No. 25-1046

IN THE

Supreme Court of the United States

BNSF RAILWAY COMPANY,

Petitioner,

v.

TANNER LYNN,

Respondent.

On Petition for a Writ of Certiorari to the Court of Appeals of Minnesota

BRIEF OF THE ASSOCIATION OF AMERICAN RAILROADS AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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STATEMENT OF INTEREST OF *AMICUS CURIAE*

Amicus curiae Association of American Railroads (AAR) is an incorporated, nonprofit industry association representing the nation's major freight railroads, Amtrak, and a commuter rail authority. AAR's members account for the vast majority of the rail industry's line haul mileage, freight revenues, and employment. In matters of significant interest to its members, AAR appears on behalf of the railroad industry before Congress, the courts, and administrative agencies. AAR also participates as *amicus curiae* to represent the views of its members when a case raises an issue of importance to the railroad industry as a whole.[1]

This case presents such an issue. AAR's members, railroads with long established operations in interstate commerce across the 48 contiguous states, Alaska, Canada, and Mexico, are uniquely vulnerable to the degradation of long-established controls on general personal jurisdiction. Prior to this Court's decision in *Mallory v. Norfolk Southern Railway Company*, railroads could reliably assert personal jurisdiction defenses against attempts by nonresident plaintiffs to bring cases under the Federal Employers' Liability Act (FELA), 45 U.S.C. §§ 51-60 naming nonresident railroads in forums having no nexus to the claims alleged. *See* 600 U.S. 122 (2023). *Mallory*, however, has unleashed a tremendous burden on railroads and interstate commerce to the benefit of no one—except

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[1] No counsel for any party authored this brief in whole or in part, and no party or their counsel, or any other person or entity other than *amicus*, its members, or its counsel, made a monetary contribution intended to fund the preparation or submission of this brief. Counsel of record for the parties received timely notice of AAR's intent to file this brief.

those nonresident plaintiffs seeking to shop for forums they deem favorable to their case.

Since *Mallory*, FELA plaintiffs' efforts to erode the limits on courts' exercise of personal jurisdiction have only gained momentum and they again seek here to further abrogate established limitations on general personal jurisdiction. The burdens implicated by these efforts, however, are borne by all. Railroads, whose services are critical to cheaper and more efficient interstate commerce, must now face the uncertain prospect of being haled into court in multiple forums, none of which has any connection to the case at bar. Local residents and businesses, in turn, must now bear the judicial and administrative costs of having their court systems clogged by litigation with no local connection.

AAR submits this brief to provide the Court with background on the burdens placed on railroads and by consequence interstate commerce by consent-by-registration statutes, including the one before it now.

INTRODUCTION AND SUMMARY OF ARGUMENT

The dormant Commerce Clause arose out of simple logic—if the Constitution empowers Congress to regulate interstate commerce, there must exist an implicit mirror provision which limits the several States' power to unduly burden it by impermissibly extending their sovereign authority beyond their borders. *See Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 157-58 (2023) (Alito, J., concurring); *Tenn. Wine & Spirits Retailers Ass'n v. Thomas*, 588 U.S. 504, 514-15 (2019).

The genesis of limitations on a state's court's right to exert personal jurisdiction over nonresident defendants can be linked to similar considerations. *See, e.g.*, *Shaffer v. Heitner*, 433 U.S. 186, 197 (1977) (Under

Pennoyer, "any attempt 'directly' to assert extraterritorial jurisdiction over persons or property would offend sister States and exceed the inherent limits of the State's power.") (quoting *Pennoyer v. Neff*, 95 U.S. 714 (1878)). And although specific personal jurisdiction jurisprudence has evolved significantly since *Pennoyer*, until recently, foreign party-defendants could oppose attempts by non-domiciled plaintiffs to force them to face suits in venues with no connection whatsoever to the claims at issue by establishing that they were not "at home" there. Defendants needed only concern themselves with the prospect of facing such "all purpose" jurisdiction in states where they were either incorporated, or where they had established its headquarters, otherwise known as their principal place of business. *Daimler AG v. Bauman*, 571 U.S. 117 (2014); *BNSF Ry. v. Tyrrell*, 581 U.S. 402 (2017).

But this Court's decision in *Mallory v. Norfolk Southern* disturbed the equilibrium upon which firms operating in interstate commerce, including railroads, relied on for years. *See* 600 U.S. 122 (2023). There, the Court ruled that a Pennsylvania statute imposing general personal jurisdiction on foreign corporations by registration was constitutional, finding that such foreign firms had "consented to in-state suits in order to do business in the forum." *Id.* at 138.

Following *Mallory*, nonresident defendants are left with just one defense against being coerced into submitting to general personal jurisdiction by any state in the Union: the dormant Commerce Clause. To avail itself of this protection, a nonresident must establish that a consent-by-registration system—like the Pennsylvania one considered in *Mallory* and the Minnesota iteration at issue in this case—unduly burdens interstate commerce without providing any

countervailing local benefit. *Mallory*, 600 U.S. at 160; *Pike v. Bruce Church*, 397 U.S. 137, 142 (1970).

The relevant underlying facts here are substantially identical to those presented in *Mallory*. A plaintiff with no connection to Minnesota filed suit there against BNSF Railway, a railroad incorporated in Delaware with its principal place of business in Texas, seeking redress for harms allegedly sustained in South Dakota. But where Pennsylvania's corporate registration statute had explicitly conditioned registration on submission to general personal jurisdiction, Minnesota's operates only based on "implication." Indeed, Minnesota courts here have relied on a 35-year-old Minnesota Supreme Court case to find that BNSF, a nonresident defendant, impliedly consented to general personal jurisdiction in the state by complying with clerical corporate registration requirements and appointing an agent in the state to receive service. Pet.App.2a-3a, 11a; *Rykoff-Sexton, Inc. v. Am. Appraisal Assocs., Inc.*, 469 N.W.2d 88 (1991).

But Minnesota courts' exercise of personal jurisdiction over BNSF imposes an undue burden on interstate commerce—a burden which no doubt violates the provisions of the dormant Commerce Clause because it provides no countervailing local benefit. Should the Court endorse this regime, nonresident firms, including railroads, will have no choice but to waste significant resources planning for and responding to lawsuits in states having no connection to either party or the underlying claims. Far from creating any local benefit, Minnesota residents will instead also share in the burden implicated here because they will be forced to dedicate both financial and administrative resources to the litigation of these out of state matters.

ARGUMENT

IMPOSING GENERAL PERSONAL JURISDICTION BY STATUTE IS UNCONSTITUTIONAL

The Commerce Clause of the Constitution of the United States empowers Congress "[t]o regulate Commerce…among the several States." U.S. Const. Art. I, § 8, cl. 3. While this grant of power is affirmative on its face, Courts, including this one, have repeatedly interpreted this clause to simultaneously restrict states from unduly restricting or burdening interstate commerce, a doctrine known as the dormant Commerce Clause. *Tenn. Wine & Spirits Retailers Ass'n*, 588 U.S. at 514-15; *Pike*, 397 U.S. at 142. These protections serve to prevent the several States from unlawfully extending their sovereign authority beyond their borders. *Mallory*, 600 U.S. at 158 (Alito, J., concurring).

The dormant Commerce Clause's limitations on state action are implicated in two circumstances. First, where a state law discriminates against interstate commerce on its face, the statute is "virtually *per se* invalid." *Dep't of Revenue v. Davis*, 553 U.S. 328, 338 (2008).[2] Second, even where a state law is not facially discriminatory and purports to regulate "even-handedly to effectuate a legitimate local public interest," it will nonetheless run afoul of the dormant

[2] Although this brief provides the Court with background on the excessive burden Minnesota's consent-by-registration system places on interstate commerce, Minnesota's system is also *per se* invalid because it facially discriminates against out of state corporations, including by forcing nonresident corporations to expend resources to guard against this very overreach where resident corporations need not.

Commerce Clause if "the burden imposed on such commerce is clearly excessive in relation to the putative local benefits." *Pike*, 397 U.S. at 142.

I. Consent-by-Registration Excessively Burdens Interstate Commerce

Consent-by-registration imposes an undue burden on railroads and interstate commerce. *Davis v. Farmers Co-operative Equity Co.*, 262 U.S. 312, 317 (1923); *see also*, *Mallory*, 600 at 160 (Alito, J., concurring). This Court has already concluded as much in *Davis v. Farmers Co.-operative Equity Co.*. 262 U.S. at 317 ("[T]he burden upon interstate carriers imposed specifically by the statute here assailed is a heavy one; and…the resulting obstruction to commerce must be serious.").

While dormant Commerce Clause jurisprudence has evolved since *Davis*, the Court's evaluation of factors constituting a burden on interstate commerce is still instructive today. The Court there identified multiple public interests inextricably linked to interstate commerce at risk from such systems, including maintenance of adequate, uninterrupted transportation services at reasonable cost and the avoidance of waste. *See id.* at 315, 317 ("[L]itigation in States and jurisdictions remote from that in which the cause of action arose entails absence of employees from their customary occupations; and that this impairs efficiency in operation, and causes, directly and indirectly, heavy expense to the carriers; these are matters of common knowledge"). Other courts have determined that interstate commerce is burdened by state laws incentivizing forum shopping or which require corporations to waste resources unnecessarily determining the magnitude of potential liability in several different jurisdictions for conduct occurring in a single state. *See Am. Rockwool,*

Inc. v. Owens-Corning Fiberglas Corp., 640 F. Supp. 1411, 1437 (E.D.N.C. 1986).[3]

Courts are not alone in concluding that policy affecting railroads may directly burden interstate commerce. For example, recognizing the consequences of a railroad deciding to abandon a line or halt operations, Congress required government approval of such decisions. If a railroad wishes to "abandon any part of its railroad lines" or "discontinue the operation of all rail transportation over any part of its railroad lines," it must file an application with, and obtain the approval of, the Surface Transportation Board. 49 U.S.C. § 10903(a). The Board, in turn, may approve such a request only if it determines that abandonment or discontinuance is consistent with "the present or future public convenience and necessity." *Id.* § 10903(d). In applying that standard, the Board must balance the competing interests of the railroad, the affected shippers and communities, *and interstate commerce generally*. *See City of Cherokee v. Interstate Commerce Comm'n*, 727 F.2d 748, 751 (8th Cir. 1984); *Waterloo Ry. Co.—Adverse Abandonment*, 2004 STB LEXIS 280 at *9 (Apr. 30, 2004).

The ICC Termination Act of 1995 ("ICCTA") further supports the notion that Congress is particularly

[3] "[T]o permit numerous states to apply damage penalties of arbitrary multipliers to extra-territorial conduct, nothing else appearing, would be to permit several states to apply damage penalties with different multipliers to conduct occurring in a single state without their respective borders. Not only would this generate both confusion and forum shopping, but it would also place a significant burden upon a company engaged in interstate commerce to determine the magnitude of its potential liability for multi-state conduct. Thus the burden on interstate commerce is not incidental." *Id.*

concerned with waste and inefficiency in rail transportation. *See* 49 U.S.C.S. § 10101. By ICCTA's own terms, "in regulating the railroad industry, it is the policy of the United States Government…to promote a safe and *efficient* rail transportation system…[and] "to foster sound economic conditions in transportation." *Id.* (emphasis added).

A. Consent-by-Registration Incentivizes Forum Shopping and Causes Waste

Minnesota's extraterritorial exercise of personal jurisdiction burdens interstate commerce because it incentivizes forum shopping. Forum shopping causes waste because it subjects interstate firms, including railroads, to shifting and unpredictable litigation exposure, forces them to engage in unnecessary and duplicative compliance and insurance planning, and threatens the efficiency of operations by forcing employees to travel away from their designated territories. *See Mallory*, 600 at 160 (Alito, J., concurring) ("Aside from the operational burdens it places on out-of-state companies, Pennsylvania's scheme injects in-tolerable unpredictability into doing business across state borders.").

It is well established that when given the choice of where to file suit, some plaintiffs will select a forum for the purpose of gaining a litigation advantage, even at apparent inconvenience to themselves. *See, e.g., Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 240 (1981) (plaintiff admitted that the law of the chosen forum was more favorable to her position than the law of the jurisdiction where the accident occurred and most of the witnesses were located); *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 507 (1947) (noting that a plaintiff sometimes will attempt to force a trial to a jurisdiction

in order to disadvantage an adversary, "even at some inconvenience to himself").

But because parallel litigation of the same claims in different jurisdictions violates fundamental tenets of the American judicial system, railroads' expenditure on contingency planning for a potential suit in Minnesota that ends up being filed in another state amounts to nothing more than waste of those efforts and resources. *See McDonough v. Smith*, 588 U.S. 109, 110 (2019) ("[P]arallel civil litigation…run[s] counter to core principles of federalism, comity, consistency, and judicial economy.").

Key employees, furthermore, may be forced to leave their operational territories to appear in Minnesota courts on matters with no connection to the state, forcing railroads and their interstate customers to absorb unnecessary business disruptions and unforeseen costs, including paying a "heavy expense for travel, time lost, witness fees and payments for substitutes to take the place of the witnesses during their absence." *Johnson v. Chi., B. & Q. R. Co.*, 243 Minn. 58, 60 (1954). Litigation costs and related transactional expenses would also rise while judicial efficiency suffers. Out-of-state parties, including railroads, wishing to mitigate these operational disruptions will be forced to engage in unnecessary litigation, inundating Minnesota courts with all manner of procedural motions. *See id.* at 74 (re-establishing doctrine of *forum non conveniens* in response to increase in number of foreign cubed FELA claims).

The harms caused by Minnesota's overreach will not be contained within its own borders. Burdens placed on railroad operations in one state may cascade and threaten the efficiency and fluidity of operations in neighboring states. This is a necessary consequence of

the inherently permanent nature of railroad property and the interconnectedness of the national rail system.

From a local perspective, railroads' business consists of transporting a wide range of commodities in rail cars moving over a lengthy, fixed right-of-way consisting of a roadbed and tracks. Large, fixed facilities, such as yards, terminals, and repair shops are physically connected to the railroad's line to support their operations. *Southern Ry. v. Greene*, 216 U.S. 400, 414 (1910) (property of a railroad within a state "is put there permanently. It cannot be withdrawn at the pleasure of the investors. Railroads are not like stages or steamboats, which . . . can be taken elsewhere and put to use at other places and under other circumstances.").

These individual local elements come together to form an integrated, intercontinental rail network—connecting with the railroad systems of Canada and Mexico—with huge volumes of freight moving from origin to destination over the lines of more than one railroad. *See* Association of American Railroads, *Freight Rail's State-by-State Impact*, https://www.aar.org/states/ (last visited Apr. 1, 2026). This extensive network, funded predominantly by the railroads themselves, permits rail carriers to transport freight more efficiently while reducing greenhouse gas emissions and keeping highways free from additional congestion. Association of American Railroads, *Freight Rail's Economic Impact: GDP & Jobs*, https://www.aar.org/issue/economic-impact/ (last visited Apr. 1, 2026). Consumers and corporations alike benefit from railroads' investments into the creation of an efficient interstate transportation system, a system which indisputably makes interstate commerce cheaper, cleaner, and more reliable. Association of American Railroads, *Freight*

Rail Makes American Life More Affordable, https://www.aar.org/issue/freight-rail-makes-american-life-more-affordable/ (last visited Apr. 1, 2026).

Consent-by-registration statutes threaten these benefits. The infrastructure making up even a single right of way may extend hundreds or even thousands of miles within one state before reaching across state lines to serve customers in neighboring jurisdictions. Railroads cannot be expected to feasibly isolate every disruption on their networks caused by the uncertainties implicated by consent-by-registration statutes without any impact on interstate operations. And when key employees must face the prospect of being called away from their posts for an extended period to travel far beyond that operating territory to serve as witnesses in unrelated jurisdictions, the efficiency of rail transportation is threatened. *See Davis*, 262 U.S. at 317; *Johnson*, 243 Minn. at 60, 74.

This cascading burden on interstate commerce, caused by state legislation reaching beyond its own borders, is precisely what the dormant Commerce Clause guards against. *See Mallory*, 600 U.S. at 158 ("The [dormant Commerce Clause] doctrine recognizes that 'one State's power to impose burdens on . . . interstate market[s] . . . is not only subordinate to the federal power over interstate commerce, but is also constrained by the need to respect the interests of other States.'") (Alito, J., concurring) (quoting *BMW of North America, Inc. v. Gore*, 517 U. S. 559, 571 (1996)).

The federal railroad regulatory scheme further emphasizes that waste and inefficiencies forced onto the railroads may negatively impact interstate commerce. Because their services are indispensable to efficient interstate commerce, railroads are subject to a non-traditional regulatory structure. *See DeBruce*

Grain, Inc. v. Union Pac. R.R., 983 F. Supp. 1280, 1284 (W.D. Mo. 1997) ("The national importance of interstate transportation cannot be doubted. Indeed, Congress has set forth an impressive list of important and often contradictory goals it hopes to achieve through its regulatory efforts of railroads.").

Given the critical role they play in connecting localities to markets nationwide, railroads, for example, do not have the authority to unilaterally abandon lines or discontinue operations in a particular territory in response to new and unforeseen risks and costs. Instead, "[a]s to abandonment of railroad use, the STB retains exclusive authority under federal law." *Sauer W. LLC v. United States*, 151 F.4th 1339, 1347 (Fed. Cir. 2025) (citing *Chi. & N. W. Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 323 (1981) ("Congress granted to the [STB] plenary authority to regulate, in the interest of interstate commerce, rail carriers' cessations of service on their lines. And at least as to abandonments, this authority is exclusive.")); *see also*, 49 U.S.C. § 10903. Among the factors the STB considers when determining whether a railroad can abandon or discontinue service are the impact on interstate commerce. *Chicago & N.W. Transp. Co.*, 450 U.S. at 323.

In analyzing applications for abandonment, the STB has recognized that easing costs and operational burdens borne by railroads benefits interstate commerce. *See N.Y. Cross Harbor R.R. v. Surface Transp. Bd.*, 374 F.3d 1177, 1185—86 (2004) (citing *CSX Corp. & CSX Transp. Inc.-Adverse Abandonment Application*, 2002 STB LEXIS 81 at *12-15 (Jan. 28, 2002) (granting a railroad's adverse abandonment application despite protests from other rail carriers, noting that abandonment "will benefit the public" because "it will

result in improved rail service by CSX," including reducing costs and delays, improving access to other rail facilities and generally allowing for "more fluid and efficient rail operation.")); *see also Abandonment of Railroad Lines — Use of Opportunity Costs,* 360 I.C.C. 571 (1979), *aff'd sub nom. Farmland Indus., Inc. v. United States,* 642 F.2d 208 (7th Cir. 1981) (explaining that "the [Board] will weigh opportunity costs as part of the burden to interstate commerce against which the needs of intrastate commerce will be balanced.").

But to force railroads to expend resources planning for a patchwork of differing state-based procedural and substantive legal conditions, as Minnesota seeks to do here, "'would greatly undermine the industry's ability to provide the seamless service that is essential to its shippers and would weaken the industry's efficiency and competitive viability.'" *Fla. E. Coast Ry. v. City of W. Palm Beach*, 266 F.3d 1324, 1338 (11th Cir. 2001) (noting that legislative history indicated that Congress intended ICCTA to prevent localities from "[s]ubjecting rail carriers to regulatory requirements that vary among the States") (quoting S. Rep. 104-176, at 6 (1995)); H. Rep. No. 104-311, at 96 (1995) ("[T]he Federal scheme...is intended to address and encompass all such regulation and to be completely exclusive. Any other construction would undermine the uniformity of Federal standards and risk the balkanization and subversion of the Federal scheme of minimal regulation for this intrinsically interstate form of transportation.").

B. FELA Incentivizes Forum Shopping, Exacerbating the Burden on Interstate Commerce

The nature of FELA claims further illustrates the burdens caused by forum shopping on interstate commerce. Unlike virtually all other employers, there

is no state-based workers' compensation regime for interstate railroads. Instead, since 1908, FELA has served as the exclusive federal regime governing injuries suffered on the job by railroad workers. *See* 45 U.S.C. §§ 51-60.

Several circumstances make forum shopping especially attractive to FELA plaintiffs. First, the Class I and regional railroads—the defendants in the vast majority of FELA cases—operate in multiple states. Second, although FELA suits arise under and are governed by federal law, they cannot be removed to federal court. *See* 28 U.S.C. § 1445(a). Third, FELA is a negligence-based regime imposing liability on defendants even if they are responsible for the employee's injury only "in part." 45 U.S.C. § 51, *see also id.* § 53 ("[T]he fact that the employee may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee."). FELA plaintiffs, therefore, may file their suit in any state or federal court that can exercise personal jurisdiction over the railroad defendant—suits which often entail the expenditure of significant local administrative and financial resources.

Forum shopping, unsurprisingly, has therefore long been a feature of FELA litigation, and Minnesota courts have not been spared. In fact, the Minnesota Supreme Court was so concerned about nonresident FELA plaintiffs overwhelming the state's judicial resources that it chose to revive the rule of *forum non conveniens* to combat the glut of cases. *Johnson*, 243 Minn. at 74-75.[4]

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[4] "No showing has been made that there is something so sacrosanct about plaintiffs' right under the Federal Employers'

Minnesota is not alone. Indeed, even before this Court's decision in *Mallory*, Philadelphia's courts, for example, had long been a favorite forum for FELA suits having little or no connection to Pennsylvania. *See, e.g., Luther v. Consol. Rail Corp.*, No. 99-1464, 1999 U.S. Dist. LEXIS 8119 (E.D. Pa. May 25, 1999) (plaintiff alleged injury in Ohio and resided in Ohio; four witnesses lived in Ohio); *Detrick v. Baltimore & Ohio R.R.*, 330 F. Supp. 257 (E.D. Pa. 1971) (plaintiff alleged injury in Maryland and resided in West Virginia; the key witnesses lived in Maryland, West Virginia, and Virginia); *Carbeck v. Baltimore & Ohio R.R.*, 160 F. Supp. 626 (E.D. Pa. 1958) (plaintiff alleged injury and resided in Maryland and all witnesses resided in Maryland).

This trend has only accelerated in recent years. *E.g.*, *Wegman v. CONRAIL*, 281 A.3d 1079 (Pa. Super. Ct. 2022) (plaintiff resided and worked in Indiana, alleged injury occurring in Indiana, Illinois, Ohio, and New York, and admitted no injury occurred in Pennsylvania); *Grillo v. Penn Cent. Corp.*, 276 A.3d 250 (Pa. Super. Ct. 2022) (plaintiff resided in New Jersey and admitted alleged injury could not have occurred in Pennsylvania); *Wallace v. Penn Cent. Corp.*, 273 A.3d 1043 (Pa. Super. Ct. 2022) (plaintiff resided in New York, admitted to never having worked for Appellees in Pennsylvania, and received treatment for alleged injury in New York).

Liability Act to bring their actions in Minnesota, some eight hundred to one thousand miles away from where the accidents happened in seven of the cases and over three hundred miles away in the other, that Congress intended to preserve that right of venue without any limitation when all other plaintiffs in the many types of civil actions of which the Federal Courts have jurisdiction are to be subject to the right of transfer upon a proper showing being made." *Id.* (internal quotation marks omitted).

Examples of FELA plaintiffs shopping for favorable forums stretch far beyond Minnesota and Pennsylvania. *See, e.g.*, *BNSF Ry. Co. v. Tyrrell*, 581 U.S. 402, 414-15 (rejecting FELA plaintiffs' attempt to expand general personal jurisdiction against railroads to states where they were not "at home"); *Fennell v. Ill. Cent. R.R.*, 987 N.E.2d 355, 362 (Ill. 2012) (plaintiff resided and was injured in Mississippi, and "almost no one connected with plaintiff's side of the case resides in Illinois"); *Bailey v. Union Pac. R.R.*, 364 F. Supp.2d 1227, 1229 (D. Colo. 2005) (plaintiff resided and was injured in Nebraska and most witnesses were Nebraska-based); *Cuzzupoli v. Metro-N. Comm. R.R.*, No. 02 Civ. 7947 (CSH), 2003 U.S. Dist. LEXIS 10978 (S.D.N.Y. June 30, 2003) (plaintiff resided and was injured in Connecticut and treating physician was in Connecticut); *Hayes v. Chi., Rock Island & Pac. R.R.*, 79 F. Supp. 821, 822-23 (D. Minn. 1948) (litigation involving eight plaintiffs, one of whom was injured in Texas, one in Illinois, and six in Oklahoma).

II. Consent-by-Registration Imposes a Local Burden, Not a Benefit

As evidenced by the above, the burdens forced onto interstate commerce by consent-by-registration statutes are indisputably significant. These regimes, conversely, provide no local benefit whatsoever. *Mallory*, 600 U.S. at 162 ("I am 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.") (Alito, J., concurring); *Edgar v. MITE Corp.*, 457 U.S. 624, 644 (1982) (finding that state had no legitimate interest in protecting nonresidents); *Telvest, Inc. v. Bradshaw*, 697 F.2d 576, 581 (4th Cir. 1983) (same).

Far from enjoying any benefit, Minnesota residents will join corporations operating in interstate commerce in shouldering the added burden implicated here. As the Minnesota Supreme Court already recognized in *Johnson*, given the opportunity, out of state forum shoppers will clog Minnesota's court dockets and consume judicial resources that would otherwise have been spent addressing matters of actual relevance to local residents and businesses:

> It is common knowledge that litigation of all kinds has increased to such an extent that many of our courts are now so congested that litigants are required to wait months and sometimes years before cases can be tried. This situation has become so acute that every session of the legislature is importuned to add more judges to some of our district courts. In many instances the need for such additional judges has come from districts overburdened by the importation of F.E.L.A. cases. The expense, too, of trying such transitory actions, which can more equitably be tried elsewhere, is no small burden for the counties into which they come.

Johnson, 243 Minn. at 74. Minnesotans, therefore, will undoubtedly share in this added expense as further resources are diverted to the courts and residents wait longer and longer for their own cases to be adjudicated. *Id.* at 74, 79 (affirming dismissal of foreign cubed FELA case, noting that the legislature was forced to dedicate more resources to the state judiciary to adjudicate matters involving nonresident litigants concerning events occurring beyond Minnesota's borders).

The road will not end with Minnesota. Since *Mallory* was decided, at least one other state legislature has

passed a limited consent-by-registration-style statute. *See* 735 Ill. Comp. Stat. 5/2-209. Another state's courts have found that mere registration, even absent explicit language referencing jurisdiction, is sufficient to exert general personal jurisdiction. *PDII, LLC v. Sky Aircraft Maint., LLC*, 925 S.E.2d 28, 35-37 (N.C. Ct. App. 2025). And a different state's judiciary has developed a conflict between its state and federal courts in interpreting *Mallory's* effect. *Compare Sociedad Concesionaria Metropolitana De Salud S.A. v. Webuild S.P.A.*, No. 3:24-CV-02043 (SVN), 2026 U.S. Dist. LEXIS 5082, at *2 (D. Conn. Jan. 12, 2026) (finding that corporations did not consent to personal jurisdiction by registering to do business in Connecticut) *with Ins. Co. of Pa. v. Textron Aviation, Inc.*, No. X07-HHD-CV-23-6173497-S, 2025 Conn. Super. LEXIS 2561, at *21 (Super. Ct. Sep. 16, 2025) (finding Connecticut statutes did create consent jurisdiction by registration).

Litigants in other states have also sought to test their ability to hale foreign corporations into jurisdictions they deem friendly to their cause under various theories of "consent." *See, e.g.*, *Ormand-Ward v. Litt*, No. 2023-000239, 2025 S.C. App. LEXIS 69, at *1 (Ct. App. Dec. 3, 2025) (rejecting argument that insurance registration was basis for consent to general personal jurisdiction); *Antis v. Siriuspoint Specialty Ins. Corp.*, No. 1:24-cv-301-LG-RPM, 2025 U.S. Dist. LEXIS 24849, at *7, n.4 (S.D. Miss. Feb. 11, 2025) ("Mississippi rejects consent jurisdiction and prohibits a finding of personal jurisdiction merely because of the appointment and maintenance of a registered agent.") (internal quotations omitted); *Phillips v. British Airways*, 743 F. Supp.3d 702, 711 (D. Md. 2024) (rejecting argument that mere corporate registration amounted to general personal jurisdiction); *Shorts v. Cedars*

Business Services, LLC, 767 F. Supp.3d 96, 105 (S.D.N.Y. 2025) ("[T]he act of registering to do business . . . does not constitute consent to general personal jurisdiction in New York").

It is clear from these efforts that endorsement of consent-by-registration statutes will take the systemic inefficiencies of forum shopping nationwide and increase the burdens on localities exponentially. But a state's imposition of such burdens on its own residents, while simultaneously doing harm to interstate commerce generally, inevitably conflicts with the interests protected by the dormant Commerce Clause.

CONCLUSION

The Court should grant BNSF's Petition for Writ of Certiorari.

Respectfully submitted,

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