

# In the Supreme Court of the United States

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No. 25A\_\_\_\_\_

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BNSF RAILWAY CO., *Applicant*

v.

TANNER LYNN

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**APPLICATION FOR AN EXTENSION OF TIME TO FILE A PETITION  
FOR A WRIT OF CERTIORARI TO THE MINNESOTA COURT OF APPEALS**

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To the Honorable Brett M. Kavanaugh  
Associate Justice of the United States  
and Circuit Justice for the Eighth Circuit

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Pursuant to Rules 13.5 and 30.2 of this Court, counsel for applicant BNSF Railway Co. respectfully requests a 60-day extension of time, to and including March 3, 2026, within which to file a petition for a writ of certiorari to review the judgment of the Minnesota Court of Appeals in this case. The court of appeals entered its judgment on October 7, 2025. App.17a. The Minnesota Supreme Court denied discretionary review on October 3, 2025. Unless extended, the time for filing a petition for a writ of certiorari will expire on January 2, 2026. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1257(a).

1. This case concerns the application of this Court’s dormant Commerce Clause jurisprudence to jurisdictional consent-by-registration statutes.

Article I of the Constitution grants Congress the power to “regulate Commerce ... among the several States.” Art. I, § 8, cl. 3. As early as *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 203 (1824), this Court recognized that the Commerce Clause has negative implications for States’ ability to interfere with interstate commerce. *See Nat’l Pork Producers Council v. Ross*, 598 U.S. 356, 368-69 (2023). Known today as the dormant Commerce Clause, this doctrine guards against State-level “economic protectionism.” *Dep’t of Revenue of Ky. v.*

*Davis*, 553 U.S. 328, 337-38 (2008) (quoting *New Energy Co. of Ind. v. Limbach*, 486 U.S. 269, 273-74 (1988)). In other words, it bars “regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors.” *Id.* (quoting *New Energy Co. of Ind.*, 486 U.S. at 273).

State laws can violate the dormant Commerce Clause in two ways. First, State laws that “discriminate against interstate commerce face ‘a virtually *per se* rule of invalidity.’” *South Dakota v. Wayfair*, 585 U.S. 162, 173 (2018) (quoting *Granholm v. Heald*, 544 U.S. 460, 476 (2005)). Second, “State laws that ‘regulat[e] even-handedly to effectuate a legitimate local public interest ... will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits.’” *Id.* (quoting *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970)) (alterations in original).

Just three terms ago in *Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122 (2023), Justice Alito noted that “[t]his Court and other courts have long examined assertions of jurisdiction over out-of-state companies in light of interstate commerce concerns.” *Id.* at 159 (Alito, J., concurring in part) (discussing *Davis v. Farmers’ Co-operative Equity Co.*, 262 U.S. 312, 314-15 (1923)).

2. In this case, Tanner Lynn, an Iowa resident, filed suit against BNSF Railway Co. in Minnesota state court. App.2a. Lynn alleged that he was employed as a conductor and brakeman for BNSF and was injured while operating a plow car near Colton, South Dakota, in December 2022. App.2a. Lynn alleged that BNSF operates “an interstate system of railroads in and through several states,” including Minnesota, and that Lynn’s managers worked in BNSF’s Twin Cities division. App.2a. Lynn asserted two causes of action: (1) negligence under the Federal Employers’ Liability Act (FELA), 45 U.S.C. §§ 51-60 (2018), and (2) violation of workplace safety standards under 49 C.F.R. §§ 214.513, 214.518 (2024). App.2a.

BNSF moved to dismiss for lack of personal jurisdiction under Minn. R. Civ. P. 12.02(b), arguing that the exercise of personal jurisdiction over BNSF violated the Due Process Clause and dormant Commerce Clause. App.2a-3a. The Minnesota trial court denied BNSF’s motion to dismiss, holding that BNSF had consented to personal jurisdiction in Minnesota by registering an agent to accept service of process under Minn.

Stat. § 303.06 (2024), and that the statute did not violate the dormant Commerce Clause. App.3a. On appeal, the Minnesota Court of Appeals affirmed, relying on Minnesota Supreme Court precedent to uphold personal jurisdiction under section 303.06 and reject the dormant Commerce Clause challenge. App.5a-15a. The Minnesota Supreme Court denied review. App.16a.

The Minnesota Court of Appeals’ dormant Commerce Clause analysis was deeply flawed. As Justice Alito noted in *Mallory*, this Court in *Davis* held that a nearly identical Minnesota consent-by-registration statute violated the dormant Commerce Clause. *See* 600 U.S. at 159-60 (quoting *Davis*, 262 U.S. at 317). That is unsurprising, since statutes like section 303.06 “discriminate[] against out-of-state companies” by “forcing them to increase their exposure to suits on all claims in order to access [the State’s] market while [in-State] companies generally face no reciprocal burden for expanding operations into another State.” *Id.* at 161 & n.7. For these reasons, this case also raises questions of exceptional importance regarding the litigation risks State laws may force on out-of-state businesses across industries.

3. Counsel respectfully requests a 60-day extension of time, to and including March 3, 2026, within which to file a petition for a writ of certiorari. This case raises significant and complicated questions concerning consent-by-registration statutes with profound consequences for interstate commerce. Undersigned counsel was just retained in December 2025, so an extension would allow counsel time to analyze the issues presented, review the record, and prepare the petition for filing. In addition, the undersigned counsel of record has several other competing deadlines in the coming weeks, including a reply brief due in *Starbucks Corp. v. NLRB* (5th Cir. No. 24-60650) on January 7, 2026, a response brief due in *VIP Products LLC v. Jack Daniel’s Properties* (9th Cir. No. 25-2027) on January 9, 2026, and other non-public pending matters that will occupy a significant portion of time in the coming weeks.

Finally, the petition is currently due one day after New Year’s Day, and several of applicant’s counsel are traveling that week.

Respectfully submitted,

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v.

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**CORPORATE DISCLOSURE STATEMENT**

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

Respectfully submitted,

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