration statute could be attacked under a different provision of the Constitution: the Dormant Commerce Clause. Justice Alito explained that Pennsylvania's consent-by-registration statute may violate that Clause

because of the burdens it may impose on interstate commerce without a legitimate local interest. Since the appellant Norfolk Southern had not challenged the validity of the statute under the Commerce Clause, however, the Court did not issue an opinion on that issue.

Background

Norfolk Southern is incorporated and has its principal place of business in Virginia. Robert Mallory previously worked for Norfolk Southern in Virginia and Ohio, but sued his former employer in Pennsylvania state court for alleged workplace injuries sustained in Virginia and Ohio. Mallory argued that the Pennsylvania courts had jurisdiction over Norfolk Southern because the company registered to do business in Pennsylvania under a statute that requires corporations to submit to general jurisdiction in the state.

Norfolk Southern moved to dismiss Mallory's complaint on the ground that the Pennsylvania court lacked jurisdiction over the company because the company is based in Virginia and Mallory's suit had no connection to Pennsylvania. Norfolk Southern argued that any effort by a Pennsylvania court to exercise personal jurisdiction over it under these circumstances would violate the Due Process Clause of the U.S. Constitution's Fourteenth Amendment.

The Pennsylvania Supreme Court agreed with Norfolk Southern.

The Decision

The U.S. Supreme Court disagreed, relying on a century-old precedent from another U.S. Supreme Court case, *Pennsylvania Fire*, which upheld the constitutionality of an analogous "consent-by-registration" statute. The Court held that *Pennsylvania Fire* remained good law and that Pennsylvania's "consent-by-registration" statute fell cleanly within the scope of *Pennsylvania Fire*'s ruling. The Court concluded that Pennsylvania's law requiring out-of-state companies that register to do business in Pennsylvania to agree to appear in Pennsylvania courts on any cause of action against them does not violate the Due Process Clause. Because Norfolk Southern registered to do business in the state, Pennsylvania courts can exercise personal jurisdiction over Norfolk Southern even in a case with no connection to Pennsylvania.

The Court also noted that in light of Norfolk Southern's "extensive operations" and advertisements in Pennsylvania, though those contacts were unrelated to Mallory's suit, Pennsylvania's exercise of personal jurisdiction over Norfolk Southern would not offend traditional notions of "fair play and substantial justice" under the Due Process Clause.

For More Information

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