

No.

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**In the Supreme Court of the United States**

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BNSF RAILWAY COMPANY,  
PETITIONER,

*v.*

TANNER LYNN,  
RESPONDENT.

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*ON PETITION FOR A WRIT OF CERTIORARI  
TO THE COURT OF APPEALS OF MINNESOTA*

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**PETITION FOR A WRIT OF CERTIORARI**

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### QUESTION PRESENTED

By statute, Minnesota requires nonresident corporations to apply for certificates of authority to transact business in the State. The Minnesota Supreme Court has construed that statute to extract applicants' consent to general personal jurisdiction in Minnesota's courts in exchange for permission to do business in the State. As a result of this statutory scheme, Minnesota claims the authority to adjudicate suits with no connection to the State brought by nonresident plaintiffs against nonresident corporations.

In *Mallory v. Norfolk Southern Railway Co.*, 600 U.S. 122 (2023), this Court held that Pennsylvania's consent-by-registration scheme did not violate the Due Process Clause of the Fourteenth Amendment. But the Court left unresolved whether a State's assertion of authority to resolve disputes with no jurisdictionally relevant connection to the forum was nonetheless unconstitutional under the dormant Commerce Clause. *Id.* at 127 n.3.

The question presented is:

Whether the Commerce Clause permits a State to extract consent to jurisdiction from nonresident corporations as a condition of their right to do business in the State, even for cases involving nonresident plaintiffs and out-of-state conduct.

**CORPORATE DISCLOSURE STATEMENT**

Applicant BNSF Railway Company, a Delaware corporation, is a wholly owned subsidiary of Burlington Northern Santa Fe, LLC, a Delaware limited liability company, with its principal place of business in Fort Worth, Texas. Burlington Northern Santa Fe, LLC is a wholly owned subsidiary of Berkshire Hathaway, Inc., a Delaware corporation with its principal place of business in Omaha, Nebraska. Berkshire Hathaway, Inc. is a publicly traded company.

### III

#### STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

- *Lynn v. BNSF Railway Co.*, No. 27-CV-23-17523 (Minn. Dist. Ct. Aug. 28, 2024) (denying motion to dismiss).
- *Lynn v. BNSF Railway Co.*, No. A24-1449 (Minn. Dec. 17, 2024) (denying petition for accelerated review).
- *Lynn v. BNSF Railway Co.*, No. A24-1449 (Minn. Ct. App. July 7, 2025) (affirming the trial court's denial of the motion to dismiss).
- *Lynn v. BNSF Railway Co.*, No. A24-1449 (Minn. Oct. 3, 2025) (denying petition for review).

There are no other proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

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**PETITION FOR A WRIT OF CERTIORARI**

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Petitioner BNSF Railway Company respectfully petitions for a writ of certiorari to review the judgment of the Minnesota Court of Appeals.

**OPINIONS BELOW**

The order of the Minnesota Supreme Court denying discretionary review of the Minnesota Court of Appeals' decision is unreported and appended at Pet.App.1a. The opinion of the Minnesota Court of Appeals affirming the trial court's denial of BNSF's motion to dismiss is unreported but available at 2025 WL 1860488. Pet.App.2a-16a. The order of the Minnesota Supreme Court denying accelerated review is unreported and appended at Pet.App.17a. The Minnesota trial court's decision denying BNSF's motion to dismiss for lack of personal jurisdiction is

unreported but available at 2024 WL 4818669. Pet.App.18a-27a.

### JURISDICTION

The order of the Minnesota Supreme Court denying a timely filed petition for discretionary review was entered on October 3, 2025. The judgment of the Minnesota Court of Appeals was entered on October 7, 2025. On December 30, 2025, Justice Kavanaugh extended the deadline to file a petition for a writ of certiorari to and including March 2, 2026.

This Court has jurisdiction under 28 U.S.C. § 1257(a) because the Minnesota Court of Appeals “finally disposed of the federal ... issue; a reversal here would terminate the state court action; and to permit the proceedings to go forward” would undermine federal policy in favor of “sound judicial administration.” *Belknap, Inc. v. Hale*, 463 U.S. 491, 497 n.5 (1983) (quoting *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 506 (1975) (Rehnquist, J., dissenting)); see also *Calder v. Jones*, 465 U.S. 783, 788 n.8 (1984). Federal policy favors resolving the jurisdictional issue “sooner rather than later in the course of the litigation.” *Belknap*, 463 U.S. at 497 n.5 (citation omitted). This Court accordingly has reviewed the judgment of a state appellate court finally rejecting a constitutional challenge to a state procedural law in an interlocutory appeal from a suit arising under the Federal Employers’ Liability Act. See *Burlington N.R.R. Co. v. Ford*, 504 U.S. 648, 649-50 & n.\* (1992); cf. *BNSF Ry. Co. v. Tyrrell*, 581 U.S. 402 (2017) (similar posture).

### CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article I, Section 8 of the United States Constitution provides in relevant part: “The Congress shall have

Power ... [t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.”

Relevant provisions of chapters 5 and 303 of the Minnesota Statutes are reproduced in the appendix. Pet.App.30a-35a.

#### STATEMENT

This case presents the ideal opportunity to answer the question left unresolved in *Mallory v. Norfolk Southern Railway Co.*, 600 U.S. 122 (2023). In *Mallory*, this Court held that Pennsylvania did not violate the Due Process Clause by extracting a nonresident corporation’s consent to general jurisdiction in exchange for the right to do business in the State. *Id.* at 134-36. The Court expressly left open whether consent-by-registration statutory schemes are nonetheless unconstitutional under the dormant Commerce Clause. *Id.* at 127 n.3.

Five Justices suggested they would conclude as much. Justice Alito noted 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.” *Id.* at 160 (Alito, J., concurring in part and concurring in judgment). And the four dissenting Justices similarly declared the case “a textbook example of overreach at the expense of other States” where Pennsylvania had “no legitimate interest” in the controversy. *Id.* at 169 n.1 (Barrett, J., dissenting) (internal quotations omitted).

This petition asks the Court to finish what *Mallory* started. Respondent Tanner Lynn sued BNSF Railway Company in Minnesota state court for injuries he allegedly sustained on the job in South Dakota. At all relevant

times, Lynn was a resident of Iowa, and BNSF was a Delaware corporation with its principal place of business in Texas. In short, Lynn’s Minnesota suit was “foreign cubed,” in which an out-of-state plaintiff sued an out-of-state defendant for an out-of-state tort. *See* Transcript of Oral Argument at 15, 88, 110, *Mallory*, 600 U.S. 122 (No. 21-1168). But Minnesota’s courts found they nonetheless had jurisdiction over BNSF because it had registered to do business in the State and thereby consented to general personal jurisdiction.

Litigants and courts urgently need clarification of the dormant Commerce Clause’s role in personal jurisdiction doctrine. In the wake of *Mallory*, companies are scrambling to mitigate the risk of being haled into courts on causes of action with no connection to the forum State. And suits seeking to bootstrap jurisdiction over defendants based on their registration to do business in a State are inundating lower courts.

The Minnesota Court of Appeals got the Commerce Clause analysis wrong. The court, applying Minnesota Supreme Court precedent, held that BNSF’s “extensive business” in the State sufficed to overcome a dormant Commerce Clause challenge—ignoring that Minnesota’s consent-by-registration scheme unduly burdens and discriminates against interstate commerce. As five members of this Court have noted, States like Minnesota have “no legitimate local interest” in adjudicating a foreign-cubed lawsuit. *Mallory*, 600 U.S. at 163 (Alito, J., concurring in part and concurring in judgment); *accord id.* at 169 n.1 (Barrett, J., dissenting). Such power grabs impose weighty burdens on interstate commerce and infringe the sovereignty of States with legitimate interests in a given lawsuit.

The upshot is clear. States and businesses across the country are waiting—at significant expense—for the other *Mallory* shoe to drop. This case presents the ideal vehicle for this Court to provide desperately needed clarity.

#### A. Legal Background

1. Article I of the Constitution grants Congress the power to “regulate Commerce ... among the several States.” U.S. Const. art. I, § 8, cl. 3. As early as *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 209 (1824), this Court recognized “great force in th[e] argument” that the Commerce Clause has negative implications for States’ ability to interfere with interstate commerce, even absent congressional legislation. *See Nat’l Pork Producers Council v. Ross*, 598 U.S. 356, 368-69 (2023). By the second half of the nineteenth century, this negative implication was “firmly established” in this Court’s cases. *Tenn. Wine & Spirits Retailers Ass’n v. Thomas*, 588 U.S. 504, 515 (2019).

Known today as the dormant Commerce Clause, this doctrine guards against state-level “economic protectionism.” *Dep’t of Revenue v. Davis*, 553 U.S. 328, 337-38 (2008) (quoting *New Energy Co. of Ind. v. Limbach*, 486 U.S. 269, 273-74 (1988)). The doctrine bars States from enacting “regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors.” *See id.* (citation omitted).

States laws can violate the dormant Commerce Clause in two ways. First, “[s]tate laws that discriminate against interstate commerce face ‘a virtually *per se* rule of invalidity.’” *South Dakota v. Wayfair*, 585 U.S. 162, 173 (2018) (quoting *Granholm v. Heald*, 544 U.S. 460, 476 (2005)). Second, state laws that “regulat[e] even-handedly

to effectuate a legitimate local public interest” are invalid if “the burden imposed on such commerce is clearly excessive in relation to the putative local benefits.” *Id.* at 173 (alteration in original) (quoting *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970)).

2. Since *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), this Court has differentiated between two categories of personal jurisdiction: specific (“case-linked”) and general (“all-purpose”) jurisdiction. *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 592 U.S. 351, 358 (2021). Under the doctrine of specific jurisdiction, courts have the power to hear a “narrow[] class of claims” that “arise out of or relate to” the defendant’s “purposeful availment” of the forum. *Id.* at 359-60 (citation omitted).

In contrast, general jurisdiction “extends to ‘any and all claims’ brought against a defendant.” *Id.* at 358 (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)). General jurisdiction over a defendant complies with due process when that defendant is “essentially at home in the forum State.” *Goodyear*, 564 U.S. at 919. The two “paradigm bases for general jurisdiction” over a corporate defendant are the corporation’s place of incorporation and principal place of business. *Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014) (cleaned up) (citation omitted).

In *Daimler*, this Court rejected the theory that a corporation’s course of doing business in a forum State suffices to establish general personal jurisdiction. *Id.* at 137-38. Previously, States had opened their courthouse doors to foreign-cubed suits based on general jurisdiction theories that treated entities “doing business” in a State as subject to suit on all causes there. *See id.* at 139 n.18. That practice, *Daimler* held, was “unacceptably grasping.” *Id.* at 137-38.

Three Terms ago, this Court in *Mallory* considered a Pennsylvania law requiring foreign corporations to consent to general personal jurisdiction to do business in the Commonwealth. A Pennsylvania statute required foreign corporations to register with Pennsylvania’s department of state as a precondition to doing business in the Commonwealth. 600 U.S. at 134 (citing 15 Pa. Cons. Stat. § 411(a) (2014)). Another statute then empowered Pennsylvania courts to exercise general personal jurisdiction over properly registered foreign corporations. *See id.* (citing 42 Pa. Cons. Stat. § 5301(a)(2)(i), (b) (2019)).

Norfolk Southern Railway, an out-of-state corporation sued by an out-of-state plaintiff on a cause of action that accrued outside Pennsylvania, argued that Pennsylvania’s exercise of general personal jurisdiction violated the Due Process Clause of the Fourteenth Amendment. *See id.* at 126. In a fractured decision, this Court narrowly rejected Norfolk Southern’s due-process argument. *See id.* at 146 & n.11. However, five Justices simultaneously cast significant doubt on the law’s constitutionality.

Writing for the majority, Justice Gorsuch held that Norfolk Southern’s challenge was “squarely” controlled by this Court’s previous rejection of the same due-process argument in *Pennsylvania Fire Insurance Co. of Philadelphia v. Gold Issue Mining & Milling Co.*, 243 U.S. 93 (1917). *Mallory*, 600 U.S. at 135-36. *Pennsylvania Fire* involved a foreign-cubed suit against an insurance company in Missouri state court. *Id.*; 243 U.S. at 94-95. Missouri’s highest court had interpreted its statutory scheme to extract consent to jurisdiction from out-of-state insurance companies in exchange for permission to do business in the State. *Pa. Fire*, 243 U.S. at 94-95. This Court rejected the defendant’s due-process challenge to Missouri’s consent-by-registration regime, reasoning that

the defendant had consented to personal jurisdiction. *Id.* at 95. Given the close similarities, the *Mallory* majority held that “*Pennsylvania Fire* controls this case.” 600 U.S. at 134.

Writing for a plurality, Justice Gorsuch concluded that *Pennsylvania Fire* was still good law following the sea change worked by *International Shoe*’s “fair play and substantial justice” standard. *See Mallory*, 600 U.S. at 138.

Justice Alito concurred in part and concurred in the judgment. Justice Alito agreed that *Pennsylvania Fire* was still good law. *See id.* at 152-53. But Justice Alito expressed concern that Pennsylvania’s statute violated the dormant Commerce Clause, noting that the decision was “not the end of the story for registration-based jurisdiction” because “[t]his Court and others have long examined assertions of jurisdiction over out-of-state companies in light of interstate commerce concerns.” *Id.* at 154, 159. The majority opinion expressly left open the question whether the Pennsylvania statute violated the dormant Commerce Clause, which was not presented. *Id.* at 127 n.3.

Justice Alito explained that consent-by-registration statutes likely “discriminate against” foreign corporations by “forcing them to increase their exposure to suits on all claims,” while Pennsylvania companies “generally face no reciprocal burden for expanding operations into another State.” *Id.* at 161 n.7. He further explained that such statutes impose a “significant burden” on interstate commerce by requiring a foreign corporation to defend itself against all transactions, including those without a forum connection, without furthering a legitimate local interest. *Id.* at 161-63 (citation omitted). As an example, Justice Alito pointed to *Davis v. Farmers’ Co-operative*

*Equity Co.*, 262 U.S. 312, 315 (1923), in which this Court held that an earlier Minnesota consent-by-registration scheme violated the dormant Commerce Clause as applied to a foreign-cubed suit. *See Mallory*, 600 U.S. at 159.

Four Justices dissented. The dissent explained that the Due Process Clause “protects interstate federalism” in addition to the individual rights of defendants. *Id.* at 168-69 (Barrett, J., dissenting). “Permitting Pennsylvania to impose a blanket claim of authority over controversies with no connection to the Commonwealth intrudes on the prerogatives of other States—domestic and foreign—to adjudicate the rights of their citizens and enforce their own laws.” *Id.* at 170. According to the dissent, a State “has no legitimate interest in a controversy with no connection to the [State] that was filed by a nonresident against a foreign corporation.” *Id.* at 169 n.1 (citation omitted).

3. It is settled that Minnesota’s registration statute extracts consent to general jurisdiction as a condition of doing business in the State. Foreign corporations must obtain a certificate of authority from the secretary of state to transact business in Minnesota. Minn. Stat. §§ 303.03, 303.06. They must also maintain a registered office and a registered agent. *Id.* § 303.10. The application for a certificate of authority requires foreign corporations to “irrevocably consent[] to the service of process” on a registered agent in Minnesota. *Id.* § 303.06; *see also id.* § 303.13 (“A foreign corporation shall be subject to service of process ... by service on its registered agent ....”); *id.* § 5.25 (similar). Foreign corporations transacting business without a certificate of authority must pay an initial penalty, as well as additional penalties for each “month or fraction thereof” they continue business without a

certificate. *Id.* § 303.20. Furthermore, those corporations are barred from maintaining actions in the State. *Id.*

The Supreme Court of Minnesota has held that by irrevocably consenting to service of process on a registered agent, a foreign corporation consents to general personal jurisdiction in Minnesota. *Rykoff-Sexton, Inc. v. Am. Appraisal Assocs., Inc.*, 469 N.W.2d 88, 90 (1991).

### **B. Factual Background**

1. BNSF is a Delaware corporation with its principal place of business in Texas. Mtn. to Dismiss,<sup>1</sup> Ex. C at ¶¶ 5-10. It operates in 28 States and three Canadian provinces. Mtn. to Dismiss, Ex. C at ¶ 11.

BNSF operates in Minnesota. Mtn. to Dismiss, Ex. C at ¶ 14. BNSF's Minnesota operations are a small fraction of its overall operations. Mtn. to Dismiss, Ex. C at ¶¶ 11-16. For example, only five percent of BNSF's total route miles, and five percent of its employees, are in Minnesota. Mtn. to Dismiss, Ex. C at ¶¶ 14, 16. In 2012 and 2013, BNSF invested only 2.6% and 2.2%, respectively, of its annual capital commitments in Minnesota-based projects. Jossart Decl., Exs. 4, 5.<sup>2</sup>

To do business in Minnesota, BNSF maintains a registered office and registered agent in the State. Jossart Decl., Ex. 2 at 11-13.

2. Respondent Tanner Lynn resided in Iowa at all times relevant to this suit. Compl. ¶ 1.<sup>3</sup> BNSF employed respondent as a conductor and brakeman. Compl. ¶ 5.

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<sup>1</sup> Mtn. to Dismiss, *Lynn v. BNSF Ry. Co.*, No. 27-CV-23-17523 (Minn. Dist. Ct. Jan. 17, 2024), Dkt. 12. All record citations are to No. 27-CV-23-17523.

<sup>2</sup> Paula M. Jossart Decl., Dkt. 14.

<sup>3</sup> Summons and Compl., Dkt. 5.

Respondent alleges that on December 27, 2022, he was injured on the job in South Dakota while operating a plow car that collided with an ice wall. Compl. ¶ 17. He received medical treatment the following day in Iowa. Mtn. to Dismiss, Ex. B. Although respondent alleges that his managers worked in BNSF's Twin Cities division, he does not allege that he lived or reported to work in Minnesota before or during the time of his accident. *See generally* Compl.

### C. Procedural Background

1. On October 25, 2023, respondent served BNSF with his complaint alleging BNSF had violated the Federal Employers' Liability Act (FELA) and seeking damages for injuries allegedly sustained during the collision. Pet.App.18a-19a. Respondent did not sue in South Dakota (where the collision occurred), Iowa (where he lives), Delaware (BNSF's state of incorporation), or Texas (BNSF's principal place of business). Instead, he filed his complaint in trial court in Hennepin County, Minnesota.

BNSF moved to dismiss for lack of personal jurisdiction under Minn. R. Civ. P. 12.02(b), arguing that the exercise of personal jurisdiction over BNSF violated the Due Process Clause of the Fourteenth Amendment and the dormant Commerce Clause. Pet.App.2a-3a.

The trial court denied BNSF's motion to dismiss on both grounds. First, the trial court held that BNSF had consented to personal jurisdiction in Minnesota by registering to do business and maintaining an agent to accept service of process on its behalf under Minn. Stat. § 303.06. Pet.App.20a-22a. According to the trial court, the Minnesota Supreme Court's decision in *Rykoff-Sexton*, which held that foreign corporations that register to do business in Minnesota thereby "voluntarily submit to the

jurisdiction of [the State's] court[s]," controlled. Pet.App.20a (quoting 469 N.W.2d at 90).

Second, the trial court rejected BNSF's dormant Commerce Clause argument, considering itself bound by *Erving v. Chicago & Nw. Ry. Co.*, 214 N.W. 12 (Minn. 1927). Pet.App.25a-26a. In *Erving*, the Minnesota Supreme Court held that the State's courts did not violate the dormant Commerce Clause by exercising jurisdiction over a nonresident railroad doing business in the State. 214 N.W. at 15.

On appeal, the Minnesota Court of Appeals affirmed. Pet.App.2a-3a. Like the trial court, the court of appeals held that *Rykoff-Sexton* required it to reject BNSF's Due Process Clause challenge. Pet.App.11a-12a. The court of appeals also held that BNSF's dormant Commerce Clause challenge was precluded by *Erving* and *State ex rel. Schendel v. District Court*, 194 N.W. 780 (Minn. 1923). Pet.App.16a. In *Schendel*, the Minnesota Supreme Court held that the State's exercise of jurisdiction over a nonresident railroad doing business in Minnesota did not interfere with interstate commerce. *See* 194 N.W. at 783-84.

The Minnesota Supreme Court denied BNSF's petition for discretionary review. Pet.App.1a.

#### **REASONS FOR GRANTING THE PETITION**

##### **I. The Question Presented Is Exceptionally Important and Squarely Presented**

Whether consent-by-registration statutes violate the dormant Commerce Clause is enormously consequential. Absent this Court's intervention, companies will continue to struggle to navigate the emerging legal patchwork governing extracted consent across the States; foreign-cubed cases will flood the lower courts; and the federalism

concerns flagged by Justice Alito and Justice Barrett in *Mallory* will multiply. Now is the time for the Court to act, and this case presents the ideal vehicle.

1. *Mallory* has unleashed a tidal wave of foreign-cubed cases in the lower courts. All 50 states require out-of-state companies doing in-state business to register and appoint an agent for service of process. *See Mallory*, 600 U.S. at 164 (Barrett, J., dissenting); Tanya J. Monestier, *Registration Statutes, General Jurisdiction, and the Fallacy of Consent*, 36 *Cardozo L. Rev.* 1343, 1363 & n.109 (2015). Most state statutes, like Minnesota’s, are silent as to whether a foreign corporation’s registration to do business constitutes consent to general personal jurisdiction. *See Will Lattimore, “Consent by Registration” After Mallory—A Fifty State Summary*, 12 *Belmont L. Rev.* 83, 88 & n.22 (2024); *see, e.g.*, N.C. Gen. Stat. § 55-15-01; Iowa Code Ann. § 490.504; 7 R.I. Gen. Laws § 1.2-1410.

Since *Mallory*, courts have been grappling with the scope and constitutionality of such foreign-corporation registration laws. Even before *Mallory*, three state supreme courts had construed their registration statutes to extract consent to general jurisdiction. *See Cooper Tire & Rubber Co. v. McCall*, 863 S.E.2d 81, 84 (Ga. 2021); *Merriman v. Crompton Corp.*, 146 P.3d 162, 177 (Kan. 2006); *Rykoff-Sexton*, 469 N.W.2d at 91. Following *Mallory*, many courts have done the same. *See, e.g., Erbey Holding Corp. v. BlackRock Fin. Mgmt., Inc.*, 2025 V.I. 25, ¶¶ 21-23 (2025) (noting “overwhelming support” in judicial precedent for its conclusion); *PDII, LLC v. Sky Aircraft Maint., LLC*, 925 S.E.2d 28, 36 (N.C. Ct. App. 2025) (interpreting North Carolina statute to create consent jurisdiction, “[g]uided by *Mallory*”), *stayed*, 924 S.E.2d 34 (N.C. 2026) (mem.); *Ins. Co. of State of Pa. v. Textron Aviation, Inc.*, 2025 WL 2701937, at \*7-8 (Conn. Super. Ct.

Sept. 16, 2025) (applying pre-*Mallory* state appellate court decision interpreting statute to “create[] consent jurisdiction”); *State v. Exxon Mobil Corp.*, 2024 WL 3580377, at \*16 (Conn. Super. Ct. July 23, 2024) (same); *Am. Food & Vending Corp. v. Goodyear Tire & Rubber Co.*, 2025 WL 2770651, \*4-5 (D. Kan. Sept. 29, 2025) (applying pre-*Mallory* state supreme court decision), *appeal filed*, No. 25-3187 (10th Cir. Oct. 17, 2025); *Factory Mut. Ins. Co. v. Flender Corp.*, 2025 WL 1810064, at \*5 (D. Kan. June 30, 2025) (same).

Meanwhile, state legislatures are beginning to “take up the Court’s invitation to manipulate registration.” *Mallory*, 600 U.S. at 180 (Barrett, J., dissenting); *see, e.g.*, Ill. Pub. Act 104-0352 (2025) (consent-by-registration statute for toxic-tort claims); S.B. S7476, 246th Leg., Reg. Sess. (N.Y. 2023) (vetoed Dec. 22, 2023) (bill proposing that foreign corporations’ registration “constitutes consent to the jurisdiction of the courts” of New York); Assemb. B. A7351, 246th Leg., Reg. Sess. (N.Y. 2023) (vetoed Dec. 22, 2023) (same).

2. The looming threat of consent-by-jurisdiction schemes subjects businesses to intolerable uncertainty, costing businesses large and small untold resources. For any business, the costs of being haled into a court where it is not at home and lacks case-related contacts with the forum State are high. For example, if a Des Moines resident who slips on a banana peel in her local Walmart chooses to file her personal injury action in Minneapolis, Walmart would be forced to bus its Des Moines-based employees hours across state lines to testify in Minnesota courts.

Businesses face the daunting task of “manag[ing] the patchwork of liability regimes, damages caps, and local rules in each State.” *Mallory*, 600 U.S. at 161-62 (Alito, J., concurring in part and concurring in judgment). When

plaintiffs can sue corporate defendants in any State where they have registered to do business, companies cannot be certain which state law governing limitations periods, punitive damages, or other matters will apply to their conduct. For example, if a Tennessee resident were to file tort claims against a large waste-management company alleging its practices at a nearby landfill caused her cancer, she might choose to sue in Minnesota, which does not cap punitive damages, rather than in Tennessee, which does. *Compare* Minn. Stat. § 549.20, *with* Tenn. Code § 29-39-104. The company's Tennessee-based conduct may well be subject to a Minnesota remedy. *See In re Levaquin Products Liability Litig.*, 2010 WL 7852346, at \*7 (D. Minn. Nov. 9, 2010) (concluding that "Minnesota's punitive damages statute is a remedial law," and remedies are governed by the law of the forum State).

Consent-by-registration schemes are particularly effective dragnets to impose state authority over corporations large and small. State registration statutes are often vague as to what amount of business triggers registration requirements. *See, e.g.*, Minn. Stat. § 303.03. As a result, faced with penalties for noncompliance, many corporations register to do business in every or nearly every State in the country. *See* Br. of Amicus Curiae Nat'l Ass'n of Mfrs. & Prod. Liab. Advisory Council at 6, *Mal-lory*, 600 U.S. 122 (No. 21-1168). The increased prevalence of remote work only exacerbates the problem.

What is more, a company's registration can be hard to undo. In Minnesota, for example, a foreign corporation can withdraw its registration only when it "has no property located in th[e] state and has ceased to transact business therein." Minn. Stat. § 303.16. A single remote worker's company-issued laptop would seem to stand in the way of withdrawal. Basing jurisdiction on corporate

registration, then, threatens to be even *more* expansive than the doing-business-based jurisdictional rules of yore.

Businesses face only bad options. They could remain registered to do business across a wide range of States, effectively agreeing to be “at home” everywhere. Or businesses could decide to violate state registration laws by operating in States *without* registering—exposing themselves to penalties but evading the crucible of deemed consent. Or, as is currently happening, companies could withdraw their operations from as many States as possible, retreating into jurisdictions with favorable laws. The implications for interstate commerce are profound.

3. Consent-by-registration jurisdiction raises pressing “federalism concerns ... that fall more naturally within the scope of the Commerce Clause.” *Mallory*, 600 U.S. at 157 (Alito, J., concurring in part and concurring in judgment). That Clause “vindicates a fundamental aim of the Constitution: fostering the creation of a national economy and avoiding the every-State-for-itself practices that had weakened the country under the Articles of Confederation.” *Id.* Yet consent-by-registration schemes—wholly unconstrained by “respect [for] the interests of other States,” *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 571 (1996)—pit States against their sisters.

Consent-by-registration schemes empower States to “infring[e] on the policy choices of other States,” *id.* at 572, overriding sister States’ authority to “make [their] own reasoned judgment[s] about what conduct is permitted or proscribed within [their] borders,” *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 422 (2003). For example, in the latest chapter in Minnesota’s lawsuit against fossil fuel producers for alleged misrepresentations about the environmental effects of fossil fuels, the Minnesota Court of Appeals held that Minnesota’s courts had

personal jurisdiction over the nonresident companies because of their registration to do business in the State. *Minnesota v. Am. Petroleum Inst.*, 2026 WL 192130, at \*4, \*8 (Minn. Ct. App. Jan. 26, 2026). That decision lays the groundwork for Minnesota’s courts to grant “a global remedy for a global issue,” overriding other States’ policy choices in “[r]egulating the production and sale of fossil fuels.” *Minn. by Ellison v. Am. Petroleum Inst.*, 63 F.4th 703, 717, 719 (8th Cir. 2023) (Stras, J., concurring), *cert. denied*, 144 S. Ct. 620 (mem.) (2024).

Worse still, consent-by-registration schemes threaten international comity. When this Court put an end to general doing-business jurisdiction, it recognized that the old doctrine had caused “international friction.” *Daimler*, 571 U.S. at 142 (citation omitted). Under that bygone era, a Finnish airline’s office in New York meant the airline could be haled into court there to answer claims that its release of “an excessive blast of air” injured someone on a Paris runway. *Bryant v. Finnish Nat’l Airline*, 208 N.E.2d 439, 439 (N.Y. 1965). The same State’s courts exercised dominion over a guest’s tumble in a London hotel’s bathtub, thanks to the British hotel’s New York-based reservation office. *See Frummer v. Hilton Hotels Int’l, Inc.*, 227 N.E.2d 851, 853 (N.Y. 1967). Consent-by-registration schemes invite the return of global forum-shopping.

Choice-of-law principles are only partial protection. States typically apply their own choice-of-law rules, which have broad latitude under the Constitution to favor the forum State’s law. *See* Maggie Gardner, et al., *The False Promise of General Jurisdiction*, 73 Ala. L. Rev. 455, 470 (2022) (highlighting Michigan’s “presumption” in favor of applying its own law); *accord Allstate Ins. Co. v. Hague*, 449 U.S. 302, 312-13 (1981).

And even if forum courts were to apply the law of the State where the conduct occurred to every foreign-cubed case, the forum States' procedural rules, jury pools, and judges remain. Further, the resulting proceeding—for example, one in which a Minnesota court applies Iowa's law to a Des Moines resident's suit against an Arkansas-headquartered retailer over her slip-and-fall in Iowa—only underscores the gimmick of Minnesota hearing that case at all.

4. This case presents an ideal vehicle to resolve this exceptionally important issue. The Minnesota courts below explicitly rejected BNSF's challenge to Minnesota's registration scheme under the dormant Commerce Clause and accordingly concluded they had jurisdiction over BNSF due to its registration to do business in the State. Pet.App.16a, 26a. And they did so in reasoned opinions, unlike the lower courts in a similar petition recently denied by this Court. *See Syngenta Crop Protection v. Nemeth*, No. 24-1190 (pet. denied Oct. 6, 2025). The Minnesota Court of Appeals' decision provides this Court with a clean vehicle to resolve the lingering question of whether consent-by-registration statutes violate the Constitution when applied to foreign-cubed cases.

## II. The Decision Below Is Wrong

For decades, this Court has recognized that a state law violates the Commerce Clause by (1) “impos[ing] undue burdens on interstate commerce” or (2) “discriminat[ing] against interstate commerce.” *Wayfair*, 585 U.S. at 173; *see also Brown-Forman Distillers Corp. v. N.Y. State Liquor Auth.*, 476 U.S. 573, 579 (1986). Minnesota's scheme does both. The Commerce Clause prohibits States from extracting consent to general jurisdiction as a condition of doing business in a State.

1. Minnesota’s scheme imposes undue burdens on interstate commerce. A state law that “effectuate[s] a legitimate local public interest” nonetheless imposes undue burdens when “the burden imposed on such commerce is clearly excessive in relation to the putative local benefits.” *Wayfair*, 585 U.S. at 173 (quoting *Pike*, 397 U.S. at 142). And when a statute serves “no legitimate [local] interest,” it fails outright, for it leaves “nothing to be weighed in the balance to sustain the law.” *Edgar v. MITE Corp.*, 457 U.S. 624, 644 (1982).

Just so here. As this Court has repeatedly recognized, States lack a legitimate local interest in nonresidents’ out-of-state activities. Five members of this Court explained as much in *Mallory*. As here, *Mallory* considered a suit between nonresidents over out-of-state conduct. 600 U.S. at 126-27. And again, as here, state law conditioned the right to do business on a company’s submission to general jurisdiction. *Id.*

Justice Alito found himself “hard-pressed to identify any *legitimate local* interest that is advanced by requiring an out-of-state company to defend a suit brought by an out-of-state plaintiff on claims wholly unconnected to the forum State.” *Id.* at 162 (Alito, J., concurring in part and concurring in judgment). Such a suit, after all, has no tie to “activities conducted within [the State’s] borders,” *id.* at 162, nor to injuries suffered by “its residents,” *id.* at 163 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473 (1985)). Justice Barrett agreed, writing for four Justices that a State “has no legitimate interest in a controversy with no connection to the [State] that was filed by a non-resident against a foreign corporation.” *Id.* at 169 n.1 (Barrett, J., dissenting) (citation omitted).

Other cases too have ruled that States have no legitimate interest in regulating nonresidents’ out-of-state

activities. In *Edgar*, the Court struck an Illinois statute that regulated out-of-state securities transactions as violating the dormant Commerce Clause. 457 U.S. at 643-46. The Court concluded that a “State has no legitimate interest in protecting nonresident[s]” who enter out-of-state transactions. *Id.* at 644. Case after case has reaffirmed this principle. *See, e.g., Printz v. United States*, 521 U.S. 898, 920 (1997) (“The State has no legitimate interest in protecting nonresidents.” (cleaned up)); *Gore*, 517 U.S. at 572-73 (same); *CTS Corp. v. Dynamics Corp. of Am.*, 481 U.S. 69, 93 (1987) (“[A State] has no interest in protecting nonresident shareholders of *nonresident corporations*.”).

Far from vindicating local interests, statutes of the sort here frustrate the local interests of States with genuine ties to the dispute. This Court recognized long ago that “a State’s exercise of jurisdiction over non-residents would be ‘an encroachment upon the independence of [another] State’ and a ‘usurpation’ of that State’s authority.” *Mallory*, 600 U.S. at 155 (Alito, J., concurring in part and concurring in judgment) (quoting *Pennoyer v. Neff*, 95 U.S. 714, 723 (1877)). Yet Minnesota has swept such cases into its courts anyway—charging its judges and juries to announce out-of-state law, find out-of-state facts, and pass judgment on out-of-state parties.

Even if Minnesota’s scheme served some legitimate interest, it still would need to “overcome the serious burdens on interstate commerce that it imposes.” *Id.* at 162. It cannot come close.

This Court’s precedent again makes the analysis straightforward. In *Bendix Autolite Corp. v. Midwesco Enterprises*, 486 U.S. 888 (1988), this Court invalidated a statute conditioning the availability of a statute-of-limitations defense on nonresident companies’ registering an agent for service of process and submitting to personal

jurisdiction in all suits. This Court explained that “[r]equiring a foreign corporation to appoint an agent for service in all cases and to defend itself with reference to all transactions, including those in which it did not have the minimum contacts necessary for supporting personal jurisdiction, is a *significant burden*.” *Id.* at 893 (emphasis added). If anything, Minnesota’s statute burdens commerce even more: It conditions not merely a limitations defense, but the right to do business at all.

This Court recognized these same burdens in *Davis v. Farmers’ Co-operative Equity Co.*, 262 U.S. 312. *Davis*, like this case, considered a Minnesota statute that the Minnesota Supreme Court had construed to extract consent to general jurisdiction as a condition of employing a soliciting agent in the State. *Id.* at 313-14. This Court invoked the Commerce Clause to prohibit applying the statute when a nonresident plaintiff sued a nonresident railroad over an out-of-state injury. *Id.* at 314-15. Under those circumstances, the statute “impose[d] upon interstate commerce a serious and unreasonable burden.” *Id.* at 315. True, since *Davis* this Court has “refined [the] Commerce Clause framework.” *Mallory*, 600 U.S. at 160 (Alito, J., concurring in part and concurring in judgment). But *Davis*’ recognition of the burdens on interstate commerce remains instructive today. *Id.*

The burdens of consent-by-registration jurisdiction mirror the burdens that resulted from the “doing business” theory of general jurisdiction put to rest in *Daimler* and *Goodyear*. *See supra* pp. 6, 17. Minnesota’s regime exhumes the horrors that those decisions sought to bury. As under the doing-business-based general jurisdiction of old, BNSF can only guess where it will be haled into court. Coast-to-coast, its employees must grapple with the risk that Minnesota courts will assert jurisdiction and apply

Minnesota law. *See Daimler*, 571 U.S. at 139. In every State, then, Minnesota’s laws govern *in terrorem*. Employees must “structure their primary conduct” to comply, *id.* (quoting *Burger King*, 471 U.S. at 472), and do what they can to navigate the resulting “patchwork of liability regimes,” *Mallory*, 600 U.S. at 161-62 (Alito, J., concurring in part and concurring in judgment).

Beyond these pressures on BNSF’s primary conduct are the burdens of litigating in Minnesota. No matter where a dispute arises, plaintiffs can force BNSF’s witnesses and employees to decamp to Minnesota. And plaintiffs can attempt to apply the forum’s plaintiff-friendly rules, whether statutes of limitations or damages caps. *Supra* pp. 14-15.

BNSF and other railroads are especially burdened by consent-by-registration schemes. When employees sue for workplace injuries under FELA, railroads are barred from removing the suits to federal court, *see* 28 U.S.C. § 1445(a)—giving plaintiffs nearly unchecked power to choose their forum. And, unlike other corporations that may choose to exit Minnesota to avoid consenting to general personal jurisdiction in the State, BNSF has no such option. Its rail lines are fixed in Minnesota’s earth, and tearing up those lines would require regulatory approval. *See* 49 U.S.C. § 10903(a).

2. Minnesota’s scheme also discriminates against interstate commerce. A state law discriminates “if its ‘practical effect’ is to disadvantage out-of-state companies to the benefit of in-state competitors.” *Mallory*, 600 U.S. at 161 n.7 (Alito, J., concurring in part and concurring in judgment) (quoting *Maine v. Taylor*, 477 U.S. 131, 138 (1986)).

Minnesota’s law produces just that effect. As Justice Alito observed of the statute in *Mallory*, the “law seems to discriminate against out-of-state companies by forcing them to increase their exposure to suits on all claims,” just to access the State’s market, even as resident companies “generally face no reciprocal burden for expanding operations into another State.” *Id.*

Where, as here, a law discriminates against interstate commerce, it faces “a virtually *per se* rule of invalidity.” *Id.* at 160 (quoting *Wayfair*, 585 U.S. at 173); accord *Brown-Forman*, 476 U.S. at 579 (“[W]e have generally struck down the statute without further inquiry.”). To survive, a discriminatory law must be “narrowly tailored to advance a legitimate local purpose.” *Tenn. Wine & Spirits Retailers*, 588 U.S. at 518 (cleaned up). The law here advances no such interest. *Supra* pp. 19-20. Much less is it “the least discriminatory” means by which Minnesota could achieve its goals. *Hughes v. Oklahoma*, 441 U.S. 322, 337 (1979).

3. In concluding that Minnesota’s consent-by-registration scheme poses no Commerce Clause problem, the Minnesota Court of Appeals defied this Court’s precedent. The court acknowledged that all parties to this suit are “non-resident[s]” of Minnesota, and that the injuries at issue arose “in a neighboring state.” Pet.App.15a. But the court nonetheless held that the Commerce Clause permits Minnesota to compel jurisdiction over this suit based on two state-court precedents. Pet.App.14a-16a.

*First*, the court relied on *Erving*, 214 N.W. 12, a century-old decision of the Minnesota Supreme Court. *Erving* disclaimed an “undue burden” when a nonresident submits to jurisdiction in a State where it “extensively carr[ies] on its business.” Pet.App.14a (quoting *Erving*, 214 N.W. at 14). Applying *Erving*, the court of appeals

here asserted that BNSF carries on “extensive business” in Minnesota, as it “owns 1,489 miles of railroad track and employs approximately 1,800 people in the state.” Pet.App.16a.

*Erving* cannot be squared with the past century of this Court’s precedent. Under the Commerce Clause, states have “no legitimate interest in protecting nonresident[s],” even where a company operates in the State. *Edgar*, 457 U.S. at 644. The court of appeals should have taken this Court’s word for it. There is a reason that at least five Justices in *Mallory* saw “no legitimate local interest” in applying a substantively identical statute to a defendant railroad. 600 U.S. at 163 (Alito, J., concurring in part and concurring in judgment); *id.* at 169 n.1 (Barrett, J., dissenting) (citation omitted).

*Erving* also blinks this Court’s holding that States impose “a significant burden” on interstate commerce by “[r]equiring a foreign corporation” to submit to suit without “the minimum contacts necessary for supporting personal jurisdiction.” *Bendix*, 486 U.S. at 893 (emphasis added). Those minimum contacts are absent here.

*Erving*’s rule also keeps courts and parties guessing about when exactly jurisdiction comports with the dormant Commerce Clause. “Simple jurisdictional rules ... promote greater predictability.” *Daimler*, 571 U.S. at 137 (quoting *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010)). Yet *Erving* dictates a case-by-case inquiry into whether a defendant does “extensive” business in the State. Pet.App.16a. That inquiry lacks guardrails. For instance, a defendant apparently does not do sufficient business by employing a soliciting agent in the State. Pet.App.13a (citing *Davis*, 262 U.S. at 314). *Erving* invites protracted threshold litigation about how much business is enough, and it fails to deliver consistent or principled results. It

would be far simpler to stick to the straightforward rule this Court's precedent requires: The Commerce Clause prohibits extracting consent to jurisdiction over out-of-state disputes between out-of-state parties.

*Second*, the court of appeals relied on a second antique decision, *Schendel*, 194 N.W. 780. The court of appeals interpreted *Schendel* to hold that "personal jurisdiction over" a railroad sued pursuant to FELA "did not obstruct interstate commerce." Pet.App.15a. Relying on *Schendel*, the court of appeals reasoned that because FELA "permits suit" wherever a railroad is "doing business," Congress must have been comfortable with any burdens from the exercise of that jurisdiction. Pet.App.16a. But FELA does not broadly "permit suit" anywhere a railroad does business. This Court has already held that FELA "confers no personal jurisdiction on any court." *Tyrrell*, 581 U.S. at 410. FELA instead addresses only "venue" and "subject-matter jurisdiction." *Id.* at 405. The court of appeals thus erred in relying on *Schendel*.

**CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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