

No. 21-1168

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IN THE  
**Supreme Court of the United States**

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ROBERT MALLORY,  
*Petitioner,*

v.

NORFOLK SOUTHERN RAILWAY CO.,  
*Respondent.*

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**On Petition for a Writ of Certiorari  
to the Illinois Supreme Court**

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**BRIEF OF *AMICUS CURIAE*  
ACADEMY OF RAIL LABOR ATTORNEYS  
IN SUPPORT OF PETITIONER**

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## **INTERESTS OF *AMICUS CURIAE***<sup>1</sup>

The Academy of Rail Labor Attorneys (“ARLA”) is a professional association with members nationwide who represent railroad employees and their families in personal injury and wrongful death cases under the Federal Employers’ Liability Act (“FELA”). 45 U.S.C. §§ 51-60. The members of ARLA represent an overwhelming majority of employees seeking recovery under the FELA. ARLA’s primary purpose is the recovery of damages for those railroad employees represented by its members, and ancillary to that purpose the promotion of rail safety for railroad employees and the general public. The vast majority of railroad employees impacted by this case are represented by the amicus. The interests common to the amicus in this matter are the preservation of a statute that provides compensatory relief for a railroad worker’s injury or death and, as such, an economic incentive for railroads to operate safely.

### **SUMMARY OF ARGUMENT**

As discussed by Petitioner, Norfolk Southern Railway Company (“Norfolk Southern”) voluntarily consented to the jurisdiction of Pennsylvania courts by registering as a foreign corporation doing business in Pennsylvania. Norfolk Southern cannot reasonably

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<sup>1</sup> Pursuant to this Court’s Rule 37.6, amicus curiae states that this brief was not authored in whole or in part by counsel for any party and that no person or entity other than amicus curiae and its counsel made a monetary contribution to the preparation or submission of this brief. Each of the parties received notice of our intention to file an amicus brief at least 10 days prior to the deadline to file this brief. The Petitioner and Respondent, through counsel, gave their consent to the filing of this Brief.

argue that its due process rights are being violated in the present case while it actively enjoys significant benefits and protections of Pennsylvania law. There is, therefore, no burden upon Norfolk Southern being subjected to general jurisdiction in Pennsylvania courts. As noted herein, as of 2017, Norfolk Southern developed a massive presence in Pennsylvania. The state's nondiscriminatory regulations, at most, are incidental to any arguable burden on Norfolk Southern.

Norfolk Southern has numerous attorneys representing its interests throughout Pennsylvania. Over the years, Norfolk Southern has initiated lawsuits in Pennsylvania courts to enforce various matters, including filing seven cases in the Philadelphia Court of Common Pleas, the same court as the present case. It has filed 67 cases in the Pennsylvania federal courts. Additionally, the railroad has defended numerous FELA cases in Pennsylvania.

The Pennsylvania Constitution clearly indicates that a foreign corporation registered and authorized to do business under the Pennsylvania law is in every respect on a par with Pennsylvania corporations, and for all practical purposes is a resident of Pennsylvania. Not only does Norfolk Southern have equal status with Pennsylvania corporations, but it also enjoys additional benefits protected by Pennsylvania law because of its status as a public utility, such as the authority of eminent domain.

There are numerous business opportunities for Norfolk Southern in Pennsylvania. Pennsylvania has the sixth largest economy in the nation, which provides Norfolk Southern enhanced shipping business. Also, with its proximity to New York City, Boston, Washington, D.C., the Midwest, and the southern United States, Pennsylvania is an attractive place for busi-

ness development and marketing. Norfolk Southern also benefits from low-income taxes and various tax credits.

## ARGUMENT

### **I. For Many Years, Norfolk Southern Rwy. Co. Has Invoked the Benefits and Protections of Pennsylvania.**

#### **A. There is No Burden on Norfolk Southern Being Subjected to Jurisdiction in Pennsylvania.**

As discussed by Petitioner, Norfolk Southern Railway Company (“Norfolk Southern”) voluntarily consented to the jurisdiction of Pennsylvania courts by registering as a foreign corporation doing business in Pennsylvania. Being engaged in interstate commerce, Norfolk Southern had no duty to do so.

Norfolk Southern cannot reasonably argue that its due process rights are being violated by the present case while it actively enjoys the benefits and protections of Pennsylvania law. As of 2017, Norfolk Southern has developed a massive presence in Pennsylvania, employing 4,650 people and operating over 2,402 miles of track, 1,468 bridges, and 2,280 grade crossings in Pennsylvania alone.<sup>2</sup> Norfolk Southern also serves four ports and operates twelve rail yards, seven intermodal terminals, and three locomotive shops in Pennsylvania, including the largest locomotive repair shop in North America, the Juniata Locomotive Shop, located in Altoona, Pennsylvania. Norfolk Southern connects with 48 short line railroads in Pennsylvania.

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<sup>2</sup> *Norfolk Southern in Pennsylvania*, <http://nscorp.com/content/dam/nscorp/get-to-know-ns/about-ns/state-fact-sheets/pa-state-fact-sheet.pdf> (last visited June 23, 2022) (2017 data).

In addition, Amtrak operates four regularly scheduled passenger trains over Norfolk Southern tracks within the Commonwealth. In 2017, Norfolk Southern invested \$66 million in infrastructure and facilities, had a \$306 million payroll, and spent \$938 million in purchases, payments, and taxes in Pennsylvania.

Norfolk Southern (together with CSX Transportation) also owns and operates Conrail Shared Assets, a Pennsylvania corporation headquartered in Philadelphia, Pennsylvania. Conrail operates 372 miles of track in the Philadelphia-South New Jersey area and has rail yards in Frankford Junction, Morrisville, Port Richmond, South Philadelphia, and Stoney Creek, Pennsylvania.

Norfolk Southern has undeniably enjoyed the benefits and protections of Pennsylvania law, and there is, therefore, no burden upon Norfolk Southern being subjected to general jurisdiction in Pennsylvania courts. The state's nondiscriminatory regulations, at most, are incidental to any arguable burden on Norfolk Southern. By registering as a foreign corporation, Norfolk Southern was provided clarity and consistency for its functions in Pennsylvania and it could access its full rights and privileges under Pennsylvania law, including the right to maintain an action in a Pennsylvania court. 15 Pa. C. S. § 411(b).

Norfolk Southern has numerous attorneys representing its interests throughout Pennsylvania. Over the years, Norfolk Southern has initiated lawsuits in Pennsylvania courts to enforce various matters. *See, e.g., Norfolk S. Ry. Co. v. G.W.S.I., Inc.*, No. CV 16-2094, 2017 WL 3602478 (E.D. Pa. Aug. 22, 2017) (assessment of demurrage charges); *Norfolk S. Ry. Co. v. Pittsburgh & W. Virginia R.R.*, 101 F. Supp. 3d 497 (W.D. Pa. 2015) (lease issue); *Norfolk S. Ry. Co. v.*

*Pub. Util. Comm'n*, No. 2157 C.D. 2010, 2011 WL 10858169 (Pa. Commw. Ct. Dec. 1, 2011) (allocation of cost of a bridge removal project); *Norfolk S. Ry. Co. v. Power Source Supply, Inc.*, No. CIV.A. 06-58 J, 2008 WL 2884102 (W.D. Pa. July 25, 2008) (breach of contract for locomotives); *Norfolk S. Ry. Co. v. City of Pittsburgh*, No. CV 04-1808, 2005 WL 8174480 (W.D. Pa. July 27, 2005) (landslides); *Norfolk S. Ry. Co. v. Pennsylvania Pub. Util. Comm'n*, 870 A.2d 942 (Pa. Commw. Ct. 2005) (alteration of three railroad crossings); *Norfolk S. Ry. Co. v. Pennsylvania Pub. Util. Comm'n*, 875 A.2d 1243 (Pa. Commw. Ct. 2005) (maintenance of crossing); *Norfolk S. Ry. Co. v. Reading Blue Mountain & N. R. Co.*, 346 F. Supp. 2d 720 (M.D. Pa. 2004) (maintenance of track); *Norfolk S. Ry. Co. v. Franklin Cty. Bd. Of Assessment and Revision*, No. 2013-03355 (Franklin Cty. Office of the Prothonotary, Aug. 20, 2013) (challenge to property tax assessment); *Norfolk S. Ry. Co. v Kennett Int'l Corp.*, 2002 U.S. Dist. LEXIS 24750 (E.D. Pa. 2002) (freight charges). Norfolk Southern has filed seven cases in the Philadelphia Court of Common Pleas, the same court as the present case. *Norfolk S. Ry. Co. v. Phila. Auth. for Indus.*, No. 080102315 (Pa. Ct. Com. Pl., Jan. 18, 2008); *Norfolk S. Ry. Co. v. Corban Corp.*, No. 051002535 (Pa. Ct. Com. Pl. Oct. 19, 2005); *Norfolk S. Ry. Co. v. Rivertrading Co.*, No. 040500268 (Pa. Ct. Com. Pl., May 3, 2004); *Norfolk S. Ry. Co. v. George Young Co.*, No. 030800362 (Pa. Ct. Com. Pl. ,Aug. 5, 2003); *Norfolk S. Ry. Co. v. Clemens Construction Inc.*, No. 9908W0181 (Pa. Ct. Com. Pl. Sept. 1, 1999); *Norfolk S. Ry. Co. v. Pocono Northeast*, No. 930503199 (Pa. Ct. Com. Pl., May 20, 1993); *Norfolk S. Ry. Co. v. Tacony Freight Systems*, No. 871201957 (Pa. Ct. Com. Pl., Dec. 16, 1987). In Pennsylvania's federal courts, Norfolk Southern has filed at least 67 cases. Additionally, for many years, Norfolk Southern has regularly de-

fended numerous FELA cases in the Pennsylvania. These examples illustrate that Norfolk Southern freely utilizes the Pennsylvania courts to enforce its rights. The railroad certainly is not prejudiced in any way by defending lawsuits in the state.

For purposes of jurisdiction, there is no valid reason that a corporation such as Norfolk Southern should be treated differently than an individual within the state. If a person is located within Pennsylvania, they are subject to being sued in Pennsylvania. Norfolk Southern, while operating its business throughout Pennsylvania, should be subject to jurisdiction by Pennsylvania courts, particularly since it consented to the jurisdiction by voluntarily registering to do business in Pennsylvania.

### **B. Being Authorized to do Business in Pennsylvania Has Provided Norfolk Southern with Various Benefits.**

Registered foreign corporations like Norfolk Southern “enjoy the same rights and privileges as a domestic entity.” 15 Pa. Cons. Stat. § 402(d). Similarly, a foreign corporation’s activities in Pennsylvania are subject to the same limitations as domestic corporations, regardless of the foreign state’s laws. 15 Pa. Cons. Stat. § 402(c). “This language, as well as other sections of the same act, clearly indicates that a foreign corporation registered and authorized to do business under the act is in every respect on a par with Pennsylvania corporations, and for all practical purposes is a resident of Pennsylvania.” *Haddonleigh Ests., Inc. v. Spector Motor Serv., Inc.*, 41 Pa. D. & C. 246, 248 (Pa. Ct. Com. Pl. 1941); *see also* 15 Pa. Cons. Stat. § 1502(a) (listing powers of domestic corporations which apply equally to registered foreign corporations). The Pennsylvania Supreme Court has

stressed that a registered foreign corporation is in every way equivalent to a domestic Pennsylvania corporation. *Olyphant Borough v. Delaware & H. Co.*, 73 A. 1101, 1102 (Pa. 1909).

Not only does Norfolk Southern have equal status with Pennsylvania corporations, but it also enjoys additional benefits protected by Pennsylvania law because of its status as a public utility. For example, railroads and other public utilities have the power of eminent domain pursuant to 15 Pa. Cons. Stat. § 1511(a)(1); *see also* 15 Pa. Cons. Stat. § 402, Committee Comment 2016 (“Thus, the association acquires the privileges of a domestic association vis a vis third parties, even in such an exceptional area as the acquisition of the power of eminent domain.”); *New York & Erie R. Co. v. Young*, 33 Pa. 175, 175 (Pa. 1859) (“A foreign railroad company, authorized by Act of Assembly, to construct a portion of its road through the state, is entitled to the same rights and privileges as a Pennsylvania corporation.”). Norfolk Southern has exercised this right to maintain and expand its rail lines throughout Pennsylvania. *See, e.g., Suwinski v. Norfolk S. Ry. Co.*, No. 51446CD2001, 2001 WL 35913344 (Pa. Ct. Com. Pl. Sept. 18, 2001) (action to challenge taking by Norfolk Southern to expand rail line). Eminent domain is a fundamental power of state governments, and the legislature of Pennsylvania would not delegate that power to a corporation that is not subject to the laws of Pennsylvania and accountable to Pennsylvania courts. *Cf. In re Ohio Valley Gas Co.*, 1897 WL 3792, at \*2 (Pa. Ct. Com. Pl. 1897) (“The power of eminent domain is vested in the State of Pennsylvania, and no one can exercise that right over land within her borders without the consent of her legislature.”).

Norfolk Southern also benefits from low-income taxes and various tax credits, such as the Research

and Development Tax Credit, Mobile Telecommunications Broadband Investment Tax Credit, Resource Enhancement and Protection (REAP), and the Job Creation Tax Credit. There are numerous business opportunities for Norfolk Southern in Pennsylvania. Pennsylvania has the sixth largest economy in the nation, which provides Norfolk Southern enhanced shipping business. Norfolk Southern provides greater opportunities for other industries to grow in Pennsylvania. Also, with its proximity to New York City, Boston, Washington, D.C., the Midwest, and the southern United States, Pennsylvania is an attractive place for business development and marketing. For its employees living in the state, Pennsylvania is the eleventh least-taxed state in the country.

That registered foreign corporations enjoy the same exact benefits and protections as domestic corporations evidences an intent by the Pennsylvania legislature to treat registration by a foreign corporation as equivalent to incorporation under the laws of Pennsylvania. In the present cases, there is no burden upon Norfolk Southern.

### CONCLUSION

The decision of the Pennsylvania Supreme Court should be reversed.

Respectfully Submitted,  
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