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Supreme Court Upholds Constitutionality of State Use of Consent-by-Registration Statutes to Confer Personal Jurisdiction Over Corporations

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The Supreme Court recently affirmed the validity of a long-unused, but notably simple method of subjecting corporations to personal jurisdiction in state courts. In *Mallory v. Norfolk Southern Railway Company*, No. 21-1168 (June 27, 2023), the Supreme Court upheld a Pennsylvania statute requiring corporations to consent to general jurisdiction in Pennsylvania courts when registering to do business within the state. In doing so, the Court rejected Norfolk Southern's contention that such consent-by-registration statutes were inconsistent with due process—and that Supreme Court precedent upholding their constitutionality had been implicitly overruled by nearly a century of subsequent Court decisions.

The petitioner in the case, Robert Mallory, filed suit against his former employer, Norfolk Southern Railway Company, alleging that he was exposed to carcinogens that gave him cancer while working for the railroad. The most contentious aspect of Mallory's suit, however, was not the allegations, but rather the decision to sue Norfolk Southern in Pennsylvania. Prior to the *Mallory* decision, most courts believed the *International Shoe* progeny of cases to be the sole standard for conferring personal jurisdiction over corporate defendants. Under the *International Shoe* standard, corporations are subject to personal jurisdiction in states where they are "at home" or have "minimum contacts" related to the claims at issue. However, Norfolk Southern was both incorporated and headquartered in Virginia, Mallory lived in Virginia, and the alleged harm occurred in Ohio and Virginia. Thus, operating solely under the *International Shoe* framework, Pennsylvania appeared to be an entirely inappropriate venue given the lack of relation between the lawsuit and the state.

Despite the case having nothing to do with Pennsylvania, Mallory asserted that the state was a proper place to bring his lawsuit because of a Pennsylvania statute that requires any company that registers to do business within the state to, by virtue of that registration, consent to general jurisdiction in the state's courts. Mallory argued that because Norfolk Southern was registered to do business in Pennsylvania, the railroad had effectively consented to jurisdiction in Pennsylvania state

courts under the statute. Mallory supported his argument by citing *Pennsylvania Fire Insurance Company v. Gold Issue Mining Company*, 243 U.S. 93 (1917), a case in which the Supreme Court upheld consent-by-registration statutes as a permissible method of conferring general jurisdiction over corporate defendants. Although such statutes were commonplace in the 1800s, Pennsylvania is the only state with such a statute remaining, and many believed that the *Pennsylvania Fire* decision had been implicitly overruled by *International Shoe* and its modern framework for corporate jurisdiction. As a result, the Pennsylvania courts dismissed the lawsuit for lack of personal jurisdiction.

The Supreme Court reversed in a 5-4 decision (with Justices Gorsuch, Thomas, Sotomayor, Jackson, and Alito making up the majority), holding that *Pennsylvania Fire* remained controlling and governed the case. In doing so, the majority concluded that *Pennsylvania Fire* was in no way inconsistent with the *International Shoe* line of cases inasmuch as the *International Shoe* line addressed the constitutional limits of personal jurisdiction over *non-consenting* defendants while *Pennsylvania Fire* was predicated on the defendant's *consent*—an entirely separate basis for exercising jurisdiction within the bounds of due process. The Court's decision thus indicates that states have two avenues for exercising jurisdiction over a corporation: (1) obtaining the corporation's consent to jurisdiction under the *Pennsylvania Fire* and *Mallory* holdings, or (2) , exercising jurisdiction over non-consenting corporations subject to the due-process limitations of the *International Shoe* framework.

The decision has significant implications for corporations going forward. As a result of the Court's ruling, any company registered to do business in Pennsylvania is now subject to jurisdiction in Pennsylvania, regardless of whether the action has any connection to Pennsylvania. And although Pennsylvania is currently the only state with such a statute, other states may now adopt similar requirements for corporations who seek to do businesses within their boundaries.

One wildcard to keep an eye on, however, is that Justice Alito wrote separately to emphasize that, although he agreed with the majority that Pennsylvania's exercise of jurisdiction did not violate the Due-Process Clause, he believes there is "a good prospect" that such statutes very well violate the so-called dormant Commerce Clause, which prohibits the states from unduly restricting interstate commerce—an issue that Justice Alito observed was not properly before the Court. Justice Alito's concurrence thus raises the possibility that the vitality of registration-based jurisdiction may be short-lived

Vorys has significant litigation experience including handling jurisdictional disputes. We will continue to monitor Pennsylvania's statute and other similar statutes that may be adopted. Please do not hesitate to contact your Vorys attorney with any questions or concerns you may have.

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Andrew Fleming contributed to this Client Alert. He is a third year law student set to graduate in December 2023. Following graduation, Andrew will be joining Vorys' eControl and Litigation practice groups.