

U.S. Supreme Court Finds Consent through Registration Sufficient for Personal Jurisdiction

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On June 27, 2023, the United States Supreme Court issued its long-awaited decision in *Robert Mallory v. Norfolk Southern Railway Co.* In its plurality decision, the Court upheld a Pennsylvania law which allows out-of-state plaintiffs to sue out-of-state companies registered to do business in Pennsylvania, even when the alleged injury occurred outside of Pennsylvania. Petitioner worked at Norfolk Southern for roughly 20 years in Ohio and Virginia prior to being diagnosed with cancer. Petitioner attributed his illness to his work and sued Norfolk Southern under the Federal Employers' Liability Act in Pennsylvania state court, despite Petitioner's only connection to Pennsylvania being that he lived there for a short period of time. Norfolk Southern is incorporated and headquartered in Virginia.

Pennsylvania, like other states, has a requirement that a company registered to do business in Pennsylvania shall agree to appear in Pennsylvania's courts on any cause of action against it. 42 Pa. Cons. Stat. §5301(a)(2)(i), (b). Norfolk Southern has been registered to do business in Pennsylvania since 1998.

The Pennsylvania Supreme Court sided with Norfolk Southern, holding that the state's law violates the Due Process Clause.

The U.S. Supreme Court agreed to hear the case to decide "whether the Due Process Clause of the Fourteenth Amendment prohibits a State from requiring an out-of-state corporation to consent to personal jurisdiction to do business there." In a 5-4 decision, the Court ruled that Petitioner could maintain his cause of action in Pennsylvania. Writing for the plurality, Justice Gorsuch relied upon the 1917 decision in *Pennsylvania Fire Ins. Co. of Philadelphia v. Gold Issue Mining & Milling Co.*, 243 U.S. 93 (1917), in which the Court concluded that a registration statute similar to Pennsylvania's comported with the Due Process Clause. Following *Pennsylvania Fire*, the Court held that suing Norfolk Southern in Pennsylvania, a state in which the company was registered to do business and by that registration consented to suit in a state, was not a violation of the company's due process rights.

Addressing arguments raised by Norfolk Southern and the dissent that cases decided after *Pennsylvania Fire* such as *International Shoe Co. v. Washington*, had effectively replaced consent-based jurisdiction statutes with a "minimum contacts" analysis, Justice Gorsuch responded that the minimum contacts analysis had neither replaced nor overruled these older forms of establishing jurisdiction but had "[staked] out an *additional* road to jurisdiction over out-of-state corporations." In fact, in *International Shoe*, the Court was looking for a way to establish personal jurisdiction over an out-of-state corporation that "had not registered to do business in [the state] and had *not* agreed to be present and accept service of process there" like out-of-state corporations are agreeing to do by registering in Pennsylvania. Instead, the Court's precedents had continued to recognize personal jurisdiction when a defendant had expressly or impliedly consented to it.

The plurality reasoned that Norfolk Southern had consented to personal jurisdiction in Pennsylvania state courts - even in cases that have nothing to do with Pennsylvania - by registering to do business in the state, as Norfolk

Southern had for more than 20 years, knowing the requirements of registering, and taking full advantage of doing business in the state. The Court also noted that when Petitioner commenced his action, Norfolk Southern employed nearly 5,000 people in Pennsylvania, maintained more than 2,400 miles of track, and a 70-acre locomotive shop in Pennsylvania.

Justice Jackson, in a concurring opinion, found that Norfolk Southern had waived the personal jurisdiction right “by choosing to register as a foreign corporation under the circumstances presented in this case.” Justice Alito also issued a concurring opinion, finding that Pennsylvania’s statute presented no Due Process violation, it likely presented an issue under the dormant commerce clause. He was “not convinced... that the Constitution permits a State to impose such a submission-to-jurisdiction requirement,” and suspected that Norfolk Southern could “renew the challenge on remand.”

Writing for the four Justice dissent, Justice Barrett feared that the Court’s holding would allow states to “manufacture ‘consent’ to personal jurisdiction,” and that the Court’s decision undermined recent decisions which held that even “substantial, continuous, and systematic” business in a state was not enough to establish personal jurisdiction. The Court’s decisions post-*Philadelphia Fire* placed an emphasis on the difference between specific jurisdiction, where the claims brought in the forum state “arise out of or relate to the defendant’s” activities in that state, and general jurisdiction, where personal jurisdiction can be had over the defendant on any and all claims brought against it.

Even if consent-based statutes had not been cast aside by the Court’s later decisions, the dissent did not believe that Norfolk Southern manifested consent to personal jurisdiction in Pennsylvania simply by registering to do business there. Instead, Justice Barrett opined that “the statutory scheme itself distinguished between actual ‘consent’ and registration,” so it would be “quite a stretch to treat them as one and the same.”

Justice Gorsuch’s plurality was joined by Justices Thomas, Sotomayor, and Jackson. Justice Barrett’s was joined in dissent by Chief Justice Roberts and Justices Kagan and Kavanaugh.

This Supreme Court decision is a significant one for those registered to conduct business in Pennsylvania (or other states with similar registration statutes). If registered in a given state, be prepared to be subject to personal jurisdiction in that state.

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