***Mallory* v. *Norfolk Southern Railway Co.*, No. 21-1168**

Today, a fractured Supreme Court held that the Due Process Clause does not bar a state from requiring an out-of-state corporation to consent to be sued in the state as a condition of doing business in the state, at least for some claims.

Background: The Due Process Clause of the Fourteenth Amendment limits the power of state courts to adjudicate claims against corporate defendants. For corporations incorporated in the state or headquartered in the state, courts can exercise general personal jurisdiction, meaning that the court can hear claims against the corporations no matter where the claims arose. For other corporations, the court usually can exercise only specific personal jurisdiction, meaning the court can only hear claims that arise out of or relate to the corporations' contacts with the state.

This case involves a Pennsylvania statute that requires foreign corporations (entities not incorporated in Pennsylvania) that seek to do business in the state to register with the state. The statute states that as a condition of registration, Pennsylvania state courts can exercise general personal jurisdiction over the corporation.

In this case, the plaintiff worked for Norfolk Southern Railway in Ohio and Virginia. Norfolk Southern is based in Virginia, but had registered to do business in Pennsylvania. When the plaintiff developed an illness he attributed to his work for the company, he sued Norfolk Southern in state court in Pennsylvania, arguing that the court had personal jurisdiction over the company because it had registered to do business in Pennsylvania.

Issue: Whether a state can require a corporation to consent to general personal jurisdiction as a condition of registering to do business in the state consistent with the Due Process Clause of the Fourteenth Amendment.

Court's Holding: Five Justices held that Pennsylvania's assertion of jurisdiction in this case did not violate due process. Four concluded that Pennsylvania could require foreign corporations to consent to general personal jurisdiction as a condition of doing business in the state without violating the Due Process Clause. Writing for those Justices, Justice Gorsuch explained that the Supreme Court had considered a materially identical registration statute in *Pennsylvania Fire Insurance Co. of Philadelphia* v. *Gold Issue Mining & Milling Co.*, 243 U.S. 93 (1917), and had held that the statute comported with the Due Process Clause. The plurality rejected the company's argument that *Pennsylvania Fire* had been overruled by the Court's later personal-jurisdiction decisions, which had established the categories of general and specific personal jurisdiction, explaining that those decisions expanded the bases for personal jurisdiction but did not abolish traditional bases for personal jurisdiction such as consent.

Justice Alito concurred in the judgment—and his opinion is controlling. Justice Alito agreed that *Pennsylvania Fire* controlled this particular case, based on its specific facts. Thus, Justice Alito stated that "[r]equiring Norfolk Southern to defend against Mallory's suit in Pennsylvania, as opposed to in Virginia, is not so deeply unfair that it violates the railroad's constitutional right to due process." He explained that "[t]he company has extensive operations in Pennsylvania; has availed itself of the Pennsylvania courts on countless occasions; and had clear notice that Pennsylvania considered its registration as consent to general jurisdiction." Therefore, "Norfolk Southern's 'conduct and connection with [Pennsylvania] are such that [it] should reasonably anticipate being haled into court there.'"

Justice Alito went on express the view that assertions of jurisdiction based on the Pennsylvania registration statute might nonetheless be unconstitutional. He stated that "there is a good prospect that Pennsylvania's assertion of jurisdiction here—over an out-of-state company in a suit brought by an out-of-state plaintiff on claims wholly unrelated to Pennsylvania—violates the Commerce Clause." And he explained the reasons for that conclusion in seven pages of analysis. Because the lower courts had decided the case based solely on the Due Process Clause, and had not yet considered the Commerce Clause challenge raised by the railroad, he agreed that the case should be remanded so that they could consider whether the statute comported with the Commerce Clause.

Justice Barrett authored a dissent, joined by the Chief Justice and Justices Kagan and Kavanaugh, saying that *Pennsylvania Fire* was inconsistent with the Court's modern personal-jurisdiction decisions, and that the Pennsylvania registration statute provided a template for other states to circumvent those decisions and expand general personal jurisdiction over corporate defendants.

Read the opinion here.