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IN THE SUPREME COURT OF PENNSYLVANIA

Docket No. 289 EAL 2024

SYNGENTA CROP PROTECTION, LLC and SYNGENTA AG,
Petitioners,

v.

DOUGLASS NEMETH, *et al.*,
Respondents.

(IN RE: PARAQUAT PRODUCTS LIABILITY LITIGATION)

BRIEF OF *AMICI CURIAE* PENNSYLVANIA COALITION FOR CIVIL JUSTICE REFORM, AMERICAN PROPERTY CASUALTY INSURANCE ASSOCIATION, INSURANCE FEDERATION OF PENNSYLVANIA, AND PENNSYLVANIA CHAMBER OF BUSINESS AND INDUSTRY SUPPORTING THE PETITION FOR ALLOWANCE OF APPEAL

Petition for Allowance of Appeal from September 5, 2024 Order of the Superior Court of Pennsylvania, No. 160 EDM 2023, Denying Petitioners' Petition for Permission to Appeal

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STATEMENT OF INTEREST OF *AMICI CURIAE*

The Pennsylvania Coalition for Civil Justice Reform ("PCCJR") is a statewide, bipartisan alliance representing businesses large and small, professional and trade associations, health care providers, energy development companies, nonprofit groups, taxpayers, and other Pennsylvania entities. PCCJR is dedicated to bringing fairness to litigants and improving Pennsylvania's civil justice system by illuminating significant legal issues and advocating for clarity and efficiency in the Commonwealth's courts. As such, PCCJR often participates as an *amicus* in Pennsylvania appeals of statewide—and national—importance.

The American Property Casualty Insurance Association ("APCIA") is the primary national trade association for home, auto, and business insurers. APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years. APCIA's member companies write 63% of the U.S. property-casualty insurance market as well as 66.2% of the Commonwealth's property-casualty insurance market. On issues of importance to the insurance industry and marketplace, APCIA advocates sound and progressive public policies on behalf of its members in legislative and regulatory forums at the federal and state levels and submits *amicus* briefs in significant cases before federal and state courts.

The Insurance Federation of Pennsylvania, Inc. ("Federation") is the Commonwealth's leading trade organization for commercial insurers of all types. The Federation consists of nearly 200 member companies and speaks on behalf of the industry in matters of legislative and regulatory significance. It also advocates on behalf of its members and their insureds in important judicial proceedings.

The Pennsylvania Chamber of Business and Industry ("PA Chamber") is the largest broad-based business association in Pennsylvania. It has close to 10,000 member businesses throughout Pennsylvania, which employ more than half of the Commonwealth's private workforce. Its members range from small companies to mid-size and large business enterprises. The PA Chamber's mission is to advocate on public policy issues that will expand private sector job creation, to promote an improved and stable business climate, and to promote Pennsylvania's economic development for all Pennsylvania citizens' benefit.

Petitioners Syngenta Crop Protection, LLC and Syngenta AG's (collectively "Syngenta") Petition for Allowance of Appeal directly implicates the dubious constitutionality of the Commonwealth's consent-by-registration statute (the "Registration Statute" or "Statute"), codified at 15 Pa.C.S. §411(a); 42 Pa.C.S. §5301(a)(2)(i), (b). As illustrated by the splintered opinion in *Mallory v. Norfolk Southern Railway Co.*, 600 U.S. 122 (2023), the Statute—which compels foreign corporations like Syngenta to consent to general personal jurisdiction in the

Commonwealth as a condition of doing business there, regardless of whether the subject litigation has any connection to Pennsylvania—is susceptible to a host of questions that the *Mallory* plurality failed to resolve in its narrowly tailored, fact-specific decision.

Left unaddressed, these issues will expose innumerable businesses operating in Pennsylvania and throughout the country to geographically untethered suits. Meanwhile, the rampant forum shopping that the Registration Statute implicitly sanctions will saddle the Commonwealth's already strained judicial system with increased litigation—litigation in which Pennsylvania not only would lack a cognizable interest, but which, given the indeterminate legal landscape surrounding the Statute, also would leave the Commonwealth's courts grasping for a sound mechanism to fairly and conclusively adjudicate such disputes.

Accordingly, PCCJR, APCIA, Federation, and PA Chamber ("*Amici*") have a compelling interest in this matter and in seeing this Court demarcate the Statute's jurisdictional reach (if any) moving forward. *Amici* file this brief in their own right and on behalf of their respective members and state that no person, other than their members and counsel, paid for or authored this brief, in whole or in part.

REASONS FOR GRANTING ALLOWANCE OF APPEAL

This Court should grant allocatur because this case presents an issue of first impression, the trial court's holding appears to conflict with United States Supreme Court precedent, and the question presented is one of such substantial public importance as to require prompt and definitive resolution. Pa.R.A.P. 1114(a)–(b).

INTRODUCTION

"*While that is the end of the case before us, it is not the end of the story for registration-based jurisdiction*."[1]

With these words in *Mallory*, Justice Alito opened a doctrinal fissure as to the continued constitutionality of Pennsylvania's Registration Statute. Although he ultimately supplied the decisive vote in *Mallory*'s plurality determination that the Statute did not violate the Due Process Clause under *Mallory*'s facts, Justice Alito wondered aloud whether his colleagues had missed the mark by testing the Statute against the Due Process Clause alone.

Justice Alito observed that the Statute implicates federalism concerns that "fall more naturally within the scope of the Commerce Clause" and its "deeply rooted" negative principle, the Dormant Commerce Clause. *Id.* He went further, opining there was a "good prospect" that the Statute, which sweepingly authorizes jurisdiction "over an out-of-state company in a suit brought by an out-of-state plaintiff on claims wholly unrelated to Pennsylvania," impermissibly restricts interstate commerce. *Id*. at 160–162. At the very least, Justice Alito concluded, the Dormant Commerce Clause question necessitated further evaluation by this Court.

And the *Mallory* plurality expressly invited this Court to consider the Dormant Commerce Clause's bearing on the Statute on remand. *Id*. at 127 n.3. But this Court

[1] *Mallory*, 600 U.S. at 154 (Alito, J., concurring).

declined the invitation, and no Pennsylvania appellate court has had the opportunity to analyze the Statute under the Dormant Commerce Clause since.

The resulting uncertainty consigns Pennsylvania to a state of practical and legal limbo. Practically, the Statute subjects thousands of foreign companies operating in Pennsylvania—the vast majority small businesses—to oppressive litigation simply because they chose to do business here. By the same token, the Statute opens Pennsylvania's courtroom doors to legions of out-of-state plaintiffs with out-of-state injuries who seek relief in the plaintiff-friendly confines of the Commonwealth's busiest courts. As a legal matter, the Statute's uncertain constitutionality post-*Mallory* leaves Pennsylvania courts without footing to reliably and consistently assess jurisdictional challenges to the Statute.

Litigants nationwide need clarity on the Statute, and Syngenta's Petition is the ideal vehicle to provide it. Accordingly, *Amici* respectfully urge this Court to step into the constitutional breach, grant Syngenta's Petition, and resolve the Statute's constitutionality through the prism of the Dormant Commerce Clause.

Alternatively, this Court should grant the Petition and remand the matter to the Superior Court for resolution of the constitutional question in the first instance.

I. Syngenta's Petition Raises a Critical Constitutional Question with Significant Local and National Implications.

A. *Mallory* Upends the Jurisdictional Landscape for Foreign Businesses by Introducing New and As-Yet-Unconfronted Constitutional Questions About the Registration Statute.

Over the last century, U.S. Supreme Court jurisprudence has contracted the fora in which business entities are subject to general personal jurisdiction, culminating with the concept that businesses have two "at home" locations for general jurisdiction purposes: where they are incorporated; or where they maintain their principal places of business. *E.g.*, *Daimler AG v. Bauman*, 571 U.S. 117 (2014). This test has provided some degree of certainty to corporate defendants and disincentivizes forum shopping.

The *Mallory* decision detracts from this relative certainty. It leaves more questions than answers. The only "answer" it yields—*i.e.*, that the Registration Statute apparently can satisfy due process in certain circumstances, while its viability is unsettled under the United States Constitution—is unhelpful. *See, e.g.*, Gregory T. Sturges, *et al.*, *Mallory v. Norfolk Southern Railway Co.*, GREENBERGTRAURIG (June 30, 2023) (questioning whether *Mallory* is "a short-lived pyrrhic victory soon to be relegated on a combination of dormant Commerce Clause and due process grounds").

And despite Plaintiffs' insistence that *Mallory*'s upshot is straightforward, the only clear takeaway is that a majority of Justices believed the Statute ***is***

constitutionally infirm but could not align ***on the basis*** for its invalidation. *See Mallory*, 600 U.S. at 150–163 (Alito, J., concurring); *id.* at 163–180 (Barrett, J., dissenting, joined by Roberts, C.J., and Kagan and Kavanaugh, JJ.).

The *Mallory* plurality's urging of this Court to explore the Dormant Commerce Clause question reflects reservations regarding the Statute's constitutional vitality. *See id.* at 127 n.3. But this Court summarily remanded the case without addressing that question. *Mallory v. Norfolk S. Ry. Co.*, 300 A.3d 1013 (Pa. 2023) (*per curiam*). This created a jurisprudential void, leaving countless stakeholders in the lurch. *See* Aleeza Furman, *Pa. Justices Remand 'Mallory' to Trial Court, Registration Statute Uncertainty Expected to Linger*, THE LEGAL INTELLIGENCER (Aug. 30, 2023).

The only clarity to be drawn from *Mallory* comes in the form of its bleak and all-but-inevitable consequences, including (1) protracted litigation, conflicting trial-court decisions, and appellate headaches regarding the Statute's constitutionality, *see, e.g.*, *id.*; (2) plaintiffs' capitalization (as here) on *Mallory*'s departure from settled principles of corporate personal jurisdiction to leverage the constitutionally ambiguous Statute as a license for forum shopping in the Commonwealth's busiest courts, *see* Alison Frankel, *US Supreme Court Clears Path for Plaintiffs to Pick Where to Sue Corporations*, REUTERS (June 28, 2023); and (3) enactment of copycat consent-by-registration laws by other states emboldened by the *Mallory* plurality's

approval of the Statute, *see* *Analysis of the United States Supreme Court's Ruling in Mallory*, AM. TORT REFORM ASS'N (Aug. 28, 2023) ("ATRA Article").

These concerns are hardly hyperbolic. Litigants lack definitive appellate guidance regarding the Registration Statute's constitutionality. Meanwhile, courts like the Philadelphia County Court of Common Pleas have assumed a national reputation as plaintiff-friendly locales, a fact Justice Alito recognized and Syngenta highlighted. *See Mallory*, 600 U.S. at 153–154 & n.1 (Alito, J., concurring) ("***[I]t is hard to see Mallory's decision to sue in Philadelphia as anything other than the selection of a venue that is reputed to be especially favorable to tort plaintiffs***." (emphasis added)); (Syngenta Reply in Further Supp. of Mot. to Certify at 18 ("[Post-*Mallory*], over 80 additional plaintiffs with no connection to the Commonwealth on the face of their complaints have filed suit in Pennsylvania.")).

And while the Statute's breadth makes it unique among states, many states (including Georgia, Iowa, Kansas, and Minnesota) have analogous statutes that permit consent-by-registration jurisdiction and are thus ripe for legislative mirroring. *See* James A. Beck, *Updating Our 50-State Survey on General Jurisdiction by Consent*, DRUG & DEVICE L. BLOG (Nov. 5, 2018). Other states could very well be awaiting a conclusive determination regarding the Statute's constitutionality to move forward with like-minded legislation. *See* ATRA Article, *supra* ("Enactment of such statutes in other states appears doubtful until courts clarify the dormant

commerce clause and other constitutional issues identified in Justice Alito's *Mallory* concurrence."). *Mallory* could be read as setting the stage for each state to pass similar general jurisdiction statutory schemes.

Until a Pennsylvania appellate court weighs in on this vital issue, uncertainty and inconsistency will only intensify.

B. In Deciding Whether to Grant Syngenta's Petition, This Court Must Reckon with the Practical Realities of the Statute's Continued Application.

Because the question of whether the Registration Statute violates the Dormant Commerce Clause is one of first impression, the absence of appellate guidance on this question alone warrants this Court's review. *See, e.g.*, *Commonwealth v. Tilley*, 780 A.2d 649, 651 (Pa. 2001) (finding interlocutory review necessary given "lack of Pennsylvania case law" on issue); *Jones v. City of Philadelphia*, 890 A.2d 1188, 1192–1193 (Pa. Commw. Ct. 2006); *Chestnut Hill Coll. v. PHRC*, 158 A.3d 251, 254, 256 (Pa. Commw. Ct. 2017); *PennDOT v. Popovich to Use of Aetna Cas. & Sur. Co.*, 542 A.2d 1056, 1057 (Pa. Commw. Ct. 1988), *aff'd*, 522 Pa. 508 (1989).

But *Mallory*'s far-reaching *practical ramifications* also counsel in favor of granting this Petition. Even a U.S. Supreme Court Justice raised concerns about the Statute's potentially "devastating" economic impact on out-of-state businesses (particularly small ones) operating in Pennsylvania and elsewhere. *Mallory*, 600 U.S. at 161–162 (Alito, J., concurring) ("***[T]he impact on small companies, which***

constitute the majority of all U.S. corporations, could be devastating." (emphasis added)).

These concerns are well founded. *See, e.g.*, Christopher S. D'Angelo, et al., *Out-of-State Defendants Beware: Supreme Court Upholds Constitutionality of Pennsylvania's "Consent-by-Registration" Statute, General Personal Jurisdiction Abounds*, MONTGOMERY MCCRACKEN (June 30, 2023) ("Small businesses [post-*Mallory*] will want to be particularly wary as many do not have the resources to develop creative corporate structuring to insulate them from litigation."). Over 99% of America's 28.7 million companies are small businesses, employing 48% of the nation's workforce and accounting for 45% of its GDP. *Small Economic Activity: JPMorgan Chase Institute*, JPMORGAN CHASE & CO. And 99.6% of Pennsylvania's companies are small businesses, employing 46.2% of the state's workforce and accounting for 31.4%, or $10.7 billion, in exports. *2022 Small Business Profiles: Pennsylvania*, U.S. SMALL BUS. ADMIN.: OFFICE OF ADVOCACY.

Further, at least 100,000 nonresident companies are registered to do business in the Commonwealth. *Registered Businesses in PA Current by County*, PA. DEP'T OF STATE (updated Nov. 8, 2023). Given the national and local trends, it is reasonable to conclude that most of these foreign companies are also small businesses.

And yet the Registration Statute allows forum-shopping plaintiffs to haul

countless of these foreign small businesses into Pennsylvania courts, irrespective of the subject litigation's connection to the Commonwealth. Faced with "intolerable unpredictability," and ill-equipped to navigate suits directly or undertake mitigation measures, the "prudent" small business could choose to withdraw from Pennsylvania or avoid entering the Commonwealth's market outright. *See Mallory*, 600 U.S. at 161–162 (Alito, J., concurring).

The Registration Statute, of course, existed pre-*Mallory*. But with the imprimatur of *Mallory*—together with the soaring trend of nuclear verdicts in the Commonwealth and the high burden attendant to venue transfers under *Tranter v. Z&D Tour, Inc.*, 303 A.3d 1070 (Pa. Super. Ct. 2023)—widespread abuse of the Statute for forum shoppers who prefer plaintiff-friendly Commonwealth courts is all but inevitable. Businesses will now think twice about whether to conduct business in the Commonwealth, at significant costs to the state's financial well-being.

In short, this case raises an open constitutional question that no Pennsylvania appellate court has addressed. This issue, left unresolved, could disproportionately affect the many small businesses that fuel the Commonwealth's economy and spell serious economic consequences for Pennsylvania and the country.

II. Syngenta Advances a Dispositive Dormant Commerce Clause Challenge, Further Necessitating Immediate Review.

Beyond the glaring uncertainty surrounding the Registration Statute and its troubling implications, the Statute remains constitutionally suspect under the

Dormant Commerce Clause. Recognizing this uncertainty, Syngenta has presented this Court with a Dormant Commerce Clause challenge that legitimately imperils its continued constitutionality. Because that challenge is meritorious and would result in the dismissal of nearly 90% of the plaintiffs in this action, this Court should grant Syngenta's Petition for this independent reason.

A. The U.S. Supreme Court Has Determined That Coercive Jurisdictional State Laws Like the Registration Statute Are Unconstitutional Under the Commerce Clause.

The Commerce Clause vests Congress with the exclusive power to regulate interstate commerce among the states. *See* U.S. CONST. art. I, §8, cl. 3. To protect Congress's prerogative, the Supreme Court has "long held that [the Commerce Clause] also prohibits state laws that unduly restrict interstate commerce." *Tenn. Wine & Spirits Retailers Assoc. v. Thomas*, 588 U.S. 504, 514 (2019). In this regard, the Dormant Commerce Clause prohibits states "from adopting protectionist measures and thus preserves a national market for goods and services." *Id.*

The U.S. Supreme Court has invalidated coercive jurisdictional state laws under the Commerce Clause. In *Davis v. Farmers' Co-op. Equity Co.*, the Supreme Court unanimously struck down a Minnesota jurisdictional statute that required out-of-state railroad carriers to generally submit to suit in Minnesota as a "condition" of doing business there. 262 U.S. 312, 315–317 (1923). The Court held the statute imposed a "serious and unreasonable burden" on interstate commerce. *Id.* at 315.

The statute impermissibly vested Minnesota courts with broad jurisdiction over suits "whatever the nature of the cause of action, wherever it may have arisen, and although the plaintiff is not, and never has been, a resident of the state." *Id.* It "unreasonably obstruct[ed]" and "unduly burden[ed]" interstate commerce. *Id.* And it exposed foreign carriers to potentially numerous, remote, and high-stakes personal-injury suits in Minnesota, engendered unpredictability, burdened carriers' employees with onerous and faraway litigation, and made costly disruptions to the carriers' wider operations inevitable. *Id*. at 315–316.

The Supreme Court held that by conditioning foreign carriers' business activity in Minnesota on forced consent to general jurisdiction, the statute's burdens on the carriers' broader commercial operations—and, by extension, interstate commerce—rendered it "obnoxious to the commerce clause." *Id*. at 316.

The Registration Statute operates in virtually identical fashion, but with a more pervasive scope. It subsumes ***any*** foreign company registered to do business in the Commonwealth, exposing them all to the panoply of burdens decried in *Davis*—geographically untethered and potentially crippling suits brought by out-of-state plaintiffs, tried by remote Pennsylvania trial courts, and heard by juries having no substantive connection to the litigation. *See id.* at 316–317. Large foreign corporations will be hard-pressed to shoulder the burden, which will likely be borne even more heavily by small businesses.

Davis remains controlling law and seals the Statute's fate. *See Mallory*, 600 U.S. at 136 (observing that state courts cannot disregard Supreme Court decisions that have "direct application" to "state law and facts"). *See generally* John F. Preis, *The Dormant Commerce Clause As a Limit on Personal Jurisdiction*, 102 Iowa L. Rev. 121, 132 (2016) ("[*Davis*] [i]s one of many cases in which state and federal courts concluded that state assertions of personal jurisdiction will sometimes offend the Dormant Commerce Clause").

B. The Registration Statute Fails to Pass Constitutional Muster Under Prevailing Dormant Commerce Clause Jurisprudence.

The Registration Statute also runs afoul of the Supreme Court's more recent Dormant Commerce Clause jurisprudence. As the Supreme Court recently reiterated, the Dormant Commerce Clause is the "primary safeguard against state Protectionism." *Thomas*, 588 U.S. at 515; *see also Dep't of Revenue v. Davis*, 553 U.S. 328, 337–338 (2008) ("The … dormant Commerce Clause … effectuate[s] the Framers' purpose to prevent a State from retreating into [] economic isolation[.]" (internal quotation marks omitted)); *W. Lynn Creamery, Inc. v. Healy*, 512 U.S. 186, 205 (1994) ("[Protecting] local industry … from the rigors of interstate competition is the hallmark of the economic protectionism that the Commerce Clause prohibits.").

Under firmly established precedent, state law offends the Commerce Clause when it: (1) discriminates against interstate commerce; or (2) imposes "undue

burdens" on interstate commerce. *S. Dakota v. Wayfair, Inc.*, 585 U.S. 162, 173–174 (2018). The Registration Statute flunks each test.

1. The Registration Statute discriminates against interstate commerce without legitimate justification.

While the Registration Statute may *seem* facially nondiscriminatory, it imposes precisely the discriminatory, protectionist scheme that the Dormant Commerce Clause doctrine is intended to thwart. By exposing foreign companies to costly and burdensome suits by foreign plaintiffs that bear no relation to any commercial dealings in Pennsylvania, the Statute discourages out-of-staters from doing business here and shelters domestic companies from the rigors of foreign competition in the Pennsylvania market.

State law discriminates against interstate commerce when it perpetuates "differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter." *Granholm v. Heald*, 544 U.S. 460, 472 (2005) (internal quotation marks omitted). A seemingly neutral state law can discriminate against interstate commerce in practical effect. *See, e.g.*, *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 350–351 (1977). And state laws with discriminatory practical effects violate the Dormant Commerce Clause. *Granholm*, 544 U.S. at 476; *see also Brown-Forman Distillers Corp. v. N.Y. State Liquor Auth.*, 476 U.S. 573, 579 (1986) (observing the Supreme Court has "generally struck down" without

"further inquiry" statutes that, in effect, "favor in-state economic interests over out-of-state interests").

The Dormant Commerce Clause's insistence on a hard look at the practical effects of state regulation makes eminent sense—it forces a consideration of whether a statute, practically speaking, drives foreign companies from a state's economic fabric, and insulates domestic companies from healthy competition. Such a phenomenon undermines the Dormant Commerce Clause's anti-protectionist concerns and smacks of improper discrimination. *See Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 372, 378 (2023) (holding state laws insulating in-state economic interests from outside competition discriminate against interstate commerce); Preis, *supra*, at 134–136 (holding Dormant Commerce Clause prohibits states "from protecting local economic actors … by imposing extra costs or burdens on out-of-state actors," discriminating against interstate commerce by discouraging out-of-staters from pursuing business in a state's market).

Pennsylvania's Registration Statute cannot withstand this scrutiny. It forces foreign companies to consent to categorical jurisdiction in distant Pennsylvania courts for any action whatsoever, regardless of their connection to Pennsylvania, as a condition of doing business in the Commonwealth. This unquestionably imposes a significant burden on all out-of-state businesses, *Bendix Autolite Corp. v. Midwesco Enters.*, 486 U.S. 888, 893 (1988), and perhaps an untenable choice: either

subject themselves to liability exposure in increasingly oppressive fora for conduct wholly unrelated to activities in the Commonwealth, or decline to do business in the Commonwealth.

The effect is to discourage foreign companies of all sizes from doing business here, setting the stage for a large-scale retreat from Pennsylvania's market while protecting domestic businesses from foreign competition. This is textbook discrimination against interstate commerce. *See Mallory*, 600 U.S. at 161 & n.7 (Alito, J., concurring) ("Pennsylvania's law seems to discriminate against out-of-state companies by forcing them to increase their exposure to suits on all claims in order to access Pennsylvania's market while Pennsylvania companies generally face no reciprocal burden for expanding operations into another State.").

As such, the Registration Statute's discriminatory effects invite invalidation under the Dormant Commerce Clause. *Granholm*, 544 U.S. at 476; *Brown-Forman*, 476 U.S. at 579 The Statute can resist this fate only if it is shown to "advance[] a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives." *New Energy Co. of Ind. v. Limbach*, 486 U.S. 269, 278 (1988). This standard is "high," *Limbach*, 486 U.S. at 278, and rarely satisfied, *see* Preis, *supra*, at 137; *see also Fulton Corp. v. Faulkner*, 516 U.S. 325, 345 (1996).

The Registration Statute crumbles against this scrutiny. The Statute does not purport to protect the health and safety of persons within the Commonwealth, to

provide a reasonable, jurisdictionally grounded forum for redress to residents or nonresidents injured within Pennsylvania, or to safeguard the Commonwealth's economic health in non-protectionist fashion. *See Raymond Motor Transp., Inc. v. Rice*, 434 U.S. 429, 443 (1978); Preis, *supra*, at 137, 143. Rather, the Statute outstrips any such plausible interest by allowing nonresident plaintiffs to launch suits for injuries unrelated to Pennsylvania activity, precipitating a protectionist framework that short-circuits out-of-state competition. This is not a legitimate state interest. *See Edgar v. MITE Corp.*, 457 U.S. 624, 643 (1982) (holding states have "no legitimate interest in protecting nonresidents" injured out-of-state); Preis, *supra*, at 137; *Mallory*, 600 U.S. at 162–163 (Alito, J., concurring) ("I am hard-pressed to identify any *legitimate local* interest that is advanced by requiring an out-of-state company to defend a suit brought by an out-of-state plaintiff on claims wholly unconnected to the forum State."); *id*. at 169–170 & n.1 (Barrett, J., dissenting, joined by Roberts, C.J. and Kagan and Kavanaugh, JJ.) (observing Pennsylvania's "blanket claim of authority over controversies with no connection to the Commonwealth" serves "no legitimate interest"); *Maine v. Taylor*, 477 U.S. 624, 148 (1986) ("Shielding in-state industries from out-of-state competition is almost never a legitimate local purpose[.]").

Consequently, "there is nothing to be weighed in the balance to sustain" the Registration Statute, *Edgar*, 457 U.S. at 644, and it cannot stand under the Dormant

Commerce Clause.

2. The Registration Statute also imposes undue burdens on interstate commerce that exceed local benefits.

The Registration Statute wilts even further beneath the independent "undue burden" test of Dormant Commerce Clause jurisprudence. *Wayfair*, 585 U.S. at 173. A state regulation, even a nondiscriminatory one, offends the Dormant Commerce Clause and invites invalidation if it imposes "undue burdens" on interstate commerce. *Id*. The Supreme Court has long observed—including in *Mallory*—that coercive jurisdictional statutes unduly burden interstate commerce by forcing foreign companies to relinquish privileges they might otherwise retain while generally subjecting them to the myriad risks, costs, and disruptions that suits from forum-shopping plaintiffs in disconnected locales entail. *See, e.g.*, *Davis*, 262 U.S. at 315–317 (recognizing, as "matters of common knowledge," such "heavy" burdens as "serious and unreasonable" impositions on interstate commerce); *Bendix*, 486 U.S. at 893–895 (recognizing such burdens as "significant" impositions on interstate commerce and invalidating analogous jurisdictional statute that forced foreign companies to either submit to general personal jurisdiction in Ohio or relinquish critical defenses); *Mallory*, 600 U.S. at 161–162 (Alito, J., concurring) (recognizing Registration Statute imposes "significant burden" on interstate commerce by requiring foreign companies to defend against all suits, "including those with no

forum connection").

In other words, this Court need not speculate on whether the Statute unduly burdens interstate commerce—this result already has been confirmed by Supreme Court precedent. And because these undue burdens stand to land disproportionately on small foreign companies, their magnitude becomes all the more intolerable under the Dormant Commerce Clause. *Mallory*, 600 U.S. at 161–162 (Alito, J., concurring).

Once a regulation is shown to unduly burden interstate commerce, it can be salvaged only if it "effectuate[s] a legitimate local public interest" and its imposition on interstate commerce is not "clearly excessive in relation to" that interest. *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970). "If a legitimate local purpose is found, then the question becomes one of degree." *Id.* "And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities." *Id.*

The Registration Statute does none of this. With no legitimate interest undergirding the Statute, nothing weighs in favor of its constitutionality under the Dormant Commerce Clause. *Edgar*, 457 U.S. at 644. Moreover, the Statute's burdens far exceed any local benefits the Commonwealth might advance. *See Mallory*, 600 U.S. at 163 (Alito, J., concurring). They instead form the foundation

for ***substantial harm*** to Pennsylvania's economic and administrative integrity. By discouraging thousands of foreign, predominately small companies from entering the Commonwealth, these burdens jeopardize a critical component of the state's economy.

Residual harms and inconveniences flow from these burdens. *See Mallory*, 600 U.S. at 162 (Alito, J., concurring) (noting that some companies may "forgo registration altogether, preferring to risk the consequences rather than expand their exposure to general jurisdiction," and that the Statute benefits neither corporations, which "must manage their added risk," nor plaintiffs, who "face challenges in serving unregistered corporations"). And if other states were to pass legislation similar to the Registration Statute, the cycle of burdens—and self-inflicted state harms—would presumably continue, essentially resulting in nationwide jurisdiction.

Maintaining the Registration Statute at the expense of foreign economic interests and the Commonwealth cannot pass constitutional muster. Because the Statute casts undue burdens on interstate commerce, it should fall under the Dormant Commerce Clause.

CONCLUSION

For these reasons and those set forth in Syngenta's Petition, *Amici* respectfully request that this Court grant Syngenta's Petition.

Respectfully submitted,

BABST, CALLAND, CLEMENTS AND ZOMNIR, P.C.

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Dated: September 9, 2024

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing BRIEF OF *AMICI CURIAE* PENNSYLVANIA COALITION FOR CIVIL JUSTICE REFORM, ET AL. complies with the word-count limit set forth in Pa.R.A.P. 531(b)(3). Based on the word-count function of the word processing system used to prepare the Brief, the substantive portions of the Brief (as required by Pa.R.A.P. 2135(b) and (d)) contain 4,500 words.

I also certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Dated: September 9, 2024

/s/ Casey Alan Coyle
Casey Alan Coyle, Esquire