

## Supreme Court Drives Train Through Jurisdiction Loophole

*Mallory v. Norfolk S. Ry. Co., 143 S. Ct. 2028 (2023)*

By: Reid Huefner & Nick Wheeler | July 28, 2023

Be cautious when deciding whether to do business in a state in a way that requires you to register in that state; you may be consenting to general personal jurisdiction in that new state by doing so. On June 27, 2023, the Supreme Court held that Pennsylvania’s consent statute—which requires out-of-state corporations to consent to general personal jurisdiction in Pennsylvania courts as a requirement for registering to do business in Pennsylvania—was constitutional under the Due Process Clause.

Robert Mallory (“Mr. Mallory”) sued Norfolk Southern Railway Co. (“Norfolk”) under the Federal Employers’ Liability Act due to his belief that his cancer was attributable to the work he conducted for Norfolk. Mr. Mallory filed his lawsuit in Pennsylvania state court. Norfolk asserted it was not subject to personal jurisdiction in Pennsylvania under the Due Process Clause of the Fourteenth Amendment because Norfolk is incorporated and headquartered in Virginia. Norfolk further argued that Mr. Mallory resided in Virginia when he filed his complaint and that Mr. Mallory was exposed to carcinogens only in Ohio and Virginia.



In rebuttal, Mr. Mallory argued Norfolk was subject to general personal jurisdiction because Norfolk had a large presence in Pennsylvania due to Norfolk managing over 2,000 miles of track, 11 railyards, and 3 locomotive repair shops in Pennsylvania and because Norfolk consented to general personal jurisdiction in Pennsylvania, under 15 Pa. Cons. Stat. § 411(a), when it registered to do business in Pennsylvania. The Pennsylvania Supreme Court agreed with Norfolk; Mr. Mallory appealed to the Supreme Court.

On appeal, the Supreme Court found Norfolk to be subject to jurisdiction in Pennsylvania. Largely ignoring the underlying facts of the case, the Supreme Court held that neither the fact that Mr. Mallory no longer lived in Pennsylvania nor that his claim accrued outside of Pennsylvania made a difference in whether Norfolk was subject to general personal jurisdiction in Pennsylvania because the statutory language was clear and did not violate due process. The Court noted how the Pennsylvania law provides that an out-of-state corporation “may not do business in this Commonwealth until it registers with” the Department of State. *Id.* The state law also requires a corporation to identify an “office” that will be “continuously maintain[ed]” in the state. *Mallory*, 143 S. Ct. 2028 at 2037. Further, the Pennsylvania law is “explicit” in requiring that “qualification as a foreign corporation” shall permit state courts to “exercise general personal jurisdiction” over a registered foreign corporation, just like domestic corporations. *Id.* Norfolk complied with the state law for over 20 years by registering in the state, regularly updating its information with the Department of State, and naming a “Commercial Registered Office” where it was “deemed ... located.” *Id.* In light of these facts, the Supreme Court held that Norfolk agreed to be found in Pennsylvania for over 20 years—including the ability to answer for any suit in Pennsylvania—and that these actions subjected Norfolk to general personal jurisdiction in Pennsylvania. The Supreme Court further held that this decision was not in opposition to more recent personal jurisdiction case law because recent personal jurisdiction cases did not prohibit state consent statutes.

In light of this contentious 5-4 split decision, businesses must carefully consider whether to do business and register to do business in a state where registration is contingent upon acceding to a broad, general-jurisdiction consent requirement that could result in an obligation to litigate any claim there.