

No. 25-1208

IN THE
Supreme Court of the United States

NORFOLK SOUTHERN RAILWAY COMPANY,

Petitioner,

v.

ROBERT WILLMORE MALLORY, AS
ADMINISTRATOR OF THE ESTATE OF
ROBERT THURSTON MALLORY, *et al.*,

Respondents.

**ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF
COMMON PLEAS OF PENNSYLVANIA, PHILADELPHIA COUNTY**

BRIEF IN OPPOSITION

CHARLES L. BECKER
RUXANDRA M. LAIDACKER
CORRIE WOODS
KLINE & SPECTER, P.C.
1525 Locust Street
Philadelphia, PA 19102

DANIEL C. LEVIN
Counsel of Record
FREDERICK S. LONGER
NICHOLAS J. ELIA
LEVIN SEDRAN & BERMAN
510 Walnut Street,
Suite 500
Philadelphia, PA 19106
(215) 592-1500
dlevin@lfsblaw.com

Counsel for Respondents

June 26, 2026

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QUESTION PRESENTED

Norfolk Southern asks this Court to assess whether Pennsylvania's general jurisdiction statute violates this Court's dormant Commerce Clause jurisprudence. Under Pennsylvania law, Norfolk Southern had to raise that issue by preliminary objections at the outset of Mr. Mallory's case. It did not. When Norfolk Southern later sought leave to file amended preliminary objections to assert a dormant Commerce Clause argument, the trial court found that Norfolk Southern had waived the argument by failing to raise it at the outset of the case. Norfolk Southern subsequently filed preliminary objections to an amended complaint filed to substitute parties after Mr. Mallory's death. Having previously found waiver, the trial court overruled those preliminary objections without further explanation. The Pennsylvania Superior Court declined discretionary review. So did the Pennsylvania Supreme Court. As such, no court ruled on Norfolk Southern's dormant Commerce Clause argument. The trial court ruled only that the argument was waived under state procedural law. Nevertheless, Norfolk Southern seeks this Court's review.

Should the Court exercise review under these circumstances, the question presented is:

Whether the Pennsylvania statute providing for the exercise of general jurisdiction over a foreign corporation that voluntarily registered with the Commonwealth and therefore consented to general jurisdiction violates the dormant Commerce Clause.

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INTRODUCTION

This is the second time this case has come before this Court. The first time, in *Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122 (2023) (“*Mallory II*”), this Court held that the Pennsylvania statute providing for the exercise of general jurisdiction over a foreign corporation that registers with the Commonwealth comports with the Fourteenth Amendment’s Due Process Clause. See 42 Pa. C.S. § 5301(a)(2)(i). Petitioner Norfolk Southern Railway Company (“Norfolk Southern”) now returns with a new challenge to the general jurisdiction statute—the dormant Commerce Clause. The Court should deny Norfolk Southern’s petition for two reasons.

First, no court in this litigation has ruled on the dormant Commerce Clause question that Norfolk Southern asks this Court to consider. The trial court never ruled on the merits; it found that Norfolk Southern had waived the argument by failing to raise the issue in its initial preliminary objections. The Pennsylvania Superior Court never ruled on the issue; it only denied Norfolk Southern’s request for discretionary appellate review. The Pennsylvania Supreme Court never ruled on the issue either; it only denied Norfolk Southern’s petition for allowance of appeal. This Court should not expend its resources addressing an issue that has not been decided by any lower court in this litigation, especially where the trial court found that the issue was waived under state law.

Second, the issue does not meet the criteria set forth in Rule 10. There is no conflict among the circuit courts or state courts regarding the interplay between the Court’s dormant Commerce Clause jurisprudence and the

consent-by-registration provision of Section 5301. There is no compelling reason to grant the petition, especially where Norfolk Southern would enjoy the right to contest the trial court's waiver finding on the entry of a final order. But for now, no court in this litigation has considered the dormant Commerce Clause issue, let alone decided it.

The petition for a writ of certiorari should be denied.

STATEMENT OF THE CASE

1. In September 2017, Robert Mallory filed a Complaint against Norfolk Southern in the Court of Common Pleas of Philadelphia County pursuant to the Federal Employers' Liability Act, 45 U.S.C. § 51 *et seq.* The action arose from Mr. Mallory's injuries that he alleged were sustained while an employee of Norfolk Southern in Virginia and Ohio from 1988 to 2005. During that time period, Mr. Mallory was exposed regularly to toxic fumes, dust, solvents, and chemicals. Mr. Mallory alleged that his exposure caused him to develop colon cancer. Mr. Mallory alleged that the Pennsylvania courts properly exercised general jurisdiction over his case under 42 Pa. C.S. § 5301(a)(2)(i) because Norfolk Southern had registered as a foreign corporation in Pennsylvania.

2. Norfolk Southern filed a preliminary objection (Pennsylvania's equivalent to a motion to dismiss, *e.g.*, a Rule 12(b)(2) motion) asserting a lack of personal jurisdiction because Section 5301(a)(2)(i) violated the Due Process Clause of the Fourteenth Amendment. The trial court sustained the preliminary objection. The Supreme Court of Pennsylvania affirmed. See *Mallory v. Norfolk Southern Railway Co.*, 300 A.3d 1013 (Pa. 2023) ("*Mallory I*"). In *Mallory II*, this Court found that Section

5301(a)(2)(i) comported with Due Process. The Court vacated the Pennsylvania Supreme Court's decision and remanded for further proceedings.

3. Back in the trial court, Norfolk Southern filed a motion for leave to file amended preliminary objections in which it would argue (for the first time) that Section 5301 violated the dormant Commerce Clause. Mr. Mallory opposed the motion, arguing that Norfolk Southern had waived any dormant Commerce Clause argument under Pennsylvania law by not raising that argument in its original preliminary objections filed at the outset of the case. In an order dated April 5, 2024, the trial court denied Norfolk Southern's motion. Resp. App. 1a.

4. Mr. Mallory died in July 2024. On October 1, 2024, Respondents' counsel filed a suggestion of death. On November 21, 2024, Respondents filed a motion to substitute Mr. Mallory's estate as the new plaintiff in the case. In response, Norfolk Southern filed preliminary objections, arguing that Section 5301(a)(2)(i) violated the dormant Commerce Clause.

5. On January 28, 2025, the trial court granted Respondents' motion to substitute. Resp. App. 3a. The trial court also dismissed Norfolk Southern's preliminary objections as premature since an amended complaint had not yet been filed. *Id.* In the order, the trial court stated that Norfolk Southern had waived a dormant Commerce Clause argument, as previously determined by its earlier order dated April 5, 2024. *Id.* As the Court wrote:

This Court has already determined by Order dated April 5, 2024, and docketed April 9,

2024, that Defendant has waived the argument that this Court's assertion of general personal jurisdiction by operation of 42 Pa. C.S. § 5301(a)(2)(i) violates the Dormant Commerce Clause, U.S. Const. Art. I, § 8, cl. 3.

Id.

6. Notwithstanding the trial court's waiver finding, Norfolk Southern filed preliminary objections on February 24, 2025, asserting a dormant Commerce Clause argument. Having found that Norfolk Southern waived any dormant Commerce Clause argument, the trial court denied the preliminary objections on April 8, 2025. Pet. App. 3a.

7. On May 7, 2025, Norfolk Southern moved the trial court to amend and certify its order for permissive interlocutory appellate review in the Superior Court of Pennsylvania. The trial court denied the motion on June 8, 2025.

8. On June 30, 2025, Norfolk Southern filed a petition for permission to appeal in the Superior Court. The Superior Court denied this petition on July 21, 2025. Pet. App. 2a. It did not order briefing. It did not hold argument. It did not issue a decision on the dormant Commerce Clause question on which Norfolk Southern seeks review. *Id.*

9. On August 19, 2025, Norfolk Southern filed a Petition for Allowance of Appeal to the Pennsylvania Supreme Court. The Supreme Court denied that petition on January 27, 2026. Pet. App. 1a. It did not order briefing.

It did not hold argument. It did not issue a decision on the dormant Commerce Clause question on which Norfolk Southern seeks review. *Id.* Norfolk Southern now seeks certiorari in this Court.

REASONS FOR DENYING CERTIORARI

- I. The case is a poor vehicle for considering the constitutionality of Pennsylvania’s consent-by-registration statute under dormant Commerce Clause principles.**
 - a. The trial court held that Norfolk Southern waived any challenge to personal jurisdiction under dormant Commerce Clause principles.**

Norfolk Southern constructs an alternative narrative where the trial court ruled on the merits without an opinion. See Pet. at 5 (“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.”).

This alternative narrative is not correct and conveniently omits the trial court’s January 28, 2025, order which specifically ruled that Norfolk Southern had already waived its dormant Commerce Clause arguments. Resp. App. 3a. Having previously found waiver, the trial court did not issue a merits ruling on that issue nor elaborate on the straightforward reason for the denial. Pet. App. 3a. Neither did the Superior Court. Pet. App. 2a. Neither did the Supreme Court. Pet. App. 1a. No court in this litigation has ruled on a dormant Commerce Clause

question. Without a fulsome trial court and appellate record with findings of fact and legal analysis, this Court has nothing to review.

The only potentially ripe question concerning Norfolk Southern's dormant Commerce Clause argument is whether the trial court erred by finding that the argument was waived and hence declining to consider the argument. Norfolk Southern has not asked this Court to consider that question. That is purely a question of Pennsylvania law, and thus, not appropriate for review by this Court.

The Pennsylvania Rules of Civil Procedure provide that the affirmative defense of lack of personal jurisdiction must be raised by preliminary objections at the trial court or else it is waived. See Pa. R. Civ. P. 1032(a) ("A party waives all defenses and objections which are not presented either by preliminary objection, answer or reply . . ."). A party may only appeal an issue which has been properly preserved—*i.e.*, not waived. *Commonwealth v. Agie*, 296 A.2d 741, 741 (Pa. 1972).

Here, Norfolk Southern did not raise a dormant Commerce Clause argument in its original preliminary objections. Applying Rule 1032, the trial court held that Norfolk Southern had already waived that argument when it later sought to file preliminary objections to an amended complaint. Resp. App. 1a, 3a.

Norfolk Southern did not seek permissive appellate review in the Pennsylvania courts of the trial court's state-law waiver ruling under Pa. R.A.P. 1311 and 42 Pa. C.S. § 702(b). Norfolk Southern still could seek appeal of the waiver ruling upon the entry of a final order. See Pa.

R.A.P. 341(a). In the meantime, the waiver ruling is not a subject of the present petition. Rather, Norfolk Southern asks this Court to review a nonexistent decision about the constitutionality of Section 5301 when the trial court never considered that question.

Because the trial court's decision applied Pennsylvania's waiver law and hence rested on an "independent and adequate state ground," this Court has no power to review it. *Coleman v. Thompson*, 501 U.S. 722, 729 (1991). Indeed, that waiver remains in effect at the trial court regardless of the outcome of the present Petition, and any decision by this Court regarding the application of the dormant Commerce Clause to Section 5301 would therefore have no effect, represent an "advance expression[] of legal judgment," and amount to an impermissible advisory opinion. *United States v. Fruehoff*, 365 U.S. 146, 157 (1961). This Court ought not be the first court in this litigation to decide the question presented. Certiorari should be denied for this reason alone.

b. The case has not produced any final order from which Norfolk Southern may appeal.

"Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari . . . where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, . . ." 28 U.S.C. § 1257(a). Finality "typically requires 'an effective determination of the litigation and not of merely interlocutory or intermediate steps therein.'" *Doe v. Facebook, Inc.*, 142 S. Ct. 1087, 1088–89 (2022) (quoting

Market Street R. Co. v. Railroad Comm'n of Cal., 324 U.S. 548, 551 (1945)). “The finality requirement of 28 U.S.C. § 1257 . . . serves several ends: (1) it avoids piecemeal review of state court decisions; (2) it avoids giving advisory opinions in cases where there may be no real ‘case’ or ‘controversy’ in the sense of Art. III; (3) it limits review of state court determinations of federal constitutional issues to leave at a minimum federal intrusion in state affairs.” *N. Dakota State Bd. of Pharmacy v. Snyder’s Drug Stores, Inc.*, 414 U.S. 156, 159 (1973). This jurisdictional “requirement is not one of those technicalities to be easily scorned. It is an important factor in the smooth working of our federal system.” *Radio Station WOW v. Johnson*, 326 U.S. 120, 124 (1945).

Here, Norfolk Southern seeks review of a trial court’s interlocutory order overruling preliminary objections on waiver grounds. The Superior Court denied permissive interlocutory review. Pet. App. 2a. The Supreme Court of Pennsylvania declined allowance of appeal. Pet. App. 1a. The Supreme Court’s order reads simply: “AND NOW, this 27th day of January, 2026, the Petition for Allowance of Appeal is DENIED.” *Id.* Under these circumstances, the Supreme Court of Pennsylvania did not enter a “final judgment” within the meaning of 28 U.S.C. 1257(a). Indeed, the case remains at a preliminary stage in the trial court.

Further, with “very rare exceptions,” *Yee v. Escondido*, 503 U.S. 519, 533 (1992), the Court has “adhered to the rule in reviewing state court judgments under 28 U.S. § 1257 that we will not consider a petitioner’s federal claim unless it was either addressed by, or properly presented to, the state court that rendered the decision we have been asked to review.” *Adams v. Robertson*, 520 U.S. 83, 86 (1997)

(citations omitted). As noted above, that did not happen here. Not only is the Pennsylvania Supreme Court's order not "final" in any conceivable way, but no Court in this litigation has considered or decided the question that Norfolk Southern asks this Court to review. Instead, the trial court overruled Norfolk Southern's preliminary objections solely on state-law procedural grounds that "effectively moot the federal-law question raised here." *Jefferson v. City of Tarrant*, 522 U.S. 75, 82 (1997).

Norfolk Southern misplaces its reliance on *Virginian Ry. Co. v. Mullens*, 271 U.S. 220 (1926). There, a trial in West Virginia resulted in a verdict and a final judgment. The Supreme Court of Appeals of West Virginia declined to exercise discretionary review over the judgment, "making the trial court the highest court of the state in which a decision could be had." This Court granted certiorari to consider a federal law question where a final judgment had been entered. *Id.* at 222. Here, the case remains pending in the trial court. The Pennsylvania Supreme Court's declining of interlocutory review does not give this case an equivalent procedural posture.

Norfolk Southern also misplaces reliance on *Mercantile Nat. Bank at Dallas v. Langdeau*, 371 U.S. 555, 557–58 (1963), in which this Court held that a federal statute rather than a state venue statute controlled the choice of counties in which national banks could be sued. The Court granted certiorari to review a merits decision of the Texas Supreme Court on the issue presented. Such a review never happened here.

Norfolk Southern cites to cases in which this Court reviewed "personal-jurisdiction questions in an

interlocutory posture, including where the state appellate courts have refused to intervene.” Pet. at 18. In the cited cases, however, state appellate courts actually reached the merits of the jurisdictional question presented to this Court. For example, in *Goodyear Dunlop Tires Operations, SA v. Brown*, 564 U.S. 915 (2011), the defendant moved to dismiss a case on personal jurisdiction grounds, and the trial court denied that motion on the merits. A state appellate court affirmed on the merits. The Supreme Court of North Carolina denied discretionary review, but two lower courts had squarely addressed the Due Process issue presented. *Id.* at 922. Similar facts obtain in other cases on which Norfolk Southern relies. See *Burnham v. Super. Ct. of Cal.*, 495 U.S. 604 (1990) (certiorari allowed after both state trial and appellate courts had ruled on the merits of the jurisdictional issue presented); *Asahi Metal Indus. Co. v. Superior Ct. of California, Solano Cnty.*, 480 U.S. 102, 108–09 (1987) (same); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 289–90 (1980) (same); *Kulko v. Super. Ct. of Cal.*, 436 U.S. 84, 88–89 (1978) (same); *Rush v. Savchuk*, 444 U.S. 320, 324 (1980) (same). In those cases, there was at least a final state-court decision with respect to the federal question present for this Court’s review.

Here, the trial court overruled preliminary objections on waiver grounds. The appellate courts never entertained merits review. Not one judge has ruled on the dormant Commerce Clause question that Norfolk Southern belatedly raises. The contrasting facts between this case and those cases referenced by Norfolk Southern underline the appropriateness of denying certiorari.

II. There is no split in federal or state appellate authority on the issue presented.

As set forth in Rule 10, this Court’s considerations regarding certiorari include the existence of conflicts among the federal circuit court or among the state courts of last resort. This Court ordinarily denies certiorari petitions absent such conflicts. *Box v. Planned Parenthood of Indiana & Kentucky, Inc.*, 587 U.S. 490, 493 (2019) (denying certiorari where “[o]nly the Seventh Circuit has thus far addressed this kind of law”).

Here, there is no split among federal circuit courts on the dormant Commerce Clause issue raised in the Petition. There is no conflict among the state supreme courts either. Nor does any conflict exist between the state supreme courts and the federal circuit courts.

Norfolk Southern points to recent state courts decisions interpreting *Mallory II*. See Pet. at 9. But none contribute to a developed circuit split on the dormant Commerce Clause issue, and none even involve decisions by federal circuit courts or state courts of last resort. Only one case, *Lynn v. BNSF Ry.*, No. A24-1449, 2025 WL 1860488 (Minn. Ct. App. July 7, 2025), involved an appellate decision interpreting the dormant Commerce Clause. That was a nonprecedential opinion of a state intermediate appellate court, and this Court denied certiorari. No. 25-1046, 2026 WL 1203425 (U.S. May 4, 2026). One federal district court opinion is currently on appeal to the Tenth Circuit Court of Appeals. See *Am. Food & Vending Corp. v. Goodyear Tire & Rubber Co.*, No. 24-02108, 2025 WL 2770651 (D. Kan. Sep. 29, 2025). And other cases identified by Norfolk Southern did not address

the dormant Commerce Clause at all. See *PDII, LLC v. Sky Aircraft Maint., LLC*, 925 S.E.2d 28 (N.C. Ct. App. 2025); *Shawgo v. Counter Brands, LLC*, No. 24-cv-0556, 2025 WL 965096 (D. Minn. Mar. 31, 2025).

Under these circumstances, no conflict exists that would support certiorari under Rule 10. Further, the present case does not contribute to any supposed conflict because the trial court found that Norfolk Southern had waived the dormant Commerce Clause argument and hence never addressed the argument. No appellate court in this case has addressed the argument either.

III. The case does not present a question otherwise warranting this Court's immediate review.

As set forth in Rule 10, when evaluating certiorari, the Court considers whether “a state court . . . has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.” Sup. Ct. R. 10(c). Here, setting aside the fact that the trial court never considered the dormant Commerce Clause argument, this condition is not met because this Court has already held that dormant Commerce Clause principles do not prohibit the exercise of general jurisdiction over foreign corporations. See *Denver & R. G. W. R. Co. v. Terte*, 284 U.S. 284, 287 (1932).

In *Denver*, a Missouri resident sued two railroads under the FELA in Missouri state court for personal injuries that occurred in Colorado. The Santa Fe Railroad was a Kansas corporation that operated railroads in states including Missouri and had registered to do business

in Missouri. The Rio Grande Railroad was a Delaware corporation that did not operate in Missouri and was not registered to do business there except for keeping offices in the state to solicit traffic. Applying *Hoffman v. State of Missouri ex rel. Foraker*, 274 U.S. 21 (1927), this Court held that a Missouri state court could exercise jurisdiction over the Santa Fe Railroad but not the Rio Grande Railroad. The Court reasoned that exercising jurisdiction over the Santa Fe Railroad would not create an “undue burden on interstate commerce” such that it should “deprive[] the courts of jurisdiction over cases like this.” *Denver*, 284 U.S. at 285–87; see *Hoffman*, 274 U.S. at 23 (“It must submit, if there is jurisdiction, to the requirements of orderly, effective administration of justice, although thereby interstate commerce is incidentally burdened.”). The present case is similar to the case against the Santa Fe Railroad. Further, no Pennsylvania court involved in this case has entered a ruling that conflicts with *Denver* and *Hoffman*.

Norfolk Southern cites *Davis v. Farmers’ Co-op. Equity Co.*, 262 U.S. 312 (1923), where this Court invalidated a Minnesota statute that “compels every foreign interstate carrier to submit to suit there as a condition of maintaining a soliciting agent within the state.” *Id.* at 315. Other cases have noted the factual posture of *Davis* and emphasized the difference between a corporation that employs a soliciting agent in the state and a corporation with more concrete contacts such as actually operating there. See, e.g., *Harris v. Am. Ry. Express Co.*, 12 F.2d 487, 488 (D.C. Cir. 1926); *Erving v. Chicago & N.W. Ry. Co.*, 214 N.W. 12, 13 (Minn. 1927); *Busch v. Louisville & N. R. Co.*, 17 S.W.2d 337, 339 (Mo. 1929). Given the facts present here, *Denver* already supports the exercise

of personal jurisdiction. See *Mallory II*, 600 U.S. at 146 (“Not every case poses a new question. This case poses a very old question indeed—one this Court resolved more than a century ago in *Pennsylvania Fire*.”).

This Court has long recognized that corporations obtain their rights and privileges according to the laws of the state in which they are incorporated. *Bank of Augusta v. Earle*, 38 U.S. 519, 588 (1839). Just as states may regulate how domestic corporations operate within their borders, states may regulate foreign corporations that seek to operate within their borders. *Lafayette Ins. Co. v. French*, 59 U.S. 404, 407 (1855) (“A corporation created by Indiana can transact business in Ohio only with the consent, express or implied, of the latter State.”). Consistent with that sovereign authority, states may require corporations that do business in the state to register, even if the corporation engages in interstate commerce. States may likewise impose consequences for failure to register, such as prohibition on accessing the state’s courts. A corporation does not “escape state regulation merely because it is also engaged in interstate commerce.” See *Eli Lilly & Co. v. Sav-On-Drugs, Inc.*, 366 U.S. 276, 279 (1961). At the same time, not every state law that potentially impacts interstate commerce violates dormant Commerce Clause principles. *Id.*

Rather, to violate dormant Commerce Clause principles, a state law must “unjustifiably discriminate on [its] face against out-of-state entities” or “impose burdens on interstate trade that are clearly excessive in relation to the putative local benefits.” *Am. Trucking Associations, Inc. v. Michigan Pub. Serv. Comm’n*, 545 U.S. 429, 433 (2005) (citing *Philadelphia v. New Jersey*,

437 U.S. 617 (1978), and *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970)) (internal quotation marks omitted). Pennsylvania’s general jurisdiction statute does not come near that standard. A foreign corporation may register in Pennsylvania and subject itself to general jurisdiction. See 15 Pa. C.S. § 411; 42 Pa. C.S. § 5301(a)(2)(i). A foreign corporation may decline to register as well, the only consequence being inability to sue in Pennsylvania courts. See 15 Pa. C.S. § 411(b). This is hardly punitive. It is not disruptive to interstate commerce either. If anything, the statute places domestic and foreign-registered corporations on equal footing.

Norfolk Southern decided to register as a foreign corporation in Pennsylvania and thereby subjected itself to the general jurisdiction of Pennsylvania’s courts. *Mallory II*, 600 U.S. at 146 (“a variety of ‘actions of the defendant’ that may seem like technicalities nonetheless can ‘amount to a legal submission to the jurisdiction of a court’”) (quoting *Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 704–05 (1982)). This outcome does not reflect unjustifiable discrimination against out-of-state entities. Neither does it indicate burdens on interstate commerce that are clearly excessive relative to the local benefits.

Regardless, the issue was never decided in this case. The trial court found waiver of any dormant Commerce Clause argument. The appellate courts declined discretionary review. Norfolk Southern now asks this Court to decide the question for the first time in this case. The Court should decline that request.

CONCLUSION

The Petition should be denied.

Respectfully submitted,

CHARLES L. BECKER
RUXANDRA M. LAIDACKER
CORRIE WOODS
KLINE & SPECTER, P.C.
1525 Locust Street
Philadelphia, PA 19102

DANIEL C. LEVIN
Counsel of Record
FREDERICK S. LONGER
NICHOLAS J. ELIA
LEVIN SEDRAN & BERMAN
510 Walnut Street,
Suite 500
Philadelphia, PA 19106
(215) 592-1500
dlevin@lfsblaw.com

Counsel for Respondents

June 26, 2026

APPENDIX

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**APPENDIX A — ORDER OF THE COURT OF
COMMON PLEAS OF PHILADELPHIA COUNTY
FOR THE FIRST JUDICIAL DISTRICT OF
PENNSYLVANIA, CIVIL TRIAL DIVISION,
DATED APRIL 5, 2024**

IN THE COURT OF COMMON PLEAS OF
PHILADELPHIA COUNTY FIRST JUDICIAL
DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

September Term 2017
Case No. 170901961
Control No. 23103786

ROBERT MALLORY,

Plaintiff,

v.

NORFOLK SOUTHERN RAILWAY COMPANY,

Defendant.

ORDER

AND NOW, this **5th** day of **April, 2024**, upon consideration of Defendant, Norfolk Southern Railway Company's Motion for Leave to File Amended Preliminary Objections to Plaintiff's Complaint, and any response

2a

Appendix A

thereto, it is hereby **ORDERED** and **DECREED** that said Motion is **DENIED**.

BY THE COURT:

/s/ Denis P. Cohen
DENIS P. COHEN, J.

**APPENDIX B — ORDER OF THE COURT OF
COMMON PLEAS OF PHILADELPHIA COUNTY
FOR THE FIRST JUDICIAL DISTRICT OF
PENNSYLVANIA, CIVIL TRIAL DIVISION,
DATED JANUARY 28, 2025**

IN THE COURT OF COMMON PLEAS OF
PHILADELPHIA COUNTY FIRST JUDICIAL
DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

September Term 2017
Case No. 170901961
Control No. 24114648

ROBERT WILLMORE MALLORY AND MICHELLE
YVONNE GIVENS as Administrators of the
Estate of ROBERT THURSTON MALLORY,

Plaintiffs,

v.

NORFOLK SOUTHERN RAILWAY COMPANY,

Defendant.

ORDER

AND NOW, this **28th** day of **January 2025**, upon consideration of Plaintiffs' Motion to Substitute Parties, and Defendant's response thereto raising Preliminary Objections to Plaintiffs' Amended Complaint, it is hereby

Appendix B

ORDERED and **DECREED** that Plaintiffs' Motion to Substitute Parties is **GRANTED**. Robert Willmore Mallory and Michelle Yvonne Givens, Administrators of the Estate of Robert Thurston Mallory, are substituted into this action as Plaintiffs pursuant to Pa. R.C.P. 2352. Plaintiffs may move to Amend the Complaint as referenced in Paragraph 7 of the instant Motion. Defendant's Preliminary Objections are premature as no Amended Complaint has yet been filed. **DENIED**.¹

BY THE COURT:

/s/ Denis P. Cohen
DENIS P. COHEN, J.

1. This Court has already determined by Order dated April 5, 2024, and docketed April 9, 2024, that Defendant has waived the argument that this Court's assertion of general personal jurisdiction by operation of 42 Pa. C.S. § 5301(a)(2)(i) violates the Dormant Commerce Clause, U.S. Const. Art. I, § 8, cl. 3.