

In the
Supreme Court of the United States



SECRETARY PENNSYLVANIA
DEPARTMENT OF LABOR AND INDUSTRY,
Petitioner,

v.

DELAWARE RIVER JOINT
TOLL BRIDGE COMMISSION,
Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Third Circuit

**BRIEF IN OPPOSITION OF RESPONDENT
DELAWARE RIVER JOINT TOLL BRIDGE COMMISSION**

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QUESTION PRESENTED

Whether the Third Circuit properly interpreted the explicit language of the bi-state Compact creating the Delaware River Joint Toll Bridge Commission (“Commission”) to cede state sovereignty to the Commission over the installation of elevators in the Commission’s administration building.

CORPORATE DISCLOSURE STATEMENT

The Respondent, the Delaware River Joint Toll Bridge Commission, is a quasi-public service-oriented agency, operating as a self-funded entity without any tax revenues from either of its two jurisdictional states or the federal government. Funding for the operation, maintenance and upkeep of its bridges and other structures is solely derived from revenues collected at its toll bridges. The agency has a full-time workforce of roughly 400 individuals, consisting primarily of toll collectors, maintenance workers and bridge monitors.

The Delaware River Joint Toll Bridge Commission has no shares publicly listed, has no parent company, and no public company owns 10% or greater of the commission.

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INTRODUCTION

This petition is not worthy of review. The Petitioners do not identify a split in authority among the Circuit Courts of Appeal. Instead, they persist in arguing that the Compact at issue here is silent as to the Commission's authority, and they misinterpret the Third Circuit's decision to suggest that it found a surrender of sovereignty from that silence. In fact, the opposite is true: The Compact could not be more explicit in granting the Commission broad powers to acquire and improve its real property and to exercise "all powers" attendant to that acquisition and improvement. Accordingly, the petition should be denied.



COUNTER-STATEMENT OF THE CASE

The Commonwealth of Pennsylvania and the State of New Jersey entered into a Compact to create the Delaware River Joint Toll Bridge Commission (the “Commission”) for the purpose of jointly owning and operating bridges spanning the Delaware River between the two states. Pet.App.3a; Pet.App.64a (Compact, Art. II). The explicit goal of the Compact was to create “a single agency for both states empowered to further the transportation interest of these states” with respect to the northern portion of the Delaware River. Pet.App.3a. To effectuate its purposes, the Commission was granted the power “to acquire, own, use, lease, operate, and dispose of real property and interest in real property, and to make improvements thereon”; “to determine the exact location, system, and character of, and all other matters in connection with, any and all improvements or facilities which it may be authorized to own, construct, establish, effectuate, maintain, operate or control”; and “to exercise all other powers . . . which may be reasonably necessary or incidental to the effectuation of its authorized purposes or to the exercise of any of the forgoing powers . . . and generally to exercise in connection with its property and affairs and in connection with property under its control, any and all powers which might be exercised by a natural person or a private corporation in connection with similar property and affairs.” Pet.App. 66a-67a (Compact, Art. II(j), (n), (p) (emphasis added)).

In an exercise of these explicit powers, in 2017 the Commission initiated a long-planned project to rebuild the bridge at the Scudder Falls crossing of the river and to build an adjacent administration building. In 2019, Petitioner attempted to shut down the project because the Commission refused to accede to Petitioner's efforts to inspect elevators installed in the administration building. The Commission applied to the District Court for the Eastern District of Pennsylvania for declaratory judgment, holding that the language of the Compact reflected the surrender by New Jersey and Pennsylvania of their respective police powers over the Commission with respect to building safety. The District Court so held, and the Third Circuit affirmed, ruling that New Jersey and Pennsylvania authorized the Commission to manage the safety of its own facilities through clear, unambiguous language in the Compact which granted the Commission the power to improve its real property, to determine all matters in connection with such improvements, and to exercise any and all other powers in connection with its property. Pet.App.12a.



ARGUMENT

Petitioner offers no grounds for certiorari, which therefore should be denied.



REASONS FOR DENYING THE PETITION

I. PETITIONER DOES NOT IDENTIFY A SPLIT IN THE AUTHORITY OF THE CIRCUIT COURTS OF APPEALS.

Petitioner attempts to manufacture a split in the authority of the Circuit Courts by misrepresenting the Third Circuit’s decision in this case. Petitioner cites *Franchise Tax Bd. of Cal. v. Hyatt*, 139 S.Ct. 1485 (2019), in support of the proposition that, for a court to find that a state has surrendered its sovereign right to exercise its police powers, the Compact at issue must reflect that surrender “in clear and express terms.” Pet. at 11. Petitioner argues that the Third Circuit’s decision conflicts with this mandate by finding that Pennsylvania surrendered its sovereignty in silence, through the creation of the Compact itself. Pet. at 10.

Petitioner misstates the Third Circuit’s decision. In fact, the Third Circuit acknowledged that “courts must be hesitant to find a surrender of sovereignty where it is ambiguous”, and it looked to the Compact to ascertain whether language in the document supported the argument that the sovereignty of the states had been surrendered. Pet.App.12a (citations omitted). Thus, the Third Circuit faithfully adhered to

the requirement that it must find “clear and express terms” for the surrender of a state’s sovereignty.

II. THE THIRD CIRCUIT FOUND THAT THE COMPACT CONTAINED “CLEAR AND EXPRESS TERMS” EVINCING THE SURRENDER OF STATE SOVEREIGNTY.

Reviewing the text of the Compact for language that would help to determine whether sovereignty had been surrendered, the Third Circuit affirmed that “the surrender of sovereignty was expansive and clear: Pennsylvania and New Jersey relinquished all control over the Commission.” Pet.App.12a. The Court affirmed that “[t]he specific language of the Compact also indicates that Pennsylvania and New Jersey delegated the relevant regulatory authority,” and that “the Compact’s text unambiguously cedes Pennsylvania’s regulatory authority over building safety regulations.” *Id.* Quoting from the Compact itself, the Third Circuit agreed that its explicitly worded provisions granted the Commission “the authority to acquire property . . . , the ability to make improvements upon the property . . . , and the power over ‘all other matters in connection with its facilities.’” Pet.App.13a. Far from silence, the language of the Court, like the language of the Compact itself, is abundantly clear.



CONCLUSION

Consistent with precedent, the Third Circuit applied the principle that the surrender of sovereignty must be determined by the language of the Compact. The Third Circuit found an express surrender of sovereignty in the Compact that formed the Commission. Petitioner fails to demonstrate that any prior precedent of this Court, Third Circuit, Second Circuit, or Highest Court of New York placed the constitutional question beyond debate. Accordingly, Petitioner's Petition for Writ of Certiorari must be denied.

Respectfully submitted,

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