Received 11/22/2023 1:44:44 PM Superior Court Eastern District

Filed 11/22/2023 1:44:00 PM Superior Court Eastern District
160 EDM 2023

IN THE SUPERIOR COURT OF PENNSYLVANIA

No. 160 EDM 2023

SYNGENTA CROP PROTECTION, LLC and SYGENTA AG,
Petitioners,

v.

DOUGLASS NEMETH, *et al.*,
Respondents.

(IN RE: PARAQUAT PRODUCTS LIABILITY LITIGATION)

APPLICATION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF IN SUPPORT OF PETITIONERS' PETITION FOR PERMISSION TO APPEAL

Pursuant to Pennsylvania Rule of Appellate Procedure 531, *Amici Curiae* Pennsylvania Coalition for Civil Justice Reform ("PCCJR"), American Property Casualty Insurance Association ("APCIA"), Insurance Federation of Pennsylvania ("Federation"), and Pennsylvania Chamber of Business and Industry ("PA Chamber") file the within Application for Leave to File *Amici Curiae* Brief in Support of Petitioners Syngenta Crop Protection LLC and Syngenta AG's (collectively "Syngenta") Petition for Permission to Appeal and, in support thereof, aver as follows:

1. Syngenta's Petition 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).

2. As recently illustrated by the U.S. Supreme Court's splintered opinion in *Mallory v. Norfolk Southern Railway Co.*, 600 U.S. 122 (2023), the Registration 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 litigation at issue has any connection to Pennsylvania—is susceptible to a host of questions that the *Mallory* plurality failed to resolve in rendering a narrowly tailored, fact-specific decision.

3. Left unaddressed, these issues will expose tens of thousands of businesses operating in Pennsylvania and throughout the country to geographically untethered suits.

4. At the same time, 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.

5. Because PCCJR, APCIA, Federation, and PA Chamber (collectively "*Amici*") have a compelling interest in this matter and in seeing this Court demarcate the Statute's jurisdictional reach (if any) moving forward, *Amici* seek leave to file

an *amicus brief* in support of Syngenta's Petition.

6. Pursuant to the Pennsylvania Rules of Appellate Procedure, an *amicus curiae* brief may be filed: "(i) during merits briefing; (ii) in support of or against a petition for allowance of appeal, if the *amicus curiae* participated in the underlying proceeding as to which the petition for allowance of appeal seeks review; or (iii) by leave of court." Pa.R.A.P. 531(b)(1).

7. Rule 531 further provides that, where, as here, leave must be sought to file an *amicus* brief, the brief is limited to "the length specified by the court in approving the motion of, if no length is specified, to half the length that a party would be permitted under the rules of appellate procedure." Pa.R.A.P. 531(a)(2).

8. However, Pennsylvania Rule of Appellate Procedure 1312 does not set forth a word-limit for a petition for permission to appeal.

9. In accordance with Rule 531, *Amici* respectfully request leave of Court to file the proposed Brief of *Amici Curiae* in Support of Petitioners' Petition for Permission to Appeal in the attached form.

WHEREFORE, Pennsylvania Coalition for Civil Justice Reform, American Property Casualty Insurance Association, Insurance Federation of Pennsylvania, and Pennsylvania Chamber of Business and Industry file the within Application for Leave to File *Amici Curiae* Brief in Support of Petitioners Syngenta Crop Protection LLC and Syngenta AG's Petition for Permission to Appeal, and enter the form of

Order submitted herewith.

Respectfully submitted,

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

By: */s/ Casey Alan Coyle*

Casey Alan Coyle, Esquire (No. 307712)
Christina Manfredi McKinley, Esquire (No. 320002)
Stefanie Pitcavage Mekilo, Esquire (No. 312720)
Devlin Carey, Esquire (No. 332768)
409 North Second Street, Suite 201
Harrisburg, PA 17101

Attorneys for Amici Curiae Pennsylvania Coalition for Civil Justice Reform, American Property Casualty Insurance Association, Insurance Federation of Pennsylvania, and Pennsylvania Chamber of Business and Industry

Dated: November 22, 2023

EXHIBIT A

Proposed 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 in Support of Petitioners' Petition for Permission to Appeal

IN THE SUPERIOR COURT OF PENNSYLVANIA

No. 160 EDM 2023

SYNGENTA CROP PROTECTION, LLC and SYGENTA 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 PENNSYLANIA, AND PENNSYLVANIA CHAMBER OF BUSINESS AND INDUSTRY IN SUPPORT OF PETITIONERS' PETITION FOR PERMISSION TO APPEAL

Seeking Permission to Appeal the August 24, 2023 Order of the Court of Common Pleas of Philadelphia County, No. 220500559, Denying Petitioners' Preliminary Objection as to Personal Jurisdiction

---

Casey Alan Coyle, Esquire (No. 307712)
Christina Manfredi McKinley, Esquire (No. 320002)
Stefanie Pitcavage Mekilo, Esquire (No. 312720)
Devlin Carey, Esquire (No. 332768)
BABST CALLAND CLEMENTS AND ZOMNIR, P.C.
409 N. 2nd St., Suite 201
Harrisburg, PA 17101
Attorneys for Amici Curiae Pennsylvania Coalition for Civil Justice Reform, American Property Casualty Insurance Association, Insurance Federation of Pennsylvania, and Pennsylvania Chamber of Business and Industry

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Pages

Cases

Statutes

Other Authorities

Rules

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 represent 63% of the U.S. property-casualty insurance market and write more than $19 billion in premiums in the Commonwealth. 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 the benefit of all Pennsylvania citizens.

Petitioners Syngenta Crop Protection, LLC and Syngenta AG's (collectively "Syngenta") Petition for Permission to 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 recently illustrated by the U.S. Supreme Court's splintered opinion in *Mallory v. Norfolk Southern Railway Co.*, 600 U.S. 122 (2023), the Registration 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 litigation at issue has any connection to Pennsylvania—is susceptible to a host of questions that the *Mallory* plurality failed to resolve in rendering a narrowly tailored, fact-specific decision.

Left unaddressed, these issues will expose tens of thousands of businesses operating in Pennsylvania and throughout the country to geographically untethered suits. At the same time, 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 (collectively "*Amici*") have a compelling interest in this matter and in seeing this Court demarcate the Statute's jurisdictional reach (if any) moving forward. Pursuant to Pa.R.A.P. 531(b)(2), *Amici* file this brief in their own right and on behalf of their respective members. *Amici* state that no person, other than their members and counsel, paid for or authored this brief, in whole or in part.

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 Justice Alito supplied the decisive vote to uphold *Mallory*'s plurality determination that the Registration Statute did not violate the Due Process Clause, as applied to the discrete facts of that case. But even as he did so, Justice Alito wondered aloud—and aptly—whether his colleagues had missed the mark by testing the Statute against the Due Process Clause alone.

Justice Alito observed that the federalism concerns implicated by the Registration Statute "fall more naturally within the scope of the Commerce Clause" and, more specifically, its "deeply rooted" negative principle, the Dormant Commerce Clause. *Id.* And he went further than merely teeing up the issue; he opined 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 the

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

Pennsylvania Supreme Court.

The *Mallory* Court, though fractured, embraced this invitation, with its plurality expressly encouraging the Pennsylvania Supreme Court to consider the Dormant Commerce Clause's bearing on the Registration Statute on remand. *Id*. at 127 n.3. The Pennsylvania Supreme Court declined that 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 speaking, the Registration Statute subjects thousands of foreign companies operating in Pennsylvania—the vast majority of them small businesses—to oppressive litigation simply because they opted to do business here and contribute to the Commonwealth's economy. By the same token, the Statute opens Pennsylvania's courtroom doors to legions of out-of-state plaintiffs with out-of-state injuries who, rather than permit their own state courts to vindicate their interests, seek relief in the plaintiff-friendly confines of the Commonwealth's busiest courts. And as a legal matter, the open question of the Statute's constitutionality post-*Mallory* leaves Pennsylvania courts without footing to reliably and consistently assess jurisdictional challenges to the Statute moving forward.

Litigants across the country need clarity on the Registration Statute, and Syngenta's Petition is the ideal vehicle to provide it. Importantly, the benefits of

review cut both ways: defendants, of course, need this Court's guidance for all the reasons set forth herein, but plaintiffs deserve clarity too, so they may craft their lawsuits accordingly. For all of these reasons, *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.

STATEMENT OF REASONS FOR IMMEDIATE REVIEW

Pennsylvania Rule of Appellate Procedure 312 provides that an appeal from an interlocutory order may be taken by permission pursuant to Chapter 13. Chapter 13, in turn, states that a party may seek permission to appeal an interlocutory order for which, *inter alia*, certification under 42 Pa. C.S. §702(b) was denied. Pa.R.A.P. 1311(a)(1). In such circumstances, the petition must explain: (1) "why the order involves a controlling question of law as to which there is substantial ground for difference of opinion;" (2) "that an appeal from the order may materially advance the ultimate termination of the matter;" and (3) "why the refusal of certification was an abuse of the trial court's or other government unit's discretion that is so egregious as to justify prerogative appellate correction." Pa.R.A.P. 1312(a)(5)(ii). Each factor is met here.[2]

[2] Mindful of the proper role of *amici curiae*, which is to bring to this Court's attention relevant matters which—although of considerable help—might not be raised by the parties, *Amici* do not endeavor to address each factor herein. Rather, *Amici* largely confine the instant brief to the first factor.

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, the U.S. Supreme Court's jurisprudence has contracted the available fora in which a business entity can be subjected to general personal jurisdiction, culminating in 2014 with the concept that there are only two locations in which a business is "at home" for general jurisdiction purposes: where it is incorporated; or where it maintains its principal place of business. *E.g.*, *Daimler AG v. Bauman*, 571 U.S. 117 (2014). This test has been a practical one, and has provided both (some degree of) certainty to corporate defendants and a disincentive to otherwise-inclined forum shoppers.

The *Mallory* decision detracts from this relative certainty that foreign businesses have come to enjoy. Indeed, for all its doctrinal discussion, *Mallory* leaves more questions than answers. The only "answer" the decision ultimately yields is an unhelpful one: although the Registration Statute apparently is tolerable under the Due Process Clause in certain circumstances, its viability otherwise remains an open question under the United States Constitution. *See*, *e.g.*, Gregory T. Sturges, *et al*., *Mallory v. Norfolk Southern Railway Co.*, GREENBERGTRAURIG (June 30, 2023) ("[T]here is an open question post-*Mallory* as to whether this is a true victory and a third rail for litigation tourism going forward, or whether it will

be a short-lived pyrrhic victory soon to be relegated on a combination of dormant Commerce Clause and due process grounds."); Aleeza Furman, *US High Court's 'Mallory' Ruling Could Mean Busier Courts in Pa., But the Fight's Not Over*, THE LEGAL INTELLIGENCER (June 29, 2023) ("But even though the [*Mallory*] Court resolved the 'due process' question, the fate of the statute is still up in the air," given Justice Alito's Dormant Commerce Clause concerns) ("Furman Article I.").[3]

And despite Plaintiffs' insistence that *Mallory*'s upshot is "straightforward" (Pl.'s Opp. to Syngenta's Mot. to Certify at 5, 9), the only clear takeaway is that a majority of Justices believed the Statute ***is*** constitutionally infirm in some shape or form—they just could not align ***on the basis*** for its invalidation. *Compare Mallory*, 600 U.S. at 150-63 (Alito, J., concurring) (finding "good prospect" of Commerce Clause violation), *with id*. at 163–180 (Barrett, J., dissenting, joined by Roberts, C.J., and Kagan and Kavanaugh, JJ.) (espousing Pennsylvania Supreme Court's determination that Statute violates Due Process Clause).

That the *Mallory* plurality invited the Pennsylvania Supreme Court to explore the Dormant Commerce Clause question on remand is evidence of its reservations regarding the Registration Statute's constitutional vitality. *See id.* at 127 n.3. But the Pennsylvania Supreme Court demurred, summarily remanding the case without

[3] For the convenience of the Court, *Amici* have embedded hyperlinks for newspaper articles, blog posts, and other authority cited herein that may not be readily available on Westlaw or LexisNexis.

opinion and without consideration of the Dormant Commerce Clause issue to the trial court for further proceedings. *Mallory v. Norfolk S. Ry. Co.*, 300 A.3d 1013 (Pa. 2023) (*per curiam*). The result of this inaction is a jurisprudential void that leaves countless stakeholders in the lurch. *See, e.g.*, Aleeza Furman, *Pa. Justices Remand 'Mallory' to Trial Court, Registration Statute Uncertainty Expected to Linger*, THE LEGAL INTELLIGENCER (Aug. 30, 2023) ("Lawyers hoping for more clarity on Pennsylvania's consent by registration statute are going to have to wait … with [*Mallory*] now bound for trial court, a clear answer is likely a long way off.") (herein, "Furman Article II").[4]

At this juncture, the only clarity to be drawn from *Mallory* comes in the form of its bleak and all-but inevitable consequences:

- **Protracted litigation, conflicting trial-court decisions, and appellate headaches regarding the Statute's constitutionality.** *See, e.g.*, Furman Article II, *supra* ("Pennsylvania's busy trial

[4] *See also* Lydia Wheeler, *State Registration Law Feared by Business Upheld by Justices*, BLOOMBERG LAW (June 27, 2023) ("Opponents feared a decision upholding the [Registration Statute] would open the door for other states to adopt similar registration requirements, but attorneys said it's unclear how future laws will fare under the [*Mallory*] court's ruling on Tuesday."); Shay Dvoretzsky, *et al.*, *SCOTUS Rejects Personal Jurisdiction Challenge to Consent-by-Registration Statutes but Leaves Door Open to Dormant Commerce Clause Challenge*, SKADDEN (July 24, 2023) ("[*Mallory*] did not finally resolve the constitutionality of the [Statute]…the constitutionality of [consent-by-registration] laws very much remains an open question."); *Supreme Court Rejects Due Process Clause Challenge to Pennsylvania Statute*, MAYER BROWN (June 30, 2023) ("[T]he fact that the *Mallory* court remanded the case for consideration of [a] dormant Commerce Clause challenge—which may ultimately return to the Supreme Court—means that the viability of these assertions of registration-based jurisdiction may be uncertain for some time.") ("MB Article"); *Personal Jurisdiction—Registration to Do Business*, FEDERAL LITIGATOR (July 2023) ("Alito's opinion … casts further uncertainty as to the status of this issue [which] still needs to make its way through the lower courts … we won't know for sure how effective the [Statute] is for quite some time.").

judges will … be plunged into an unsettled area of law, with no clear guidance from higher courts…. Some judges will probably dismiss some of these suits, while others will not; the plaintiffs in the dismissed suits may then appeal the dismissal while simultaneously filing the same suit in another forum as a protective measure." (quotation marks omitted)); MB Article, *supra* ("[T]he fractured nature of [*Mallory*]…ensures further litigation over so-called 'consent-by-registration' jurisdictional statutes [and] further litigation over personal jurisdiction.").

- **Capitalization by plaintiffs (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 to the Commonwealth's busiest courts.** Alison Frankel, *US Supreme Court Clears Path for Plaintiffs to Pick Where to Sue Corporations*, REUTERS (June 28, 2023) ("[*Mallory*] could upend litigation against corporate defendants, allowing plaintiffs to pick friendly out-of-state venues and gain valuable leverage from filing masses of cases in a single court … plaintiffs' lawyers will capitalize on the Mallory ruling by filing cases for out-of-state claimants" in plaintiff-friendly courts.); Sturges, *supra,* ("[A]t least in the short term, litigation tourism will likely experience a renaissance in Pennsylvania state courts" because "the status of personal jurisdiction law is now in flux."); Mark Lee, *Is the International Shoe on the Other Foot?*, THE WAKE FOREST L. REV. (Oct. 31, 2023) ("[*Mallory*] has the potential to displace the Court's existing corporate personal jurisdiction jurisprudence and green light a forum shopping spree."); Bob Giuffra, et al., *Sullivan & Cromwell Discusses Supreme Court Decision on Pennsylvania's Consent-to-Jurisdiction Law*, THE COLUMBIA L. SCH. BLUE SKY BLOG (July 11, 2023) ("*Mallory* will mean that, in Pennsylvania and potentially elsewhere, plaintiffs will attempt to engage in greater forum shopping.").

- **Enactment of copycat consent-by-registration laws by other states, emboldened by the *Mallory* plurality's approval of the Statute.** *See, e.g.*, Furman Article I, *supra* ("Should the [S]tatute ultimately withstand another bout in the high court, other states could follow Pennsylvania's lead."); MB Article, *supra* ("Other states may be pressed by the plaintiffs' bar to adopt statutes like

> Pennsylvania's[.]"); *Analysis of the United States Supreme Court's Ruling in Mallory*, AM. TORT REFORM ASS'N (Aug. 28, 2023) ("[T]he plaintiffs' bar has already recognized that the Mallory ruling both opens the door to the pursuit of cases in Pennsylvania that have no connection to that state other than the corporate defendant's registration, and may support other states' adoption of similar consent-by-registration statutes.") ("ATFA Article"); Sean Marotta, *After Mallory, Businesses Shouldn't Panic, But They Should Be Ready to Keep Fighting*, WESTLAW TODAY (June 30, 2023) ("By suggesting that freedom from consent-by-registration may be a matter of legislative grace rather than Due Process Clause command, *Mallory* opens the door for state legislatures to amend their registration statutes to copy Pennsylvania's approach.").

These concerns are hardly hyperbolic. Litigants presently lack definitive appellate guidance regarding the Registration Statute's constitutionality, particularly under the Dormant Commerce Clause. Meanwhile, Pennsylvania's trial courts—namely, the Philadelphia County Court of Common Pleas—have assumed a national reputation as plaintiff-friendly locales, a fact Justice Alito expressly recognized and which Syngenta, too, has highlighted. *See Mallory*, 600 U.S. at 153–154 & n.1 (Alito, J., concurring) (observing "***it 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) while collecting sources illustrating this reputation); (Syngenta Reply in Further Support of Mot. to Certify at 18 (noting that since *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, a number of states (including Georgia, Iowa, Kansas, and Minnesota) have analogous statutes that already have been construed as permitting 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); *see also* Marotta, *supra*. Other states could very well be awaiting a conclusive determination regarding the Statute's constitutionality to move forward with like-minded legislation. *See* ATFA 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."). When extended to its logical conclusion, *Mallory* could be read as setting the stage for each state to pass similar general jurisdiction statutory schemes, essentially amounting to what becomes nationwide, general jurisdiction for any business—in contradiction of more than 100 years of evolutionary personal jurisdiction jurisprudence.

The lack of clarity left in *Mallory*'s wake makes this issue ripe for this Court's review. 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 Realties 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 issue, even without more, 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 Phila.,* 890 A.2d 1188, 1192–1193 (Pa. Commw. Ct. 2006) (permitting interlocutory appeal where there was a constitutional issue of first impression); *Chestnut Hill Coll. v. PHRC*, 158 A.3d 251, 254, 256 (Pa. Commw. Ct. 2017) (same on "issue of first impression" with constitutional implications); *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) (same where appeal entailed issues that "would have a significant impact upon litigation in this Commonwealth"). *See generally* Darlington, *et al*., 20 West's Pa. Prac., Appellate Practice §1312:4.7 (noting appellate courts routinely permit interlocutory appeals from orders trial courts have refused to certify to "address and resolve unsettled and important issue[s] of law" (collecting cases)).

Putting aside *Mallory*'s legal ramifications, this Court should not lose sight of the decision's far-reaching practical ramifications. However this Court chooses to regard Justice Alito's Dormant Commerce Clause analysis in *Mallory*, it cannot be

ignored that a Justice of the U.S. Supreme Court dedicated a significant portion of his opinion to articulating concerns about the Statute's potentially "devastating" economic impact on present and future out-of-state businesses operating in Pennsylvania (or elsewhere). Indeed, that opinion exhibited a particular interest in the plight of small businesses:

> Aside from the operational burdens it places on out-of-state companies, Pennsylvania's scheme injects ***intolerable unpredictability*** into doing business across state borders. Large companies may be able to manage the patchwork of liability regimes, damages caps, and local rules in each State, ***but the impact on small companies, which constitute the majority of all U.S. corporations, could be devastating***. Large companies may resort to creative corporate structuring to limit their amenability to suit. ***Small companies may prudently choose not to enter an out-of-state market due to the increased risk of remote litigation***.

Mallory, 600 U.S. at 161–162 (Alito, J., concurring) (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) (commenting that, after *Mallory*, "[s]mall businesses will want to be particularly wary as many do not have the resources to develop creative corporate structuring to insulate them from litigation"). Small businesses are ubiquitous and vital to the commercial scene across the country, and Pennsylvania is no different. *See Mallory*, 600 U.S. at 162 n.8 (Alito, J., concurring). Over 99% of America's 28.7 million companies are small

businesses, employing 48% of nation's workforce and accounting for 45% of its GDP. *Small Economic Activity: JPMorgan Chase Institute*, JPMORGAN CHASE & CO. In fact, 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, Pennsylvania Department of State records indicate at least 100,000 nonresident companies currently are registered to do business in the Commonwealth. *Registered Businesses in PA Current by County*, PA. DEP'T OF STATE (updated Nov. 8, 2023).[5] Given the aforementioned national and local trends, it is reasonable to conclude that the majority of these foreign companies operating in Pennsylvania are also small businesses.

As it stands, and as endorsed by the *Mallory* plurality, the Registration Statute entitles forum-shopping plaintiffs to haul thousands (if not tens of thousands) of these foreign small businesses into Pennsylvania courts, irrespective of the subject litigation's connection to the Commonwealth. Faced with such "intolerable unpredictability," and ill-equipped to either navigate suits directly or undertake

[5] According to the Pennsylvania Department of Community and Economic Development, over 6,500 of these foreign companies are international companies. *Foreign Owned Companies in PA: International Businesses from Around the World Have Chosen to Locate and Do Business in All Over PA*, PA. DEP'T OF CMTY. & ECON. DEV. (last visited Nov. 14, 2023).

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).

Admittedly, the Registration Statute existed pre-*Mallory*. But pre-*Mallory*, there was not much suggestion that the Statute was being used in an oppressive manner to allow forum-shopped suits, wholly unrelated to any conduct in the Commonwealth, to be filed in cherrypicked venues within the Commonwealth's borders. Post-*Mallory*, however, that paradigm no longer is reliable. Confronted with coercive general jurisdiction, businesses might well elect to cease doing business in the Commonwealth, or not come here at all. And, even if they do remain registered in the Commonwealth, lawsuits untethered to any state interest come with significant financial costs to businesses and significant burdens to the courts.

The practical effects of the Registration Statute therefore work on multiple, increasingly pernicious levels. The Statute could directly burden the operations of foreign small companies that have elected to contribute to the Commonwealth's economy. On the other hand, it threatens to cast a pall over Pennsylvania's attractiveness as a viable marketplace, thereby undermining the economic health of the Commonwealth as a whole—which, as data shows, depends heavily upon small business activity. And if other states—influenced by *Mallory* but without the benefit of a definitive ruling on the Registration Statute's constitutionality under the

Dormant Commerce Clause—move to enact analogous legislation, they could be priming themselves for similar economic pitfalls given the prevalence of small business operations throughout the nation.

In short, Syngenta comes to this Court with an open constitutional question that no Pennsylvania appellate court has addressed. This issue, if left unresolved, could disproportionately affect the many small businesses operating in Pennsylvania and underpinning the Commonwealth's economy, and could spell serious economic consequences for Pennsylvania and the country writ large. Regardless of the Statute's constitutional fate, these weighty implications should not percolate further without this Court's guidance.

II. Syngenta Advances a Meritorious Dormant Commerce Clause Challenge to the Registration Statute That Would Prove Dispositive Here, Further Necessitating Immediate Review.

Beyond the glaring uncertainty surrounding the Registration Statute and its troubling implications, the fact of the matter is the Statute remains constitutionally suspect under the Dormant Commerce Clause. *See Mallory*, 600 U.S. at 157–163 (Alito, J., concurring). Recognizing this uncertainty, Syngenta has presented this Court with a Dormant Commerce Clause challenge to the Statute 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 for lack of jurisdiction, this Court should grant Syngenta's Petition for this independent reason.

A. The U.S. Supreme Court Has Already 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. ___, 139 S. Ct. 2449, 2459 (2019). This "negative" interpretation of the Commerce Clause, or the Dormant Commerce Clause doctrine, "prevents the States from adopting protectionist measures and thus preserves a national market for goods and services." *Id.*

Although no Pennsylvania appellate court has ruled on this issue, the U.S. Supreme Court has determined that coercive jurisdictional state laws are unconstitutional under the Commerce Clause, providing closely analogous precedent to guide this Court's hand. In *Davis v. Farmers' Co-op. Equity Co.*, the Supreme Court unanimously struck down a Minnesota jurisdictional statute that had required out-of-state railroad carriers to generally submit to suit in Minnesota as a "condition" of doing business there. The Court held the statute imposed an impermissible, "serious and unreasonable burden" on interstate commerce. 262 U.S. 312, 315–317 (1923). The Court explained that the statute might have been palatable had it been tailored to authorize jurisdiction only over suits arising out of in-state

acts or brought by in-state plaintiffs. *Id.* at 316–317.

But by broadly vesting Minnesota courts with 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," the law "unreasonably obstruct[ed]" and "unduly burden[ed]" interstate commerce by exposing foreign carriers to potentially "numerous" and "remote" personal-injury suits in Minnesota—in which the amounts demanded would be "large"; liability determinations would be unpredictable; the carriers' employees would be unduly burdened to attend to onerous and faraway litigation; and costly disruption to the carriers' wider operations would be inevitable. *Id*. at 315–316. By conditioning foreign carriers' business activity in Minnesota on forced consent to general jurisdiction there, 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 to *Davis*'s constitutionally "obnoxious" one. Only here, the Statute's scope is even more pervasive. It subsumes ***any*** foreign company registered to do business in the Commonwealth, exposing each and every one (some big, but most small) to the same panoply of burdens decried in *Davis*—geographically untethered and potentially crippling suits by out-of-state plaintiffs, where alleged liability will be assessed by

remote Pennsylvania trial courts and juries having no substantive connection to the litigation, with the effect of displacing workforces, disrupting operational efficiency, and imposing "heavy expenses" on a defendant for no reason other than that it chose to do some portion of its business in the Commonwealth. *See id.* at 316–317. And while large foreign corporations potentially may be able to shoulder such a burden, small ones will not. *See Mallory*, 600 U.S. at 161–162 (Alito, J., concurring).

Davis remains controlling law and demonstrates precisely why the Registration Statute offends the Commerce Clause; the decision seals the Statute's fate. *See Mallory*, 600 U.S. at 136 (observing Supreme Court decisions with "direct application" to "state law and facts" must be followed, as state courts have no "prerogative" to disregard such decisions until overruled by Supreme Court itself). *See generally* John F. Preis, *The Dormant Commerce Clause As a Limit on Personal Jurisdiction,* 102 Iowa L. Rev. 121, 132 (2016) (noting that *Davis* is "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.

In addition to *Davis*, which was decided a century ago, the Registration Statute runs afoul of the Supreme Court's more recent Dormant Commerce Clause jurisprudence. As the Supreme Court recently reiterated, "the proposition that the Commerce Clause by its own force restricts state protectionism is deeply rooted in our case law," positioning the Dormant Commerce Clause doctrine as the "primary safeguard against state Protectionism." *Thomas*, 139 S.Ct. at 2460–2461; *see also Dep't of Revenue v. Davis*, 553 U.S. 328, 337–338 (2008) ("The modern law of what has come to be called the dormant Commerce Clause is driven by concern about economic protectionism, that is, regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors. The point is to effectuate the Framers' purpose to prevent a State from retreating into the economic isolation that had plagued relations among the Colonies and later among the States under the Articles of Confederation[.]" (citations and quotation marks omitted)); *W. Lynn Creamery, Inc. v. Healy*, 512 U.S. 186, 205 (1994) ("Preservation of local industry by protecting it from the rigors of interstate competition is the hallmark of the economic protectionism that the Commerce Clause prohibits.").

Under this firmly established precedent, a state law offends the Commerce Clause and should generally be invalidated when it: (1) discriminates against interstate commerce; or (2) imposes "undue burdens" on interstate commerce. *S.*

Dakota v. Wayfair, Inc., 585 U.S. ___, 138 S .Ct. 2080, 2090–2091 (2018). The Registration Statute flunks each test.

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

The Registration Statute, at first blush, seems nondiscriminatory, requiring any company, domestic or foreign, to submit to general jurisdiction for any action in Pennsylvania as a condition of doing business in the Commonwealth. 15 Pa.C.S. §411(a); 42 Pa.C.S. §5301(a)(2)(i), (b). But upon closer review, the Statute reveals a discriminatory, protectionist scheme that the Dormant Commerce Clause doctrine exists precisely to thwart. By exposing foreign companies to costly and burdensome suits by foreign plaintiffs that bear no relation to these companies' actual commercial dealings in Pennsylvania, the Statute actively discourages out-of-staters from doing business in the Commonwealth and, in effect, shelters domestic companies from the rigors of foreign competition in the Pennsylvania market. Such discrimination against interstate commerce contravenes the Dormant Commerce Clause.

A 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) (quotation marks omitted). Such discriminatory treatment need not be evident on the face of the challenged statute; a seemingly neutral state law, whatever its putative

purpose may be, 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) (holding facially nondiscriminatory North Carolina law invalid under Dormant Commerce Clause when in "practical effect" statute "insidiously operate[d] to the advantage of local" businesses by eroding out-of-state commercial incentives to participate in state's market and imposing added costs upon out-of-staters).

The Dormant Commerce Clause's insistence on a hard look at the practical effects of state regulation makes sense, as a court might otherwise miss the ways in which a given statute operates to drive foreign companies out of the economic fabric of the state in question, while improperly insulating domestic companies from healthy competition. Such a phenomenon undermines the entire anti-protectionist premise of the Dormant Commerce Clause and smacks of improper discrimination. *See Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 372, 378 (2023) (holding states may not erect "economic barrier[s] protecting a major local industry against competition from without the State," and state laws which practically operate to "insulate" in-state economic interests from "out-of-state competition" discriminate against interstate commerce); Preis, *supra*, at 134–136 (explaining "Dormant Commerce Clause forbids a state from protecting local economic actors from competition by out-of-state economic actors, usually by imposing extra costs or burdens on out-of-state actors," because such impositions practically discriminate

against interstate commerce by discouraging out-of-staters from pursuing business in that state's market).

State laws deemed discriminatory in practical effect thus are subject to a finding of invalidity under the Dormant Commerce Clause. *Granholm*, 544 U.S. at 476 (quotation marks omitted); *see also Brown-Forman Distillers Corp. v. N.Y. State Liquor Auth.*, 476 U.S. 573, 579 (1986) (collecting cases and observing that, when a statute "discriminates against interstate commerce, or when its effect is to favor in-state economic interests over out-of-state interests, we have generally struck down the statute without further inquiry").

As applied to Pennsylvania's statutory scheme, the 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 even 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. That choice becomes all the more problem when considering its predominant impact on small, out-of-state companies. These state-driven economic barriers and commercial

disincentives would make any rational foreign company think twice about doing business in Pennsylvania. *See* D'Angelo, *supra* ("Allowing for such broad general personal jurisdiction over out-of-state corporations could discourage corporations from doing business in Pennsylvania, and other states alike because of wariness of being hauled into any state's courts over any claim.").

The effect is to discourage foreign companies, whatever their size and scope, from doing business here, setting the stage for a large-scale retreat from Pennsylvania's market while protecting domestic businesses from foreign competition. That 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*, 516 U.S. at 345.

The Registration Statute crumbles against this scrutiny. The Statute finds no support in the usual-suspect state interests—it does not, for example, 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; *Mallory*, 600 U.S. at 162-63 (Alito, J., concurring). Rather, the Statute outstrips any such plausible interest by allowing nonresident plaintiffs to launch suits for alleged injuries wholly unrelated to activity within Pennsylvania, precipitating a protectionist framework that short-circuits out-of-state competition in the Commonwealth's market. That is not a legitimate state interest. *See Edgar v. MITE Corp.*, 457 U.S. 624, 643 (1982) (holding a state has "no legitimate interest in protecting nonresidents" injured out-of-state); Preis, *supra*, at 137; *Mallory*, 600 U.S. at 162-63 (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 … 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."); *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 [brought by nonresidents] intrudes on the prerogatives of other States—domestic and foreign—to adjudicate the rights of their citizens and enforce their own laws" and 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[.]"); *Tenn. Wine*, 139 S.Ct. at 2469 ("We have examined whether state…laws that burden interstate commerce serve a State's legitimate…interests. And protectionism, we have stressed, is not such an interest.").

Consequently, "there is nothing to be weighed in the balance to sustain" the Statute. *Edgar*, 457 U.S. at 644. Because the Registration Statute discriminates against interstate commerce with no legitimate justification, 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*, 138 S. Ct. at 2091. A state regulation, even if nondiscriminatory (this one is not), will nevertheless offend the Dormant Commerce Clause and invite invalidation if it

imposes "undue burdens" on interstate commerce. *Id*. The Supreme Court has observed for nearly a century—including recently in *Mallory*—that coercive jurisdictional statutes unduly burden interstate commerce, in violation of the Dormant Commerce Clause, 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 in invalidating analogous jurisdictional statute under Commerce Clause); *Bendix*, 486 U.S. at 893–895 (recognizing such burdens as "significant" impositions on interstate commerce in applying Dormant Commerce Clause to invalidate analogous jurisdictional statute that impermissibly forced foreign companies into Hobson's choice of either submitting to general personal jurisdiction in Ohio or relinquishing critical defenses there); *Mallory*, 600 U.S. at 161-62 (Alito, J., concurring) (recognizing Registration Statute imposes "significant burden" on interstate commerce by requiring foreign companies to defend against any and all suits, "including those with no forum connection," while "inject[ing] intolerable unpredictability into doing business across state borders," with potentially "devastating" ramifications for small companies).

In other words, this Court need not speculate as to whether the Statute unduly

burdens interstate commerce—this result already has been confirmed by Supreme Court precedents, the most recent of which concerned the Statute itself. And given that that 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 161–1 (Alito, J., concurring).

Once a regulation is shown to unduly burden interstate commerce, it can be salvaged only if it serves to "effectuate a legitimate local public interest" and the law's 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. Again, no legitimate local purpose underlies the Statute's protectionist bent, and with no legitimate interest undergirding the Statute, there is nothing weighing in favor of its constitutionality under the Dormant Commerce Clause. *Edgar*, 457 U.S. at 644. Moreover, the Registration Statute's burdens do more than exceed any putative local benefits the Commonwealth might advance. *See Mallory*, 600 U.S. at 163 (Alito, J., concurring). They instead lay 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. At the same time, these burdens foretell a proliferation of suits throughout the Commonwealth in which Pennsylvania has no legitimate interest, taxing the resources of its courts and citizenry (and as long as the Statute's constitutionality remains unresolved, making confusing adjudication and conflicting decisions inescapable).

Residual harms and inconveniences flow from these burdens. *See Mallory*, 600 U.S. at 162 (Alito, J., concurring) (noting the Registration Statute may prompt "[s]ome companies [to] forgo registration altogether, preferring to risk the consequences rather than expand their exposure to general jurisdiction. No one benefits from this efficient breach of corporate-registration laws: corporations must manage their added risk, and plaintiffs face challenges in serving unregistered corporations. States, meanwhile, would externalize the costs of [their] plaintiff-friendly regimes." (quotation marks and citations omitted)). 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 outside of Pennsylvania, essentially resulting in nationwide jurisdiction.

Maintaining the Registration Statute at the direct expense of foreign economic interests and of the Commonwealth itself cannot pass constitutional muster. Because

the Registration Statute independently and improperly casts undue burdens on interstate commerce, it should fall under the Dormant Commerce Clause.

CONCLUSION

For the foregoing reasons and those additional reasons set forth in Syngenta's Petition, *Amici* respectfully request that this Court grant Syngenta's Petition and permit review on all issues raised therein.

Respectfully submitted,

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

By: */s/ Casey Alan Coyle*
Casey Alan Coyle, Esquire (No. 307712)
Christina Manfredi McKinley, Esquire (No. 320002)
Stefanie Pitcavage Mekilo, Esquire (No. 312720)
Devlin Carey, Esquire (No. 332768)
409 North Second Street, Suite 201
Harrisburg, PA 17101

Attorneys for Amici Curiae Pennsylvania Coalition for Civil Justice Reform, American Property Casualty Insurance Association, Insurance Federation of Pennsylvania, and Pennsylvania Chamber of Business and Industry

Dated: November 22, 2023

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing BRIEF OF *AMICI CURIAE* PENNSYLVANIA COALITION FOR CIVIL JUSTICE REFORM IN SUPPORT OF PETITIONERS' PETITION FOR PERMISSION TO APPEAL complies with Pa.R.A.P. 531. Rule 531 provides that, where, as here, leave must be sought to file an *amicus* brief, the brief is limited to "the length specified by the court in approving the motion of, if no length is specified, to half the length that a party would be permitted under the rules of appellate procedure." Pa.R.A.P. 531(a)(2). However, Pennsylvania Rule of Appellate Procedure 1312 does not set forth a word-limit for a petition for permission to appeal. As a result, there is no set word-limit for the instant Brief.

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: November 22, 2023 /s/ Casey Alan Coyle

Casey Alan Coyle, Esquire

CERTIFICATE OF COMPLIANCE

I 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: November 22, 2023

/s/ Casey Alan Coyle
Casey Alan Coyle, Esquire

PROOF OF SERVICE

I hereby certify that, on this 22nd day of November, 2023, I am causing to be served the foregoing document upon the persons and in the manner indicated below, which service satisfies the requirements of Pa.R.A.P. 121:

Service by first-class U.S. mail, postage prepaid, addressed as follows:

Daniel Lapinski, Esquire
Motley Rice LLC
40 West Evergreen Avenue, Suite 104
Philadelphia, PA 19118

Fidelma Fitzpatrick, Esquire
Motley Rice LLC
40 Westminster Street, 5th Floor
Providence, RI 02903

Counsel for Plaintiffs

Kimberly A. Brown, Esquire
Michael A. Magee, Esquire
Jones Day
500 Grant Street, Suite 4500
Pittsburgh, PA 15219-2514

Counsel for Chevron U.S.A. Inc.

Nina M. Gussack, Esquire
Barry H. Boise, Esquire
Christoper M. Brolley, Esquire
Troutman Pepper LLP
3000 Two Logan Square
Eighteenth and Arch Streets
Philadelphia, PA 19103

Counsel for FMC Corp.

Ragan Naresh, Esquire (*pro hac vice)*
Don Hong, Esquire (*pro hac vice)*
Kirkland & Ellis LLP
1301 Pennsylvania Avenue N.W.
Washington, D.C. 20004

David J. Parsells, Esquire
Karl S. Myers, Esquire
Stevens & Lee
620 Freedom Business Center
Suite 200
King of Prussia, PA 19406

Counsel for Syngenta Crop Protection, LLC and Syngenta AG

/s/ Casey Alan Coyle
Casey Alan Coyle, Esquire