

An aerial photograph showing the aftermath of a train derailment. Several train cars are overturned and scattered on the ground. A large, intense fire is visible in the background, with thick black smoke rising into the air. The scene is surrounded by trees and some debris.

FORUM SHOPPING AFTER OHIO TRAIN DERAILMENTS

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As I'm sure most of us have heard, last month a train carrying toxic chemicals derailed near East Palestine, Ohio. While we do not yet know what the long term effects of this will be, the water in East Palestine and the surrounding areas has shown signs of contamination. What many of us may not have heard is that the company responsible for the train derailment, Norfolk Southern, is currently arguing a case in front of the Supreme Court that, if they win, could make it more difficult for those harmed by the train derailment to sue the company and get the justice they deserve. The case concerns a legal concept known as forum shopping and it could have significant repercussions in terms of holding corporations accountable.

Forum shopping refers to the practice of choosing the most advantageous place to file a suit, usually either to take advantage of more favorable laws or regulations in a specific state or locality or to find a judge who may be favorable to your position. This is most commonly done by corporations or those who have access to significant resources, with one famous example being the Sackler family filing bankruptcy in a New York court even though their company, Purdue Pharmaceuticals, was based in Connecticut in order to have their case heard by a judge who was more favorable to their position (source).

While forum shopping is fairly common practice among corporations and the ultra-rich, the case Norfolk Southern is currently arguing before the Supreme Court has the potential to prevent regular people from using the practice against corporations. The case concerns Robert Mallory, a former employee of Norfolk Southern who was exposed to harmful carcinogens while working for the company in both Ohio and Virginia. He sued Norfolk Southern in Pennsylvania court, as PA law dictates that any corporation that operates in the state is subject to their laws.

Norfolk Southern is arguing that by suing in a jurisdiction other than where the injury took place or where the corporation is headquartered, the suit places an undue burden on them and should not be allowed (source). Essentially, if the Supreme Court upholds the lower courts rulings, which it seems they most likely will, it will make statutes like Pennsylvania's unconstitutional. This will mean that there will be states in which corporations can operate in where they are not liable to being sued and therefore aren't required to abide by their regulations.

This case is yet another example of corporations and the wealthy playing by a different set of rules, as they will still be allowed to forum shop but they are attempting to take that right away from anyone they have harmed. It merely creates another barrier to people seeking justice and compensation for harm done by large corporations.

In terms of the train derailment in East Palestine, this case could potentially create a number of hurdles for those attempting to hold Norfolk Southern accountable for the harm they've caused the community. Since the extent of the harm done by the derailment is not fully known, it could be difficult to determine in whose jurisdiction the injury occurred. Toxic chemicals don't abide by lines on a map, and it is conceivable that the spill could harm people in the neighboring states and localities which has the potential to create confusion about which jurisdiction the victims are eligible to sue Norfolk Southern in.

In my view, Norfolk Southern's goal in this case is to create additional hurdles and obstacles to regular, working people who are harmed by large corporations and the wealthy holding them accountable in a court of law. The more hurdles they can place in the process, the more confusing and convoluted they make the system, the less likely it is they will be held accountable for their actions.