GIBSON DUNN

Supreme Court Holds That Due Process Permits A State To Require Registered Businesses To Consent To General Jurisdiction

Client Alert | June 27, 2023

Decided June 27, 2023 ***Mallory v. Norfolk Southern Railway Co.*****, No. 21-1168 Today, the Supreme Court held in a fractured 5-4 decision that the Due Process Clause does not prohibit Pennsylvania from requiring businesses that register to do business in Pennsylvania to consent to general jurisdiction in the state's courts, but a majority of the Justices questioned whether other constitutional principles limit states' power to require such consent. Background:** Robert Mallory sued his former employer, Norfolk Southern, for alleged workplace injuries. Mallory sued in Pennsylvania even though he's a citizen of Virginia, his injuries allegedly occurred in Ohio and Virginia, and Norfolk Southern was incorporated and had its principal place of business in Virginia. He asserted jurisdiction on the theory that Norfolk Southern registered to do business in Pennsylvania under a statute that requires corporations to submit to general personal jurisdiction in Pennsylvania over all suits.

Norfolk Southern moved to dismiss the suit for lack of personal jurisdiction on the grounds that the suit had no connection to Pennsylvania, and Pennsylvania's consent-to-jurisdiction statute violates the Due Process Clause. Although the Supreme Court held in *Pennsylvania Fire Insurance Co. v. Gold Issue Mining & Milling Co.*, 243 U.S. 93 (1917), that a similar consent-to-jurisdiction statute did not violate due process, Norfolk Southern argued that *Pennsylvania Fire* had been implicitly overruled by later cases. The Pennsylvania Supreme Court agreed, holding that the state's registration statute violated due process by coercing Norfolk Southern to consent to general personal jurisdiction.

Issue: Whether the Due Process Clause prohibits a state from requiring an out-of-state corporation to consent to general personal jurisdiction in that state as a condition of registering to do business there. **Court's Holding:** No. Due process does not prohibit a state from requiring that businesses consent to general personal jurisdiction as a condition of registering to do business in the state.

> *"To decide this case, we need not speculate whether any other statutory scheme and set of facts would suffice to establish consent to suit. It is enough to acknowledge that the state law and facts before us fall squarely within* Pennsylvania Fire's *rule."*

Justice Gorsuch, writing for the Court

Gibson Dunn submitted an *amicus* brief on behalf of the Association of American Railroads in support of respondent: *Norfolk Southern Railway Co.*

What It Means:

Related People

Lucas C. Townsend

Bradley J. Hamburger

Brad G. Hubbard

Shaun A. Mathur

© 2026 Gibson, Dunn & Crutcher LLP. All rights reserved. For contact and other information, please visit us at www.gibsondunn.com. | **www.gibsondunn.com**

- The Court's opinion was fractured, and the only holding joined by a majority of the Justices was narrow, concluding only that Pennsylvania's consent-by-registration statute did not violate due process under *Pennsylvania Fire*. The majority made clear that *Pennsylvania Fire* had not been implicitly overruled by later cases.
- Justice Alito concurred, providing the necessary fifth vote to vacate the Pennsylvania Supreme Court's decision and remand for further consideration. Critically, Justice Alito opined that consent-by-registration statutes might violate *other* constitutional provisions and principles, including the dormant Commerce Clause.
- Justice Barrett dissented, joined by Chief Justice Roberts and Justices Kagan and Kavanaugh, opining that Pennsylvania's consent-by-registration scheme is inconsistent with both due process and principles of interstate federalism.
- Given the Court's fractured and narrow opinion, and Justice Alito's concurrence, it is likely that consent-by-registration statutes will continue to face constitutional challenges.

The Court's opinion is available here.

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the Supreme Court. Please feel free to contact the following practice leaders:

Appellate and Constitutional Law Practice

Thomas H. Dupree Jr. +1 202.955.8547 tdupree@gibsondunn.com	**Allyson N. Ho** +1 214.698.3233 aho@gibsondunn.com	**Julian W. Poon** +1 213.229.7758 jpoon@gibsondunn.com
Lucas C. Townsend +1 202.887.3731 ltownsend@gibsondunn.com	**Bradley J. Hamburger** +1 213.229.7658 bhamburger@gibsondunn.com	**Brad G. Hubbard** +1 214.698.3326 bhubbard@gibsondunn.com

Related Practice: General Litigation

Reed Brodsky +1 212.351.5334 rbrodsky@gibsondunn.com	**Theane Evangelis** +1 213.229.7726 tevangelis@gibsondunn.com	**Veronica S. Moyé** +1 214.698.3320 vmoye@gibsondunn.com
Helgi C. Walker +1 202.887.3599 hwalker@gibsondunn.com		

Related Capabilities

Appellate and Constitutional Law

© 2026 Gibson, Dunn & Crutcher LLP. All rights reserved. For contact and other information, please visit us at www.gibsondunn.com. | **www.gibsondunn.com**