

# Divided Supreme Court Takes on Personal Jurisdiction

## Publications

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In Pennsylvania, an out-of-state corporation may not do business there until it registers with the Pennsylvania Department of State. Under Pennsylvania law, once the out-of-state corporation is registered, Pennsylvania state courts are permitted to exercise general personal jurisdiction over that corporation. In other words, once registered, the out-of-state corporation is required to answer any lawsuit, on any cause, in Pennsylvania state courts.

On June 27, 2023, the US Supreme Court, in a split decision, upheld this Pennsylvania law as constitutional. *See Mallory v. Norfolk S. Ry. Co.*, 143 S. Ct. 2028 (2023). Writing in part for a plurality and in part for the Court, Justice Gorsuch concluded that by complying with this law “for many years,” “Norfolk Southern has agreed to be found in Pennsylvania and answer any suit there.” And this consent comports with the Due Process Clause under pre-*International Shoe* precedent—namely, a 1917 case referred to as *Pennsylvania Fire*. *See id.* at 2037–38 (citing *Pennsylvania Fire Ins. Co. of Philadelphia v. Gold Issue Min. & Mill. Co.*, 243 U.S. 93 (1917)). Writing for a plurality of the Court, Justice Gorsuch further explained that *International Shoe* did not “seriously undermine[] *Pennsylvania Fire*’s foundations”; rather, “[t]he two precedents sit comfortably side by side.” *Id.* at 2038 (plurality opinion).

The Court did, however, leave open the possibility of a future challenge to the Pennsylvania law, and others like it, under the dormant Commerce Clause. As Justice Alito suggested in his separate opinion concurring in part and concurring in the judgment, this may not be “the end of the story for registration-based jurisdiction.”

It remains to be seen how states, corporations, and plaintiffs will react. Only a few states currently have laws like Pennsylvania’s that essentially equate registration with consent to personal jurisdiction. Other states may follow suit and enact similar laws. It is possible that Norfolk Southern—or a new defendant in a future case—will successfully challenge this law under the dormant Commerce Clause. It is also possible that the Court, closely divided here, might come out a different way if faced with an out-of-state corporation that did not have such long-standing and extensive operations in the relevant state. And finally, for out-of-state corporations facing a situation like Norfolk Southern’s, *forum non conveniens* and venue challenges may get pushed to the forefront.

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