

# U.S. Supreme Court Hears Oral Argument on Where Businesses Can Be Sued

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The constitutionality of Pennsylvania’s “registration statute,” which requires corporations that register to do business in Pennsylvania consent to the “general personal jurisdiction” of Pennsylvania, was the subject of oral argument in the U.S. Supreme Court on November 8, 2022.

In *Mallory v. Norfolk Southern Railway Co.*, No. 21-1168, the justices heard argument on whether Pennsylvania may require companies that want to do business in Pennsylvania to consent to litigating in Pennsylvania state court no matter where the claim arose. Pennsylvania is the only state that expressly requires corporations to consent to its personal jurisdiction as part of the registration process.

### General Personal Jurisdiction

Underlying the law of personal jurisdiction is whether it is “fair” to sue a person or corporation in a particular state.

Under *general* personal jurisdiction, the precept under consideration in *Mallory*, a state court has personal jurisdiction over any resident of that state. In *Daimler AG v. Bauman*, 571 U.S. 117 (2014), the Supreme Court held that a corporation resides in any state where its connections are so continuous and systematic that they render the corporation “essentially at home” in the state. The most straightforward example is a corporation incorporated and headquartered in a specific state is a resident of, or resides in, that state.

Pennsylvania’s registration statute effectively lowers the bar for general personal jurisdiction. It requires corporations to consent to the jurisdiction of the Pennsylvania state courts simply by registering to do business in Pennsylvania. Most states require that corporations register to do business in their state, but Pennsylvania is the only one that expressly requires corporations to consent to the state’s personal jurisdiction as part of the registration process.

State and federal courts are divided on whether simply registering to do business in a state subjects a company to the general jurisdiction of that state. State courts in New York and New Mexico have held that a corporation is *not* subject to general jurisdiction in a state just because it registered to do business there. The state courts of Georgia held the opposite: registering to do business in a state is enough to confer general personal jurisdiction.

### Background

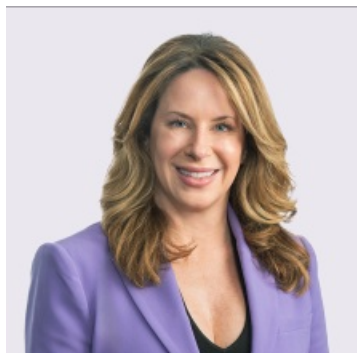
The facts in *Mallory* show the paradoxical reach of Pennsylvania’s consent-by-registration law. Petitioner Robert Mallory, a Virginia resident, claims to have been exposed to toxic chemicals that caused him to develop cancer while working for Norfolk Southern Railway Company in Virginia. Mallory did not live or work in

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Pennsylvania nor did his alleged injury occur in Pennsylvania, but he sued in Pennsylvania state court under Pennsylvania’s consent-by-registration law.

Norfolk Southern challenged the state court’s jurisdiction. Ultimately, the Pennsylvania Supreme Court held Pennsylvania’s registration statute was unconstitutional. It stated, “[A] court cannot subject a foreign corporation to general all-purpose jurisdiction based exclusively on the fact that it conducts business in the forum state.” Because allowing Pennsylvania courts to exercise personal jurisdiction over a company is a requirement of registering to do business in Pennsylvania, the Pennsylvania Supreme Court reasoned that the company cannot be said to consent voluntarily to general personal jurisdiction.

### Oral Argument

At oral argument, the justices appeared divided on the issue as it questioned both sides.

Justice Samuel Alito pressed Mallory’s attorney on fairness and whether consent to jurisdiction is voluntary if it is a condition of doing business in Pennsylvania. Similarly, Chief Justice John Roberts appeared to reject Mallory’s argument that jurisdiction consent laws have a long history in American jurisprudence, stating that “history and tradition move on.” Justice Brett Kavanaugh noted the potential effect on businesses, warning that if “every state” enacts a similar statute, potential plaintiffs could sue in any state where the company does business no matter where the alleged harm occurred.

Justice Elena Kagan cited the seminal jurisdiction case *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), which, in her view, “obviates the need” for fictional consent such as Pennsylvania’s consent-by-registration scheme.

On the other hand, Justice Ketanji Brown Jackson said she did not necessarily see a conflict between the Pennsylvania statute and *International Shoe*. Justice Sonia Sotomayor noted that Norfolk Southern could not claim Pennsylvania coerced it to consent to jurisdiction, because the company has more employees and more miles of railroad track in Pennsylvania than in any other state.

### Potential Impact on Employers

The decision in *Mallory v. Norfolk Southern Railway* could affect employers that transact business in more than one state, particularly on *where* employees could sue. If the Supreme Court agrees that the Pennsylvania statute is constitutional, more states may require companies to consent to the broad jurisdiction of their courts through business registration. Any company that transacts business in multiple states would need to be prepared to defend a lawsuit in any state court where it registers to do business.

We will continue to follow this case and provide updates. Located throughout the country and familiar with state courts throughout the United States and Puerto Rico, Jackson Lewis attorneys are available to discuss the potential impact of the Supreme Court’s decision on employers’ business operations and help businesses prepare.

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