No. 25-

IN THE

Supreme Court of the United States

NORFOLK SOUTHERN RAILWAY COMPANY,

Petitioner,

v.

ROBERT WILLMORE MALLORY AND MICHELLE YVONNE GIVENS, AS ADMINISTRATORS OF THE ESTATE OF ROBERT THURSTON MALLORY,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Pennsylvania

PETITION FOR A WRIT OF CERTIORARI

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April 2, 2026

QUESTION PRESENTED

Last time this case was here, the Court held that Pennsylvania did not violate due process by exercising general personal jurisdiction over Norfolk Southern Railway based solely on its registration to do business in Pennsylvania, even though this suit has "no connection to the Commonwealth." See *Mallory* v. *Norfolk S. Ry.*, 600 U.S. 122, 135 (2023); *id.* at 170 (Barrett, J., dissenting). The Court did not resolve "Norfolk Southern's alternative argument that Pennsylvania's statutory scheme as applied here violates this Court's dormant Commerce Clause doctrine," with the majority noting that this issue "remains for consideration on remand." *Id.* at 127 n.3. Concurring, Justice Alito explained that registration-based jurisdiction likely violates the dormant Commerce Clause in cases with no forum link. *Id.* at 160. On remand, the Pennsylvania courts summarily rejected Norfolk Southern's Commerce Clause arguments.

The question presented is:

Whether "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 Constitution, including the Commerce Clause. *Id.*

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioner is Norfolk Southern Railway Company. Norfolk Southern Railway Company's parent corporation is Norfolk Southern Corporation (NYSE: NSC), a publicly held corporation that holds at least 10% of Norfolk Southern Railway Company's stock.

Respondents are Robert Willmore Mallory and Michelle Yvonne Givens, as Administrators of the Estate of Robert Thurston Mallory.

RELATED CASES

This case arises from the following proceedings in the Philadelphia Court of Common Pleas, the Pennsylvania Superior Court, the Supreme Court of Pennsylvania, and this Court:

Mallory v. *Norfolk Southern Railway Co.*, Case No. 170901961 (Pa. C.P. Phila. Cnty., Sep. 18, 2017)

Mallory v. *Norfolk Southern Railway Co.*, 600 U.S. 122 (2023)

Norfolk Southern Railway Co. v. *Mallory et al.*, 77 EDM 2025 (Super. Pa. Ct. 2026)

Norfolk Southern Railway Co. v. *Mallory et al.*, 305 EAL 2025 (Pa. 2026)

No other proceedings relate directly to this case.

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PETITION FOR A WRIT OF CERTIORARI

Norfolk Southern Railway Company respectfully petitions for a writ of certiorari to review the judgment of the Pennsylvania Supreme Court.

OPINIONS AND ORDERS BELOW

The Pennsylvania Supreme Court's order (Pet. App. 1a) is unreported. The Superior Court of Pennsylvania's order (Pet. App. 2a) is unreported. The trial court's order (Pet. App. 3a) is also unreported.

STATEMENT OF JURISDICTION

The Pennsylvania Supreme Court issued its judgment on January 27, 2026. The Court has jurisdiction under 28 U.S.C. § 1257(a); see *infra* § III.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The interstate Commerce Clause, Article I, Section 8, Clause 3, provides: "The Congress shall have power . . . [t]o regulate commerce . . . among the several states."

Pennsylvania's corporations law provides, as relevant, that "a foreign filing association or foreign limited liability partnership may not do business in this Commonwealth until it registers with the department under this chapter. 15 Pa. Stat. § 411.

Pennsylvania's long-arm statute provides, as relevant:

> The existence of any of the following relationships between a person and this Commonwealth shall constitute a sufficient basis of jurisdiction to ena-

> ble the tribunals of this Commonwealth to exercise general personal jurisdiction over such person . . . and to enable such tribunals to render personal orders against such person or representative: . . . qualification as a foreign corporation under the laws of this Commonwealth.

42 Pa. Stat. § 5301(a)(2)(i).

INTRODUCTION

The Court should decide the question it left open when this case was last here: Whether the Commerce Clause forbids a state from exercising general personal jurisdiction over an out-of-state company—in a suit with no link to the forum—simply because the company is registered to do business there. See *Mallory* v. *Norfolk S. Ry.*, 600 U.S. 122, 127 n.3 (2023).

This question is both important and urgent. The Court's prior decision unsettled the post-*International Shoe* consensus that merely "doing business" in a state provides an insufficient basis to exercise "state judicial power over such corporations." See *McGee* v. *Int'l Life Ins. Co.*, 355 U.S. 220, 222 (1957). For many years, courts, litigants, and businesses understood that a corporation was subject to general jurisdiction only where it was truly "at home"—where it was headquartered or incorporated. See *Daimler AG* v. *Bauman*, 571 U.S. 117, 127 (2014). Anywhere else, it was subject only to specific jurisdiction for suits based on its activities there. This two-part scheme functioned predictably, allowing businesses to understand the risks of expanding into a new forum and plaintiffs to understand where a defendant could be sued.

Mallory established that—for due process purposes, and on the facts of this case—general jurisdiction is

not so limited. The result has been substantial uncertainty. Now, any company registered to do business in Pennsylvania *may or may not* be subject to suit there on any cause of action arising anywhere in the world. Given Philadelphia's well-deserved reputation as a friendly forum, plaintiffs' counsel have every reason to bring suit there against any registered company. See *Mallory*, 600 U.S. at 154 & n.1 (Alito, J., concurring in part). By itself, that produces a distorting effect on interstate commerce, as Philadelphia threatens to become a black hole that absorbs all litigation against national businesses.

And with the attention that this Court's decision garnered, other states have followed in Pennsylvania's footsteps, by statute or judicial decision. The upshot is that businesses must now think twice before expanding into any new market, lest they be deemed to consent to suit there for any claims arising anywhere in the world. This situation "injects intolerable unpredictability into doing business across state borders." *Id.* at 161. The Court should step in to make clear that the Commerce Clause forbids states from seizing jurisdiction over cases involving out-of-state plaintiffs, out-of-state defendants, and out-of-state facts, in which they have "no legitimate local interest." See *Id.* at 163 (Alito, J., concurring in part); *id.* at 169 n.1 (Barrett, J., dissenting).

This case is a good vehicle. Given *Mallory*'s narrow holding, a different case would likely also raise the question of whether the Due Process Clause applies differently to "any other . . . set of facts." See *id.* at 135. But the Court has already decided how the Due Process Clause applies *in this case*, so personal jurisdiction here depends solely on the Commerce Clause. And cases arising in other states with less clear statutes may also raise threshold fair-notice issues, which

are absent here. This case also involves a railroad, a paradigmatic instrumentality of interstate commerce. Lastly, while interlocutory, the judgment below is "final." See *Cox Broad. Corp.* v. *Cohn*, 420 U.S. 469, 477 (1975).

STATEMENT

1. Nearly ten years ago, Robert Mallory sued Norfolk Southern in the Pennsylvania Court of Common Pleas. He alleged that, while working for the railroad in Ohio and Virginia, he was exposed to harmful carcinogens. When he sued, he lived in Virginia. Virginia was also Norfolk Southern's home: The railroad is a Virginia corporation whose principal place of business was then in Virginia (now, Georgia). See *Mallory*, 600 U.S. at 126. The dispute therefore has no connection to Pennsylvania.

Then, as now, the sole asserted basis for personal jurisdiction over Norfolk Southern was Pennsylvania's registration-jurisdiction scheme, which (1) requires all out-of-state corporations to register with the state to conduct business in Pennsylvania and (2) mandates that such registration is sufficient for Pennsylvania courts to exercise general personal jurisdiction, regardless of any connection between the suit and forum. See 15 Pa. Stat. § 411; 42 Pa. Stat. § 5301(a).

2. Lengthy litigation ensued. At each step, Norfolk Southern argued that Pennsylvania lacked personal jurisdiction under the Due Process and Commerce Clauses. The Pennsylvania courts agreed on due process grounds, not reaching the Commerce Clause argument.

This Court, in a closely divided decision, reversed the due process holding. The majority held narrowly "that the state law and facts before us fall squarely

within" the rule of *Pennsylvania Fire Insurance Co.* v. *Gold Issue Mining & Milling Co.*, 243 U.S. 93 (1917), which upheld a similar scheme against a due process challenge. See *Mallory*, 600 U.S. at 136. The Court did "not speculate whether any other statutory scheme and set of facts would suffice to establish consent to suit." *Id.* at 135. And the majority noted that "Norfolk Southern's alternative argument that Pennsylvania's statutory scheme as applied here violates this Court's dormant Commerce Clause doctrine . . . remains for consideration on remand." *Id.* at 127 n.3.

Justice Alito concurred in part. He agreed with the majority's due process holding, but he was "not convinced . . . that the Constitution" as a whole "permits a State to impose such a submission-to-jurisdiction requirement." *Id.* at 150. In fact, "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. A "long" line of this Court's cases considered—and sometimes rejected—"assertions of jurisdiction over out-of-state companies in light of interstate commerce concerns." *Id.* at 159 (citing, *e.g.*, *Davis* v. *Farmers' Co-op. Equity Co.*, 262 U.S. 312, 315–17 (1923)). Similar reasoning applies here, Justice Alito explained, because Pennsylvania's registration-jurisdiction regime discriminates against or significantly burdens interstate commerce without advancing "any *legitimate local* interest." See *id.* at 162.

3. On remand, the Pennsylvania Supreme Court sent the case back to the trial court, where Norfolk Southern renewed its Commerce Clause arguments. The trial court rejected those arguments without explanation. Pet. App. 3a. The Pennsylvania Superior

Court then refused to review the trial court's order, citing its prior decision in *Hunt Refining Co.* v. *Gray*, 59 & 60 EDM 2024 (Pa. Super. March 26, 2025). Pet. App. 2a. *Hunt* had rejected another interlocutory appeal raising a dormant Commerce Clause challenge to registration-jurisdiction, opining that "concurring opinions" like Justice Alito's in *Mallory* "have no legal effect." *Id.* at 7a. Norfolk Southern then sought review in the State's Supreme Court, which also rejected the appeal. *Id.* at 1a.

REASONS FOR GRANTING THE PETITION

I. The Court should decide now whether the Commerce Clause restricts general registration-jurisdiction.

The uncertainty that *Mallory* created—for both primary conduct and litigation—calls for prompt resolution. To order their affairs, corporations must be able to assess litigation risk, and plaintiffs should know where they can sue corporate defendants. The Court should take this chance to answer the major question that *Mallory* left open.

1. The Court has long recognized that businesses depend on clear, stable personal-jurisdiction rules to "structure their primary conduct"—they rely on "some minimum assurance as to where that conduct will and will not render them liable to suit." *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 297 (1980). "Predictability is valuable to corporations making business and investment decisions," *Hertz Corp* v. *Friend*, 559 U.S. 77, 94 (2010), including when deciding whether to expand into new markets.

The Court has also recognized that requiring an out-of-state corporation "to defend itself with reference to all transactions, including those in which it did not

have the minimum contacts necessary for supporting [specific] personal jurisdiction, is a significant burden." *Bendix Autolite Corp.* v. *Midwesco Enters., Inc.*, 486 U.S. 888, 893 (1988). Non-resident corporate defendants, forced to litigate in unfamiliar and potentially biased fora, face a substantial risk of prejudice. See *Honda Motor Co.* v. *Oberg*, 512 U.S. 415, 432 (1994); *TXO Prod. Corp.* v. *All. Res. Corp.*, 509 U.S. 443, 464 (1993) (plurality). These concerns are even more acute for corporations based not just in other states, but in other countries—to whom Pennsylvania's scheme also applies. See *Asahi Metal Indus. Co.* v. *Super. Ct. of Cal.*, 480 U.S. 102, 114 (1987); Charles W. Rhodes, *Clarifying General Jurisdiction*, 34 Seton Hall L. Rev. 807, 900 (2004) (explaining that "applying the American conception of general jurisdiction . . . to disputes without any relationship to the United States" often "is viewed with abhorrence by many other nations").

And the Court has recognized the importance to the judicial system of where a suit is litigated—and "the harm of forum shopping." See *Ferens* v. *John Deere Co.*, 494 U.S. 516, 527 (1990). "Venue is often a vitally important matter," Justice Scalia explained: "Suit might well not be pursued, or might not be as successful, in a significantly less convenient forum." *Stewart Org., Inc.* v. *Ricoh Corp.*, 487 U.S. 22, 39–40 (1988) (Scalia, J., dissenting). Given the variation among the states' tort regimes—including on key issues like statutes of limitations, damages caps, or immunity for certain kinds of activities, see *Mallory*, 600 U.S. at 161–62 (Alito, J. concurring in part)—enterprising plaintiffs' counsel have every reason to look for a jurisdictional hook in the most favorable forum available. These practices produce unfairness, inefficiency, and unnecessary expenses, and overburden certain courts.

See Markus Petsche, *What's Wrong with Forum Shopping—An Attempt to Identify and Assess the Real Issues of a Controversial Practice*, 45 Int'l Lawyer 1005, 1010 (2011).

2. The post-*Mallory* status quo disserves each of these vital interests by creating a double layer of uncertainty. *Mallory* potentially blesses nationwide forum-shopping—which creates substantial uncertainty for businesses—but whether it actually does so is far from clear.

Pennsylvania purports to allow any plaintiff to bring any suit against any company registered to do business there. By approving that scheme (at least for due process purposes, on the specific facts here), *Mallory* unsettled the predictable, two-part personal jurisdiction scheme that corporations, plaintiffs, and courts have long relied on. Now, seemingly any lawsuit against any national business can be filed in Philadelphia. See Abigail Nilsson, *Railroading Interstate Corporations: Personal Jurisdiction and Dormant Commerce after* Mallory v. Norfolk Southern Railway Co., 108 Marq. L. Rev. 583, 597 (Winter 2024) (recognizing that "plaintiffs' lawyers will capitalize on the [*Mallory*] ruling by filing cases for out-of-state claimants in plaintiffs-friendly Philadelphia courts" (internal quotation omitted)). Currently, then, Pennsylvania's judges and jurors apparently enjoy the right to judge disputes and business practices across the nation—at the expense of courts in states with an actual interest in regulating or vindicating those practices. Cf. Maggie Gardner et al., *The False Promise of General Jurisdiction*, 73 Ala. L. Rev. 455, 473–74 (2022) ("If there is general jurisdiction effectively everywhere, then the plaintiffs' bar need only capture a single state legislature and push for plaintiff-friendly law and choice-of-

law rules that would apply to claims that arise anywhere.").

Nor is this problem limited to Pennsylvania. Every state requires out-of-state companies doing in-state business to register. See *Mallory*, 600 U.S. at 164 (Barrett, J., dissenting). And other jurisdictions have now followed in the Commonwealth's footsteps to leverage their registration schemes. Some have enacted new statutory registration-jurisdiction schemes for at least certain categories of claims. See 735 Ill. Comp. Stat. § 5/2-209(b)(5); 805 Ill. Comp. Stat. § 5/13.20(b). Others have adopted or reaffirmed registration-jurisdiction through judicial decisions, even in the face of Commerce Clause challenges. See *PDII, LLC* v. *Sky Aircraft Maint., LLC*, 925 S.E.2d 28, 36 (N.C. Ct. App. 2025) ("Guided by *Mallory* . . . we hold a foreign corporation that obtains a certificate of authority consents to general personal jurisdiction in North Carolina"), *stayed*, 924 S.E.2d 34 (N.C. 2026) (mem.); *Lynn* v. *BNSF Ry.*, No. A24-1449, 2025 WL 1860488, at *5 (Minn. Ct. App. July 7, 2025) (similar), *review denied* (Oct. 3, 2025), *cert. pet. pending*, No. 25-1046; *Shawgo* v. *Counter Brands, LLC*, No. 24-cv-0556, 2025 WL 965096, at *4 (D. Minn. Mar. 31, 2025) (registration and appointment of agent for service of process "consents to the jurisdiction of Minnesota courts over any lawsuit . . . whether or not the lawsuit relates to the [company's] in-state activities"); *Am. Food & Vending Corp.* v. *Goodyear Tire & Rubber Co.*, No. 24-02108, 2025 WL 2770651 (D. Kan. Sep. 29, 2025) (rejecting a dormant commerce clause argument against a jurisdiction-by-registration scheme based, in part, on *Mallory*).

The result is substantial unpredictability that necessarily dampens interstate commerce and investment. Broad registration-jurisdiction schemes "reduce

the certainty of the law and subject businesses to capricious litigation treatment as a cost of operating on a national scale or entering any state's market." *Genuine Parts Co.* v. *Cepec*, 137 A.3d 123, 127–28 (Del. 2016) (en banc). Faced with this increased risk, companies that would otherwise participate in the national market may, instead, take the prudent approach, preferring to wait for that much-needed stability prior to making the large investment necessary to expand business across state lines. See *Mallory*, 600 U.S. at 162 (Alito, J. concurring in part) (recognizing State's may not enter an out-of-state market "due to the increased risk of remote litigation").

Other companies may refrain from registering, reasoning that "a corporation who defie[s] registration statutes could face lesser jurisdictional consequences than a corporation who complie[s] and register[s]." Carol R. Andrews, *Another Look at General Personal Jurisdiction*, 47 Wake Forest L. Rev. 999, 1006 (2012). This counterintuitive outcome would undermine respect for the rule of law and creates perverse structural incentives for businesses to limit rather than expand lawful economic activity. See *Mallory*, 600 U.S. at 162 (Alito, J., concurring).

And this calculus—compelled by jurisdictional uncertainty—inevitably chills economically beneficial expansion and investment, as foreign companies must think long and hard about whether the potential benefits of doing business in Pennsylvania outweigh the increased risk of suit. International companies seeking to expand into U.S. markets may be especially chilled. See *Daimler*, 571 U.S. at 141–42. Or, if they register anyway, they may face suits in state courts arising from their conduct around the world—raising diplomatic concerns. See Rhodes, *supra*, at 900.

These results are not just harmful to interstate commerce, but also to the judicial system and to horizontal federalism. They foster a dynamic in which a handful of plaintiff-friendly jurisdictions can seize authority over essentially all major litigation against corporate defendants, distorting litigation outcomes, diverting resources from local disputes, and eroding the justice system's perceived fairness. And they undermine interstate federalism by allowing any state to exercise jurisdiction over a dispute in which it has no real interest—and in which other states have far greater sovereign interests.

All this uncertainty is compounded by the questions *Mallory* did not decide. Faced with a flood of forum-shopped lawsuits based on registration-jurisdiction, defendants must raise every remaining personal-jurisdiction defense, including due-process notice concerns (for statutes less clear than Pennsylvania's), due-process merits (for defendants with no or negligible in-state operations), and most of all, the dormant Commerce Clause. Litigants and lower courts are thus grappling with all these issues, with scant guidance. And defendants face the prospect of protracted, expensive litigation, and potentially significant adverse judgments, before they can get answers.

This Court should take the opportunity to resolve the Commerce Clause question—lest the looming uncertainty chill the very interstate commerce the Commerce Cause was meant to preserve.

II. Pennsylvania's scheme violates the Commerce Clause in cases with no forum link.

The Commerce Clause serves both to empower Congress to regulate interstate commerce and to "assure that there be free trade among the several States." *Boston Stock Exch.* v. *State Tax Comm'n*, 429 U.S. 318,

335 (1977). A state law violates the Commerce Clause by "impos[ing] undue burdens on," or "discriminat[ing] against," interstate commerce. *South Dakota* v. *Wayfair*, 585 U.S. 162, 173 (2018); see *Nat'l Pork Producers Council* v. *Ross*, 598 U.S. 356, 369 (2023). As Justice Alito recognized, Pennsylvania's scheme—when applied to a case with a foreign plaintiff, a foreign defendant, and a foreign cause of action—does both.

1. The Commerce Clause forbids state laws whose interstate-commerce burdens are "clearly excessive in relation to the putative local benefits." *Wayfair*, 585 U.S. at 173 (quoting *Pike* v. *Bruce Church, Inc.*, 397 U.S. 137, 142 (1970)). So if a law serves "no legitimate [local] interest," then any burden suffices to invalidate it, since there is "nothing to be weighed in the balance" against the burden. *Edgar* v. *MITE Corp.*, 457 U.S. 624, 644 (1982).

That is the case here. *First*, the burdens are clear. As noted, the Court has already held that requiring an out-of-state corporation "to defend itself with reference to all transactions," "whether or not the transaction in question had any connection with" the forum state, "is a significant burden." *Bendix*, 486 U.S. at 892–93. *Bendix* applied the dormant Commerce Clause to invalidate an Ohio law that "force[d] a foreign corporation to choose between exposure to the general jurisdiction of Ohio courts or forfeiture of the [statute of] limitations defense, remaining subject to suit in Ohio in perpetuity." See *Id.* at 893.

The Court has also applied this reasoning to invalidate a very similar state registration law, as applied to an interstate railroad. *Davis* v. *Farmers' Co-operative Equity Company* held that a Minnesota law that "compel[ed] every foreign interstate carrier to submit to suit there as a condition of maintaining a soliciting agent within the state" was invalid as applied in a case

"in no way connected with Minnesota." 262 U.S. 312, 314–17 (1923) (Brandeis, J., for the Court). In a case with no forum connection, such a law "imposes upon interstate commerce a serious and unreasonable burden, which renders the statute obnoxious to the commerce clause." *Id.* Other cases are in accord. See *Mallory*, 600 U.S. at 161 (Alito, J., concurring in part) (collecting cases).

Likewise here, Pennsylvania's scheme imposes "operational burdens" and "injects intolerable unpredictability into doing business across state borders." *Id.* at 161. Indeed, some companies "may prudently choose not to enter an out-of-state market due to the increased risk of remote litigation," and others "may forgo registration altogether, preferring to risk the consequences rather than expand their exposure to general jurisdiction." *Id.* at 162.

Second, no valid local interest exists to justify these burdens. Pennsylvania's own high court recognized—and five Justices agreed—that Pennsylvania "has no legitimate interest in a controversy with no connection to the Commonwealth that was filed by a non-resident against a foreign corporation that is not at home here." *Mallory* v. *Norfolk S. Ry.*, 266 A.3d 542, 567 (Pa. 2021), *vacated*, 600 U.S. 122 (2023); accord *Mallory*, 600 U.S. at 169 n.1 (Barrett, J., dissenting). As Justice Alito put it: "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." 600 U.S. at 162 (Alito, J., concurring in part).

At bottom: "The State has no legitimate interest in protecting nonresidents." *Printz* v. *United States*, 521 U.S. 898, 920 (1997) (cleaned up); see *Asahi Metal Indus.*, 480 U.S. at 114. Thus, "there is nothing to be

weighed in the balance to sustain the law." *Edgar*, 457 U.S. at 644. But even if Pennsylvania could assert some marginal interest, it could not "overcome the serious burdens on interstate commerce that it imposes." *Mallory*, 600 U.S. at 163 (Alito, J., concurring in part); see *Bendix*, 486 U.S. at 893–94.

2. Pennsylvania's scheme also discriminates against foreign corporations by imposing a unique burden on them—"forcing them to increase their exposure to suits on all claims in order to access Pennsylvania's market while Pennsylvania companies generally face no reciprocal burden for expanding operations into another State." *Mallory*, 600 U.S. at 161 & n.7 (Alito, J. concurring in part). *Bendix* again provides guidance. The Ohio law there "impose[d] a greater burden on out-of-state companies than it [did] on Ohio companies, subjecting the activities of foreign and domestic corporations to inconsistent regulations." 486 U.S. at 894. So too here.

It does not matter that Pennsylvania's law may not look facially discriminatory. "[L]aws can violate the Dormant Commerce Clause even where in-state and out-of-state businesses are treated the same"—for example, if they take "an advantage that out-of-staters possess[ ] . . . and nullif[y] its benefit within the state." John F. Preis, *The Dormant Commerce Clause as a Limit on Personal Jurisdiction*, 102 Iowa L. Rev. 121, 139–40 (2016). Pennsylvania does just that, by removing an out-of-state business's protection from suit unrelated to its activities there. That, in turn, imposes special burdens on foreign corporations not shared by their in-state competitors. See *Mallory*, 600 U.S. at 161 & n.7 (Alito, J. concurring in part).

3. Applying the Dormant Commerce Clause here is particularly appropriate because Norfolk Southern is an interstate railroad. By nature, it must operate

across state lines, and even if it wanted to stop operating in a particular state, it could not abandon any of its rail lines without permission from the federal regulator. 49 U.S.C. § 10903(a)(1)(A). Thus, the burden of Pennsylvania's law falls directly on the channels of interstate commerce. See Jeffrey L. Rensberger, *Consent to Jurisdiction Based on Registering to Do Business: A Limited Role for General Jurisdiction*, 58 San Diego L. Rev. 309, 366 (2021) (emphasizing registration-jurisdiction's burdens on interstate commerce as applied to "networked industries" like railroads). And in a FELA case like this one, the railroad defendant cannot remove a state-court suit to federal court, even though the claims are federal. 28 U.S.C. § 1445(a). So a FELA plaintiff can forum-shop not just across state lines, but within states too.

This matters because the Court's Dormant Commerce Clause cases have always been particularly skeptical of "state regulations on instrumentalities of interstate transportation—trucks, trains, and the like." *Nat'l Pork Producers*, 598 U.S. at 379 n.2; see also *id.* at 392 (Sotomayor, J., concurring); see, *e.g.*, *S. Pac. Co.* v. *Arizona ex rel. Sullivan*, 325 U.S. 761, 763–782 (1945) (Commerce Clause bars states from regulating train length). Likewise, the Court has long recognized that a railroad "cannot easily remove" itself from a jurisdiction where it operates, making it "easy prey" for local regulators. See *Dep't of Revenue of Or.* v. *ACF Indus., Inc.,* 510 U.S. 332, 336 (1994). And the Court's Dormant Commerce Clause cases specifically recognize that "requiring from interstate [rail] carriers general submission to suit" in cases with no forum connection "unreasonably obstructs, and unduly burdens, interstate commerce." *Davis*, 262 U.S. at 317. Thus, applying Pennsylvania's registration-jurisdiction

scheme is especially improper in a case involving an interstate railroad defendant

Thus, the Commerce Clause invalidates Pennsylvania's jurisdiction-by-registration scheme as applied in a case—like this one—with no forum link. In brushing aside this issue, the Pennsylvania courts have refused to engage with the substance of these arguments, declaring simply that, while "Justice Alito's concurrence provides a window into the workings of that jurist's mind, concurring opinions have no legal effect and, therefore, are not binding on any court." Pet. App. 7a; see *id.* at 2a (citing this explanation for rejecting Norfolk Southern's appeal below). But non-binding does not mean incorrect. And as Justice Alito explained, his views build on a century of this Court's precedents, which *are* binding. The decisions below are wrong.

III. This an ideal vehicle.

1. This case is an unusually good vehicle, for three reasons. *First*—as was true last time the case was here—the relevant facts are few and uncontested, the applicable state law is clear, and the case undisputedly has "no connection" to the forum. See *Mallory*, 600 U.S. at 132; *id.* at 170 (Barrett, J., dissenting). Thus, this case cleanly presents the question of whether the Commerce Clause allows general registration-jurisdiction in a case with a foreign plaintiff, a foreign defendant, and a foreign cause of action.

Second, because the Court has already decided the due process question *in this case*, that issue has dropped away. By contrast, in almost any other case—arising in Pennsylvania or elsewhere—the due process question will still be open. *Mallory*'s holding is narrow; the majority declined to "speculate whether any other statutory scheme *and set of facts* would suffice to establish consent to suit." *Id.* at 135 (emphasis added);

see *id.* at 143 (plurality) (emphasizing the extent of Norfolk Southern's operations in Pennsylvania); *id.* at 154 (Alito, J., concurring in part) (emphasizing "the facts of this case"). Thus, other cases that raise the Commerce Clause question may also raise follow-on due process questions based on different factual permutations. No such complication exists here.

Third, because this case arises in Pennsylvania, there are no due-process *notice* questions here. Unlike other states' laws, Pennsylvania's statutes expressly assert general jurisdiction based on corporate registration, putting registrants on notice of the consequences. See *id.* at 148 (Jackson, J., concurring); *id.* at 153 (Alito, J., concurring in part). In other states, however, registration jurisdiction has been applied by judicial decision based on far more ambiguous language. Cases arising elsewhere may thus raise threshold fair-notice issues that are absent here. Cf. *K&C Logistics, LLC* v. *Old Dominion Freight Line, Inc.*, 374 So. 3d 515, 527 (Miss. 2023).

2. While interlocutory, the decision below is reviewable under 28 U.S.C. § 1257(a). Because the state appellate courts refused to review the trial court's Commerce Clause ruling, the trial court is "the highest court of the State in which a decision could be had." See *Virginian Ry.* v. *Mullens*, 271 U.S. 220, 222 (1926); see also *Am. Ry. Express* v. *Levee*, 263 U.S. 19, 20–21 (1923).

The judgment below is also final on this issue. See *Cox Broad. Corp.*, 420 U.S. at 477. Indeed, it "serves the policy underlying the requirement of finality . . . to determine now in which state court [Norfolk Southern] may be tried rather than to subject [it], and [Mallory], to long and complex litigation which may all be for naught if consideration of the preliminary question of

venue is postponed until the conclusion of the proceedings." *Mercantile Nat'l Bank* v. *Langdeau*, 371 U.S. 555, 558 (1963). For that reason, this Court regularly reviews personal-jurisdiction questions in an interlocutory posture, including where the state appellate courts have refused to intervene. See *Goodyear Dunlop Tires Operations, SA* v. *Brown*, 564 U.S. 915, 922–23 (2011) (granting review after denial of motion to dismiss and denial of discretionary review by state high court "to decide whether the general jurisdiction the North Carolina courts asserted over petitioners" was proper); *Burnham* v. *Super. Ct. of Cal.*, 495 U.S. 604, 608 (1990) (granting review following denial of motion to quash service of process and appellate court denied mandamus relief); *Asahi Metal Indus.*, 480 U.S. at 106–08 (1987) (similar); *World-Wide Volkswagen Corp.*, 444 U.S. at 288–91 (similar); *Kulko* v. *Super. Ct. of Cal.*, 436 U.S. 84, 88–89 (1978) (similar); *Rush* v. *Savchuk*, 444 U.S. 320, 324 (1980) (granting review after denial of motion to dismiss for lack of personal jurisdiction).

CONCLUSION

For these reasons, the petition should be granted.

Respectfully submitted,

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