

Supreme Court dramatically expands scope of state court jurisdiction over businesses

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A new 5-4 decision from the U.S. Supreme Court holding registration to do business in a state is sufficient for personal jurisdiction even if the subject of the lawsuit has no connection to the state will have far reaching effects on the ability of consumers, employees, and others to sue businesses outside of their home state.

On June 27, in *Mallory v. Norfolk Southern Railway Co.*, a five-judge majority led by Justice Neil Gorsuch ruled that a Pennsylvania statute allowing any business registered to do business in the state to be sued there was constitutional, even if the business is not headquartered there, the plaintiff has no connection to the state, and the alleged wrong giving rise to the suit did not occur in the state.

The dissenters, led by Justice Amy Coney Barrett, argued forcefully that the Court's decision departs from nearly a century of precedent requiring more than simply registering to do business within a state to establish specific personal jurisdiction, an approach the dissenters said allows states to "now manufacture 'consent' to personal jurisdiction."

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The plaintiff, a Virginia resident, worked for Norfolk Southern Railway Company as a freight-car mechanic in Ohio and Virginia. Norfolk Southern is headquartered and incorporated in Virginia. When Mallory was diagnosed with cancer, he filed suit against Norfolk Southern in Pennsylvania state court alleging he was

exposed to asbestos and other toxins while working for Norfolk Southern in Ohio and Virginia.

For jurisdiction, Mallory relied on the Pennsylvania statute requiring out-of-state businesses to register to do business in the state and thereby "agree to appear in its courts on 'any cause of action' against them." Norfolk Southern argued that the Pennsylvania statute violates the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution. The Pennsylvania Supreme Court agreed.

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In reversing the Pennsylvania Supreme Court's decision, the majority disagreed that its 1945 decision in *International Shoe Co. v. Washington* holds that the Due Process Clause limits the reach of state courts' personal jurisdiction over businesses to lawsuits brought either (1) where a business is incorporated and has its principal place of business or (2) where the wrong giving rise to a suit occurred.

Instead, relying on an older decision — *Pennsylvania Fire Insurance Co. of Philadelphia v. Gold Issue Mining & Milling Co.* — and, the dissenters argue, ignoring more recent decisions, the Court held that these two alternatives were *additional* avenues for establishing personal jurisdiction over a business, but they did not exclude other avenues. Those other avenues include statutes requiring a business to consent to personal jurisdiction in order to lawfully operate within the state. The majority relied upon a number of theories, including

consent and the reach of sovereign power, and a recitation of the history of jurisdictional jurisprudence of what were known as transitory and local actions at common law.

Justice Samuel Alito, whose vote tipped the balance in favor of finding the Pennsylvania statute constitutional, wrote a concurring opinion in which he questioned whether the Pennsylvania statute would be constitutional under the so-called Dormant Commerce Clause. The Dormant Commerce Clause generally restricts states from interfering with or burdening interstate commerce. The Court declined to rule on that issue because it was not an issue the Pennsylvania Supreme Court considered and thus was not before the Court.

While the reach and effect of the Court's decision in *Mallory* remains to be seen, in the short-term businesses must be prepared for potential lawsuits to be brought in new states where they have consented to jurisdiction by registering to do business there, even if the alleged wrong giving rise to the suit did not occur in the state and they are not headquartered in or have substantial contacts with the state. The decision gives new importance to consumer, employee, or other contracts to have favorable choice of law and forum provisions to limit, as much as possible, the risk of being sued in foreign jurisdictions.

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