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 Supreme Court of Pennsylvania

PETITIONER'S REPLY BRIEF

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REPLY BRIEF

On the key point justifying this Court's review—ongoing post-*Mallory* uncertainty and disruption for courts, litigants, and businesses—Respondents are silent. Nor do they dispute that unchecked general registration-jurisdiction has harmful effects, inviting forum-shopping and eroding interstate federalism. These points, as *amici* elaborate, support the Court's intervention now.

Respondents instead claim this is a poor vehicle. They say the courts below merely applied a state procedural rule, but that is wrong: The trial court's waiver finding applied to the original complaint, not the amended one—and the appellate court explained its ruling by citing authority addressing the Commerce Clause merits. Respondents also say no final judgment exists, but that argument relies mainly on the same mistaken claim that the state courts did not address the federal issue.

On the merits, Respondents declare that this Court has already decided the question presented. But they cite only a case involving a forum-resident plaintiff, which (as Justice Alito noted) involves a different Commerce Clause calculus. This Court's Commerce Clause precedents have never addressed a situation in which the plaintiff, the injury, and the defendant are all foreign to the forum. This case provides that opportunity.

I. Respondents' waiver argument is meritless.

Respondents' lead argument is that the trial court "never ruled on the merits" of the Commerce Clause issue. Opp. 1. In their telling, the decision below "applied Pennsylvania's waiver law and hence rested on an 'independent and adequate state ground.'" See *id.*

at 6–7, 10 (quoting *Coleman* v. *Thompson*, 501 U.S. 722, 729 (1991)). But no waiver occurred here, and the lower court did not find one.

Respondents conflate the original and amended pleadings, ignoring that amendment wipes the slate clean. True, the trial court first held that Norfolk Southern waived its Commerce Clause objections to the original complaint by not raising them in its preliminary objections thereto (effectively, a pre-answer motion to dismiss). See Resp't App. 4a. But then Respondents amended their pleading. In Pennsylvania, "the filing of an 'amended complaint has the effect of *eliminating* the prior complaint.'" *Avery* v. *Cercone*, 225 A.3d 873, 882 (Pa. Super. Ct. 2019) (quoting *Hionis* v. *Concord Tp.*, 973 A.2d 1030, 1036 (Pa. Commw. Ct. 2009)). "Objections to any amended pleading shall be made by filing new preliminary objections," Pa. R. Civ. P. 1028(f), which Norfolk Southern did—raising its Commerce Clause arguments. This was proper: "In the event of an amended complaint, [defendant] retains the right to raise additional preliminary objections." See *Linn* v. *Perrotti*, No. 337 EDA 2025, 2026 WL 637250, at *6 (Pa. Super. Ct. Mar. 6, 2026). Respondents cite nothing addressing this scenario.

Anyway, what matters here is not whether Respondents' waiver argument is correct on the merits, but whether the trial court ruled on that basis. And the court said no such thing. Pet. App. 3a. If Respondents believe the decision below must be *presumed* to apply state law, they have it backwards.

To determine whether a decision rests on adequate-and-independent state grounds, this Court "assume[s] that there are *no such grounds* when it is not clear from the opinion itself"—that is, where the opinion lacks a "plain statement" to that effect—"and when it fairly appears that the state court rested its decision primarily on federal law." *Michigan* v. *Long*, 463 U.S. 1032, 1042 (1983) (emphasis added). Here, none of the orders addressing Norfolk Southern's objections to the *amended* complaint identify any state-law grounds. On the contrary, the Superior Court explained its decision to deny review by citing *Hunt*, which addressed the Commerce Clause question, *not* any waiver issues. See Pet. 6; Pet. App. 7a. Respondents overlook this key point. See Opp. 5 (asserting incorrectly that the Superior Court did not "elaborate on" its reasons for ruling).

For the same reasons, this case is nothing like *Coleman* v. *Thompson*, 501 U.S. 722 (1991) (cited at Opp. 7). The petitioner there "concede[d]" that the state court had "appl[ied] a state procedural rule" in granting a motion to dismiss his appeal that was "based solely on [state] procedural grounds." See *id.* at 740, 744. None of that is true here.

II. This case is otherwise a good vehicle.

Respondents claim no final judgment exists under § 1257. See Opp. 7–10. But their finality argument relies mainly on the mistaken premise just discussed—that "the trial court overruled Norfolk Southern's preliminary objections solely on state-law procedural grounds." *Id.* at 9. They say this distinguishes cases where this Court reviewed interlocutory personal-jurisdiction rulings, in which "there was at least a final state-court decision with respect to the federal question." *Id.* at 10. As just explained, however, the decision below does not rest on state-law waiver grounds, so this is not a real distinction.

Mercantile National Bank at Dallas v. *Langdeau* illustrates why review is proper. There, the state courts rejected the defendant's venue arguments, allowing the case to go forward. 371 U.S. 555, 557 (1963). Thus, in Justice Harlan's view—in dissent—the "state court judgments" were "nothing more than a determination that venue was properly laid," which "is a classic example of an interlocutory ruling that is only a step towards ultimate disposition and is not in itself reviewable as a final judgment." *Id.* at 572. The majority, however, held that venue is "a separate and independent matter, anterior to the merits," and that "it serves the policy underlying the requirement of finality in [§] 1257 to determine now in which state court appellants may be tried." *Id.* at 558. So too here.

Respondents also note the rule that this Court "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." Opp. 8–9 (citation omitted) (emphasis added). They say "that did not happen here" because the Pennsylvania Supreme Court merely "declined allowance of appeal." *Id.* That misunderstands the rule: When the state appellate courts refuse to review a trial court's 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); *Richmond Newspapers, Inc.* v. *Virginia*, 448 U.S. 555, 563 (1980). And, as explained above, the Commerce Clause issue was "properly presented to," and resolved by, the trial court.

Respondents' other vehicle arguments likewise fail. Their assertion that any opinion here would be advisory because the supposed "waiver remains in effect at the trial court regardless of the outcome of the present Petition," Opp. 7, is puzzling. If this Court reversed the decision below, the trial court would be required to dismiss the case. And Respondents' insistence on "a fulsome trial court and appellate record with findings of fact and legal analysis," *id.* at 6, overlooks that this

Court "review[s] judgments, not statements in opinions." *Trump* v. *Cook*, No. 25A312, 2026 WL 1855613, at *11 n.3 (U.S. June 29, 2026) (cleaned up). Anyway, Respondents identify no missing facts that might be relevant to the question presented—especially since this Court has analyzed the relevant facts once already. Cf. Pet. 16.

Finally, Respondents do not address the points that make this case an especially good vehicle: The few relevant facts cleanly tee up the question presented, and the analysis is not complicated by any open due process questions (about either notice or the extent of the defendant's in-state presence). See Pet. 16–17. That same will not be true in cases arising in other states, or even just involving other defendants.

III. The question presented is important and urgent.

The petition and amicus briefs explained that *Mallory*'s unanswered questions create significant, ongoing uncertainty for courts, litigants, and businesses. Pet. 8–11; Atl. Legal Found. Br. 5–15; Wash. Legal Found. Br. 6–9. Respondents have no answer. In disputing that Rule 10(c) is satisfied—because the case involves "an important question of federal law that has not been, but should be, settled by this Court"—Respondents dispute only the second part of the test, claiming the Court has *already* decided the question presented. Opp. 12. That is wrong. See *infra* § IV.

As to importance, Respondents do not dispute that it is now unclear whether (or when) a single state can seize jurisdiction over every suit against a regional, national, or international business. See Pet. 8. Nor do they dispute that, in *Mallory*'s wake, other states have adopted similar schemes for at least some kinds of claims. *Id.* at 9. And they do not dispute that, without some limits, general registration-jurisdiction invites forum-shopping, deters investment, and erodes interstate federalism. Pet. 8–11; Atl. Legal Found. Br. 5–15. Those problems warrant the Court's intervention now, to provide clarity for lower courts, for businesses that need stability to order their primary conduct, and for plaintiffs who need to know where they can seek redress for injuries. The absence of a circuit split is not a reason to allow these disruptive conditions to continue. Cf. *South Dakota* v. *Wayfair*, 585 U.S. 162, 168 (2018) (Court granted review of a splitless dormant Commerce Clause issue).

IV. The decision below is wrong.

On the merits, Respondents say "this Court has already held that dormant Commerce Clause principles do not prohibit the exercise of general jurisdiction over foreign corporations." Opp. 12 (citing *Denver & Rio Grande W. R.R.* v. *Terte*, 284 U.S. 284, 287 (1932)). But they overlook a key distinction: The *Denver* plaintiff—after being injured, but before suing—"became a bona fide resident and citizen of" the forum state. 284 U.S. at 286. "Residence . . . is a fact of high significance" in this context. *Int'l Milling Co.* v. *Columbia Transp. Co.*, 292 U.S. 511, 519–20 (1934). Because Mr. Mallory "is a non-resident injured out of state," the Commerce Clause calculus is different. See John F. Preis, *The Dormant Commerce Clause as a Limit on Personal Jurisdiction*, 102 Iowa L. Rev. 121, 143 (2016). As Justice Alito put it, "a State generally does not have a legitimate local interest in vindicating the rights of non-residents harmed by out-of-state actors through conduct outside the State." *Mallory* v. *Norfolk S. Ry.*, 600 U.S. 122, 163 (2023) (emphasis omitted); see *Asahi Metal Indus. Co.* v. *Superior Ct.*, 480 U.S. 102, 114 (1987) (similar).

Respondents also claim that states can exclude foreign corporations altogether, so they "may require corporations that do business in the state to register, even if the corporation engages in interstate commerce." Opp. 14. But the notion that a state could entirely exclude foreign corporations—and thus could "attach such conditions as it chooses upon the grant of the privilege to do business"—"disintegrat[ed]" decades ago. *W. & S. Life Ins.* v. *State Bd. of Equalization*, 451 U.S. 648, 657, 662 (1981).

Respondents' other arguments, about registration-jurisdiction's supposed even-handedness and its minimal burden on interstate commerce, Opp. 14–15, boil down to disagreements with Justice Alito's thoughtful analysis, which they never address head-on. Those arguments fail for the reasons he explained. And they certainly don't show that this issue isn't substantial enough to warrant the Court's attention.

Respondents also try to reframe Pennsylvania's registration-jurisdiction scheme as optional: "A foreign corporation may decline to register," they say, yet "Norfolk Southern decided to register." Opp. 15. But the Commonwealth's high court has made clear that "a corporation . . . conduct[ing] business in Pennsylvania … without registering" is acting "unlawfully." *Mallory* v. *Norfolk S. Ry.*, 266 A.3d 542, 570 n.20 (Pa. 2021), *vacated*, 600 U.S. 122. That is not a free choice.

Nor does it matter that "the only [express] consequence" for breaking this law is the "inability to sue in Pennsylvania courts." Opp. 15. This Court's dormant Commerce Clause cases have never asked how severely a party will be punished for violating the law in question, instead focusing solely on the law's substantive commands. *E.g.*, *Tenn. Wine & Spirits Retailers Ass'n* v. *Thomas*, 588 U.S. 504, 511 (2019) (describing how a person "may lawfully" sell alcohol under the state's "onerous . . . requirements," without mentioning any penalties for violating them). If the doctrine hinged on how easily the burdened party could withstand the consequences of non-compliance, the Court's cases would look very different. In any event, access to courts is a constitutional right, "one of the highest and most essential privileges of citizenship," *Chambers* v. *Balt. & Ohio R.R.*, 207 U.S. 142, 148 (1907)—hardly a trivial loss.

Respondents' arguments do not rebut the point that this case involves a substantial and important constitutional issue that warrants the Court's resolution.

CONCLUSION

For these reasons, the petition should be granted.

Respectfully submitted,

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