Legal Update Article

U.S. Supreme Court Rules on Narrow Jurisdictional Question in Fractured Opinion

By Kathryn J. Barry & Eric R. Magnus

July 6, 2023

Meet the Authors

Kathryn J. Barry
Principal and Office Litigation Manager
(631) 247-0404
Kathryn.Barry@jacksonlewis.com

Eric R. Magnus
Principal and Office Litigation Manager
404-525-8200
Eric.Magnus@jacksonlewis.com

Related Services

Litigation
Trials and Appeals

In a 5-4 decision, the U.S. Supreme Court has upheld Pennsylvania's "registration statute," which requires corporations that register to do business in Pennsylvania to consent to the "general personal jurisdiction" of Pennsylvania. ***Mallory v. Norfolk Southern Railway Co.***, No. 21-1168 (June 27, 2023).

This decision vacates the Pennsylvania Supreme Court's ruling in *Norfolk Southern*'s favor and remands the case to the Pennsylvania Supreme Court for further consideration.

No Majority Opinion

The Court's decision reflects the same divisions apparent when it heard oral arguments last November. In a fractured decision with no one majority opinion, Justice Neil Gorsuch, joined by Justices Clarence Thomas, Sonia Sotomayor, and Ketanji Brown Jackson, vacated the lower court's ruling and upheld the Pennsylvania statute. Justice Amy Coney Barrett, joined by Chief Justice John Roberts and Justices Elena Kagan and Brett Kavanaugh, dissented. Justice Samuel Alito concurred in part and concurred with the decision to vacate the lower court's ruling.

Justice Gorsuch relied on *Pennsylvania Fire Ins. Co. v. Gold Issue Mining Co.,* 243 U.S. 93 (1917), in which the Court upheld a similar Missouri law. He reasoned that by registering to do business in Pennsylvania (a state unique in that it requires companies to consent to general jurisdiction when registering to do business) for many years, the company took on the risk of consenting to personal jurisdiction in exchange for taking full advantage of the benefits of doing business in the commonwealth.

Justice Alito wrote a concurring opinion in which he agreed with the majority that the Pennsylvania statute did not violate the U.S. Constitution's equal protection clause. However, he questioned whether the dormant commerce clause allows a state to adopt a long-arm statute with this kind of "submission-to-jurisdiction requirement." This concurrence left open the possibility that Pennsylvania's registration statute may be successfully challenged on other grounds.

In her dissent, Justice Barrett dismissed the plurality's conclusion that the company consented to jurisdiction as a "fiction." She argued that the plurality erred in failing to consider the impact of *International Shoe Co. v. Washington,* 326 U.S. 310 (1945), which rendered the 1917 *Pennsylvania Fire* ruling inapplicable.

Potential Impact

The plurality decision here may mean that courts will be able to assert jurisdiction over out-of-state defendants in the few states where, according to case precedents, a non-resident company may be subject to general jurisdiction simply by registering to do business in the state.

The Court's holding does not extend to the 46 other states and the territories with less expansive long-arm statutes. However, as Justice Alito explained in his concurring opinion, even in states where the *Norfolk Southern* decision arguably applies, a court's decision to assert jurisdiction over a company based merely on its having registered to do business in a state may still be a violation of the dormant commerce clause.

Please contact a Jackson Lewis attorney with any questions.