

No. 24-1021

In the Supreme Court of the United States

CEDRIC GALETTE,

Petitioner,

v.

NEW JERSEY TRANSIT CORPORATION,

Respondent.

**On Petition For A Writ Of Certiorari To The
Supreme Court of Pennsylvania**

BRIEF FOR THE RESPONDENT

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QUESTIONS PRESENTED

(1)

Whether New Jersey Transit is an arm of the State for interstate sovereign immunity purposes.

(2)

Whether a State's formal financial liability for a judgment against a state-created entity carries more weight in assessing whether that entity is an arm of the State than other factors, including the State's own characterization of that entity.

DISCLOSURE STATEMENT

New Jersey Transit Corporation is a governmental entity.

RELATED PROCEEDINGS

The following proceedings are directly related to this case within the meaning of Rule 14.1(b)(iii):

Cedric Galette v. NJ Transit and Julie E. McCrey, No. 4 EAP 2024, Supreme Court of Pennsylvania. Judgment entered March 12, 2025.

Cedric Galette v. NJ Transit and Julie E. McCrey, No. 2210 EDA 2021, Superior Court of Pennsylvania. Judgment entered March 21, 2023.

Cedric Galette v. NJ Transit and Julie E. McCrey, No. 200800610, Court of Common Pleas of Pennsylvania. Judgment entered September 23, 2021.

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RESPONSE TO PETITION FOR A WRIT OF CERTIORARI

Respondent New Jersey Transit Corporation responds to Cedric Galette's petition for a writ of certiorari to review the judgment of the Supreme Court of Pennsylvania.

OPINIONS AND RULINGS BELOW

The opinion of the Supreme Court of Pennsylvania is pending publication in the Atlantic Reporter and currently available at 2024 WL 5457879. See also Petitioner's Appendix (App.) 1-24.

The opinion of the Superior Court of Pennsylvania is reported at 293 A.3d 649. See also App.25-37.

The opinion of the Court of Common Pleas is unreported but is available at 2021 WL 11551626. App.38-39.

JURISDICTION

The Supreme Court of Pennsylvania entered judgment on March 12, 2025. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a).

INTRODUCTION

While Respondent New Jersey Transit (NJ Transit) disagrees with Petitioner on the appropriate disposition of the question presented, it agrees that this Court should grant certiorari to resolve the untenable split in which New Jersey finds itself. When an NJ Transit train leaves Morrisville, Pennsylvania, bound for New York City, its sovereign immunity toggles on and off at different points along the route. If NJ Transit is sued for conduct in Morrisville, in Pennsylvania state court, it enjoys sovereign immunity. But if NJ Transit faces suit for the same conduct in New York City, in New York state court, its sovereign status suddenly evaporates. Same public service, same day, same train—yet a different answer on the same state entity’s immunity.

This circumstance flows entirely from a recent, direct, and acknowledged conflict between the decision below and a decision three months prior from the New York Court of Appeals. In assessing whether NJ Transit is entitled to sovereign immunity from suit, courts must determine whether the entity is an “arm of the State” such that it is cloaked in New Jersey’s own sovereignty. In the decision below, the Pennsylvania Supreme Court joined the Third Circuit in holding that NJ Transit is an arm of the State—as the State so recognizes. See App.24; *Karns v. Shanahan*, 879 F.3d 504, 518-519 (CA3 2018). But just three months prior, the New York Court of Appeals—in a highly fractured opinion—held that NJ Transit is not an arm of the State and is entitled to no immunity. See *Colt v. N.J. Transit Corp.*, __ N.E.3d ___, 2024 WL 4874365 (N.Y. 2024). The New York

high court recognized that it was splitting with the Third Circuit, see 2024 WL 4874365, at *4 n.4, and the Pennsylvania high court in turn acknowledged a conflict with *Colt*—calling its dispute with its sister high court “obvious.” App.22a. And multiple judges in *Colt*’s fractured opinions observed that more guidance from this Court is needed.

If anything, Petitioner undersells the need for this Court to grant certiorari to resolve this dispute—which involves not only this direct conflict on this immunity holding, but also a deeper split on the underlying methodology for determining when a state-created entity can assert its creator State’s sovereign immunity. Courts recognize that sovereign immunity extends to a state-created entity that constitutes an “arm of the State.” *Coll. Savs. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 691 (1999). But state and federal courts are divided over how to determine whether an entity qualifies—especially when it comes to the so-called “treasury factor,” which considers whether a judgment against the entity runs against the State’s treasury. Some courts—including the New York high court and multiple circuits—give the treasury factor enhanced or even dispositive weight, perceiving sovereign immunity as primarily about protecting the state fisc. Others—including the Pennsylvania high court, and the Third, Ninth, and D.C. Circuits—reject this view, reasoning that immunity is primarily about according dignity to the sovereign, and thus giving comparable weight to factors that reflect the State’s view of the entity’s function and the State’s control over its operations. And the conflict produces

outcome-determinative results, as this conflict between the New York and Pennsylvania high courts vividly illustrates.

Certiorari is needed to resolve the disagreements over the immunity holding and underlying methodology. See *supra*, at i (repeating question presented from Petition, while adding a second question presented on methodology). The splits are direct, and given that they are acknowledged, there is no serious prospect of resolution absent this Court's intervention. The issues are consequential both in theory and in practice: state sovereign immunity is "integral to the structure of the Constitution" and reflects "an essential component of federalism," *Franchise Tax Bd. of California v. Hyatt*, 587 U.S. 230, 246-247 (2019) (*Hyatt III*), and can be the difference between facing years of litigation followed by substantial legal judgments in a foreign State's courts, versus facing litigation and potential liability only where the State has consented to suit. The issues are recurring, as parties have debated whether a range of state entities are arms of the State. And this case is a strong vehicle to assess this pure, dispositive question of law.

The State disagrees with Petitioner on the merits of these immunity questions. But it agrees that the lower courts need more instruction, and that NJ Transit's immunity should be the same at every stop on its route. That guidance, and the resolution of this conflict, can come from this Court alone.

STATEMENT OF THE CASE

1. Since its creation by the New Jersey Legislature in 1979, NJ Transit has operated New Jersey’s public transportation system. It is one of the largest public-transit agencies in the country, providing “nearly 270 million passenger trips each year.” *Colt v. N.J. Transit Corp.*, __ N.E.3d ___, 2024 WL 4874365, at *28 (N.Y. 2024) (Rivera, J., dissenting). In addition to maintaining a network of statewide bus, rail, and light-rail services extending across the State and into Pennsylvania and New York alike, NJ Transit offers “publicly funded transit programs for people with disabilities, senior citizens and people living in the state’s rural areas who have no other means of transportation.” *Ibid.*

The Legislature established NJ Transit because it found that “the provision of efficient, coordinated, safe and responsive public transportation is an essential public purpose,” and that it was the “responsibility of the State to establish and provide for the operation and improvement of a coherent public transportation system in the most efficient and effective manner.” New Jersey Public Transportation Act of 1970 (NJ Transportation Act), N.J. Stat. Ann. § 27:25-2(a)-(b). It established NJ Transit “in the Executive Branch of the State Government,” and “allocated [it] within the Department of Transportation.” *Id.* § 27:25-4(a). And the Legislature stated that NJ Transit is “constituted as an instrumentality of the State exercising public and essential governmental functions,” and that the exercise of its powers is “an essential governmental function of the State.” *Ibid.*

The Legislature granted NJ Transit significant governmental powers to exercise in the service of its public function. NJ Transit can promulgate rules and regulations that have “the force and effect of law.” *Id.* §27:25-5(e). Its police officers can enforce not only those rules, but also “all criminal and traffic matters at all times throughout the State.” *Id.* §27:25-15.1(a). NJ Transit has statewide powers of eminent domain. *Id.* §27:25-13. And its property is deemed untaxable property belonging to the State. *Id.* §27:25-16.

NJ Transit also operates subject to extensive state control. The Governor appoints each member of NJ Transit’s thirteen-member board, including the state Commissioner of Transportation and state Treasurer as *ex officio* members. *Id.* §27:25-4(b). The Board’s minutes must be delivered to the Governor after each meeting, and no Board action enjoys “force or effect” unless the Governor either approves the action or lets ten days pass from the submission of the Board’s minutes. *Id.* §27:25-4(f). Even then, the New Jersey Legislature maintains the power to override certain eminent-domain decisions. *Id.* §27:25-13(h).

NJ Transit’s liability to suit in New Jersey court is limited by the New Jersey Tort Claims Act (NJTCA), consistent with its status as a “public entity” under that statute. See *Muhammad v. New Jersey Transit*, 821 A.2d 1148, 1153 (N.J. 2003). It is thus susceptible to tort suits in the New Jersey courts only pursuant to that statute’s limited waiver of sovereign immunity. NJ Transit is not subject to federal suit in the District of New Jersey or the Eastern District of Pennsylvania, under the Third Circuit’s holding that it is an arm of

New Jersey for Eleventh Amendment purposes. See *Karns v. Shanahan*, 879 F.3d 504, 519 (CA3 2018).

2. In May 2021, Petitioner sued NJ Transit in the Pennsylvania Court of Common Pleas, alleging that an NJ Transit bus had struck the car in which he was a passenger on a Philadelphia street. App.2. He also sued the bus driver, Julie McCrey. *Ibid.*¹ NJ Transit moved to dismiss Petitioner’s suit, invoking sovereign immunity. App.2, 38-39. The trial court denied the motion. App.2, 39. The intermediate appellate court affirmed, App.3-4, 25-37, reasoning that the fact the judgment in that case would be paid by NJ Transit—not by New Jersey’s treasury—is the dispositive issue in the sovereign-immunity analysis. App.4, 36-37.

The Pennsylvania Supreme Court unanimously reversed. App.1-24. Grounding its analysis in this Court’s decision in *Hyatt III*, the Pennsylvania high court acknowledged that interstate sovereign immunity is “integral to the structure of the Constitution.” App.10 (quoting *Hyatt III*, 587 U.S., at 246). It thus focused on whether NJ Transit is an arm of New Jersey, App.12-13, looking to the six factors Pennsylvania courts have traditionally used for this analysis, App.14 (citing *Goldman v. Se. Pa. Transp. Auth.*, 57 A.3d 1154, 1179 (Pa. 2012)).

The Pennsylvania Supreme Court found that New Jersey’s own characterization of NJ Transit as a state entity was the most important factor in its analysis. App.17. Interstate sovereign immunity, it reasoned,

¹ As Petitioner notes, McCrey has never made an appearance in this litigation. Pet. 15 n.1.

“ensures that each State honors the coequal sovereign status of her sister States,” App.16, and “requires a State to avoid a direct conflict with a sister State by refusing to compel the sister State to defend against a private action in the former State’s courts,” App.17. Given that “primary objective,” the court held that it needed to “give primacy to the manner in which the sister State classifies and describes the entity within the structure of that State.” *Ibid.* And New Jersey had unambiguously classified NJ Transit as part of the State, in both form and function. See App.17-20.

In reaching its holding, the Pennsylvania Supreme Court recognized that it was parting ways with a recent decision of the New York Court of Appeals, which held that NJ Transit is not an arm of the State entitled to sovereign immunity. See App.21-23 (citing *Colt*, 2024 WL 4874365). The Pennsylvania high court called its disagreement with *Colt* “obvious,” App.22—emphasizing that it disagreed not only on the result but also on the underlying methodology. The court rejected *Colt*’s express decision to “place significant weight” on the fact that the New Jersey treasury did not face any “legal liability or ultimate financial responsibility for a judgment” against NJ Transit. App.21-22 (quoting *Colt*, 2024 WL 4874365, at *7). Instead, the court held below, New Jersey’s own definition of “the entity and its functions” must be “the driving force in concluding that NJ Transit is an arm of the State of New Jersey,” consistent with the principles of interstate comity that undergirds interstate immunity. App.21-23.

On March 19, 2025, Petitioner filed his petition for a writ of certiorari. This response follows.

ARGUMENT

While NJ Transit disagrees with Petitioner as to the appropriate outcome of this case, it agrees that this Court should grant certiorari. Most importantly, this case implicates two splits: on the arm-of-the-State test, and on the existence of NJ Transit's immunity here. The lower courts are in conflict over whether an entity's status as an "arm of the State" turns principally on whether judgments against the entity run against the State's treasury, or whether to give equal or higher weight to the creator State's classification and control over that entity. This methodological dispute is not academic; it led state high courts and the Third Circuit to split over the immunity to which NJ Transit is entitled, and it has produced splits for other state-created entities in recent years. The issues presented are consequential in theory and in practice alike. And this case is a good vehicle to address these questions. This Court should therefore grant certiorari to address the two questions presented, and ultimately affirm.

I. This Case Presents Two Splits On Important And Recurring Questions.

This Court should grant certiorari to resolve two splits. *First*, courts are divided over the significance of the "treasury factor"—the impact that any judgment against a state-created entity will have on its creator State's treasury—in determining whether that entity is an arm of the State. *Second*, that division resulted in a conflict for NJ Transit itself: courts cannot agree whether NJ Transit is an arm of New Jersey. Unless and until this Court steps in, the answer to both will continue to vary with geography.

A. Courts Are Divided Over The Arm-Of-The-State Test And The “Treasury Factor.”

The decision below reflects one side of a deep and acknowledged split over the role the “treasury factor” plays in the arm-of-the-state analysis. All agree that courts—in assessing whether a particular entity is an arm of its creator State—consider if a legal judgment against that entity runs against the State’s treasury. But there is a square dispute over whether that factor gets primacy in the sovereign immunity analysis—a conflict that is often outcome determinative.

One side of the split, most recently reflected in the majority decision of the New York Court of Appeals in *Colt v. New Jersey Transit Corp.*, gives primary (if not dispositive) weight to this “treasury factor.” __ N.E.3d __, 2024 WL 4874365, at *6-7 (N.Y. 2024). There, a majority concluded that New Jersey’s decision to “disclaim[] any legal liability for judgments against” NJ Transit “outweigh[ed] the relatively weak support provided by the other factors” it assessed, even though New Jersey law otherwise classifies NJ Transit as a government instrumentality subject to both executive and legislative oversight. *Id.*, at *7. Concurring and dissenting judges acknowledged that the majority gave this factor dispositive weight. See *id.*, at *31 (Rivera, J., dissenting) (criticizing court for “rendering [treasury] factor dispositive”); *id.*, at *8 (Halligan, J., concurring) (agreeing that it was “understandable” to “conclude[] that a concern for state solvency, rather than dignity, drives the majority’s analysis”).

Like the New York Court of Appeals, a number of federal circuits give the treasury factor priority. The Fourth, Fifth, Sixth, and Seventh Circuits have each

labeled the treasury factor the “most important” and “foremost” within their multifactor tests. See *DuPage Reg’l Off. of Educ. v. Dep’t of Educ.*, 58 F.4th 326, 339-340 (CA7 2023) (collecting cases) (citations omitted); *Hutto v. S.C. Ret. Sys.*, 773 F.3d 536, 543-548 (CA4 2014); *Daves v. Dallas County*, 22 F.4th 522, 532-533 (CA5 2022) (en banc); *Ernst v. Rising*, 427 F.3d 351, 359 (CA6 2005) (en banc). And the First, Second, Eighth, and Tenth Circuits each allow the treasury factor to be dispositive when other, structural features of a state-created entity do not *all* point in the same direction. See *Fresenius Med. Care Cardiovascular Res. v. P.R. & the Caribbean Cardiovascular Ctr.*, 322 F.3d 56, 68-75 (CA1 2003); *McGinty v. New York*, 251 F.3d 84, 95-96 (CA2 2001); *United States ex rel. Fields v. Bi-State Dev. Agency of Mo.-Ill. Metro. Dist.*, 872 F.3d 872, 877, 882-883 (CA8 2017); *Good v. Dep’t of Educ.*, 121 F.4th 772, 792-794 (CA10 2024), petition docketed sub nom. *Higher Educ. Loan Auth. of Mo. v. Good*, No. 24-992 (Mar. 18, 2025).

By contrast, the Pennsylvania Supreme Court (in the decision below) and the Third, Ninth, and D.C. Circuits decline to give special weight to the “treasury factor.” In the Pennsylvania high court’s view, the fact that judgments against a particular entity do or do not run to the State’s treasury should indeed count in the multifactor analysis, App.14, but should not receive “significant weight.” App.22. Rather than focusing on the impact of a legal judgment against the entity on the state fisc, the Pennsylvania high court instructed its courts to “give primacy to the manner in which the sister State classifies and describes the entity within the structure of that State.” App.17. Put another way,

in place of a heavy or near-dispositive emphasis on the treasury factor, a State’s characterization of the entity should be “the driving force” in the analysis. App.23

The Third, Ninth, and D.C. Circuits also decline to give special weight to the treasury factor. See *Karns v. Shanahan*, 879 F.3d 504, 515-516 (CA3 2018); *Kohn v. State Bar of Cal.*, 87 F.4th 1021, 1030 (CA9 2023) (en banc); *P.R. Ports Auth. v. Federal Maritime Comm’n*, 531 F.3d 868, 874 (CAD9 2008) (*PRPA v. FMC*). While these courts all include an assessment of the impact on the state fisc in the analysis, they treat the treasury factor as just one factor that, “though relevant, is not dispositive,” *Kohn*, 87 F.4th, at 1030, and is instead “co-equal” with the other considerations in the balancing test, *Karns*, 879 F.3d, at 513. And for good reason: as then-Judge Kavanaugh explained in *PRPA v. FMC*, the fiscal impact on a State is but one indicator of the State’s intention to structure the entity as one of its instrumentalities. 531 F.3d, at 874. While an obligation by the State to pay a judgment can be “a *sufficient* condition for sovereign immunity,” it is not a “*necessary* condition” for that status. *Id.*, at 879 (emphasis in original).

The split is entrenched, reflecting different views of this Court’s decisions and the principles underlying state immunity alike. The dispute arose in large part from different readings of *Hess v. Port Auth. Trans-Hudson Corp.*, 513 U.S. 30 (1994), and *Regents of the University of California v. Doe*, 519 U.S. 425 (1997), and has persisted among state high courts since *Hyatt III* confirmed that States have sovereign immunity in sister state courts. Courts on New York’s side of the split read *Hess* as requiring that the treasury factor

be given primacy. See, *e.g.*, *DuPage*, 58 F.4th, at 340. Courts on Pennsylvania’s side do not read *Hess* that broadly, see, *e.g.*, *PRPA v. FMC*, 531 F.3d, at 874, 879, and they instead take *Regents* to require a “holistic” analysis, *Karns*, 879 F.3d, at 515. The Fifth, Seventh, Ninth, and Tenth have all reaffirmed their (divergent) approaches since *Hyatt III*, and Pennsylvania and New York have joined opposite sides in the past few months. And these decisions reflect not only disputes on the scope of this Court’s precedents but on first principles—whether immunity is primarily focused on state “solvency” (avoiding liability to the treasury) or “dignity” writ large. See, *e.g.*, *Colt*, 2024 WL 4874365, at *8 (Halligan, J., concurring). As the split is direct and acknowledged, and rests upon differing views of precedents and principles alike, there is no chance of resolution absent intervention by this Court.

The distinction has practical implications, as it is often outcome determinative. It explains, for instance, why the First and D.C. Circuits come to conflicting answers on whether the Puerto Rico Ports Authority is an arm of the Commonwealth. Compare *PRPA v. FMC*, 531 F.3d, at 879-880, with *Grajales v. P.R. Ports Auth.*, 831 F.3d 11, 21 (CA1 2016). It explains why Kentucky’s student-loan body has been found to be an arm of Kentucky within the Sixth Circuit, but not in courts within the Third. Compare *Skidmore v. Access Grp., Inc.*, 149 F. Supp. 3d 807, 817 (E.D. Mich. 2015), with *Berg v. Access Grp., Inc.*, No. 13-5980, 2014 WL 4812331, at *11 (E.D. Pa. Sept. 26, 2014). And it explains why the Pennsylvania Supreme Court held that NJ Transit is an arm of New Jersey, but the New York Court of Appeals held the precise opposite.

Compare App.21-23, with *Colt*, 2024 WL 4874365, at *7. This Court should resolve the direct conflict over whether the state treasury, or state classification and operations of the entity, ultimately drive the analysis.

B. Courts Are Divided Over Whether NJ Transit Is An Arm Of New Jersey.

This case, of course, presents a direct split not only on methodology in the abstract, but on the holding in this very case—whether NJ Transit enjoys sovereign immunity as an arm of the State.

The Pennsylvania Supreme Court joined the Third Circuit in concluding that NJ Transit has immunity. Its high court emphasized the importance of honoring the views of NJ Transit’s own creator State, and thus gave “primacy to the manner in which the sister State classifies and describes the entity within the structure of that State.” App.17. It then identified ways in which New Jersey treated NJ Transit as a state entity in form and function, App.17-20, including its allocation as an “instrumentality of the State exercising public and essential governmental functions” placed “in the Executive Branch,” N.J. Stat. Ann. §27:25-4(a). The court held that the negligence claims against NJ Transit therefore could not proceed in Pennsylvania state court.

The conflict with the New York Court of Appeals could scarcely be starker. The Pennsylvania and New York cases both involved the same entity: NJ Transit. NJ Transit operates the same public-transit services in both Pennsylvania and New York, and NJ Transit’s legal character is of course identical regardless of which side of which river its vehicle is on. Even the

basic facts in the cases were mirror images: both were negligence claims arising from accidents involving NJ Transit-operated buses. Compare App.2; *Colt*, 2024 WL 4874365, at *1. But the outcome was the opposite: the New York Court of Appeals majority held that the very same indicia of state classification and control of NJ Transit barely supported granting it immunity—and instead held the treasury factor “outweigh[ed] the relatively weak support” they provided. *Colt*, 2024 WL 4874365, at *7. In other words, the state entity, services, state laws, and underlying facts were the same, and all that differed was geography—Pennsylvania versus New York, the two foreign States in which NJ Transit operates.

That split is direct and acknowledged, and jurists all agree that NJ Transit’s immunity now switches on and off across its routes. The Pennsylvania Supreme Court, for its part, described its disagreement with the New York Court of Appeals on both the immunity and the underlying methodology as “obvious.” App.22. The New York Court of Appeals explicitly admitted it split from the Third Circuit, emphasizing only that it was at “‘liberty to answer’ this question ‘in a manner that may conflict with the determinations of courts in our [or other] federal circuit[s].’” *Colt*, 2024 WL 4874365, at *4, n.4. So even though there is only one accurate answer to this “important constitutional question,” *Hyatt III*, 587 U.S., at 249, that answer can now only come from this Court. And until this Court provides it, NJ Transit faces suit absent New Jersey’s consent in the New York courts, but enjoys immunity for identical claims in Pennsylvania courts.

Given the squareness of this conflict, judges in the cases below recognize the need for further guidance. Across their fractured separate opinions, the judges in *Colt* observed that federal courts had propounded “an array of multifactor and multistep tests” in assessing whether the entity is an arm of the State, 2024 WL 4874365, at *4; described the arm-of-the-state issue as “uncharted,” *id.*, at *3; *id.*, at *7 (Halligan, J., concurring), and expressed that the proper “test w[ould] ultimately be determined by the Supreme Court,” *id.*, at *21 n.11 (Wilson, C.J., concurring in result). Other courts have voiced similar concerns over the conflicts in the lower courts and called for guidance from this Court. See *Kohn*, 87 F.4th, at 1026 (“There is no standard test for determining whether an entity is an arm of the state for purposes of sovereign immunity.”). Given the direct conflict between two sister state high courts over whether NJ Transit is indeed an arm of New Jersey, this Petition presents a straightforward opportunity to provide that needed clarity.

II. This Case Is An Ideal Vehicle To Address These Important, Recurring Questions.

The conflicts presented in this Petition are worthy of this Court’s intercession. The questions presented are important and recurring. And this case provides a suitable vehicle for addressing them.

1. Not only are the conflicts direct, entrenched, and acknowledged, but these issues are of jurisprudential and practical importance in a recurring area of law. As to jurisprudence, as this Court has explained, the availability of sovereign immunity in sister courts is

“an important constitutional question.” *Hyatt III*, 587 U.S., at 249. Just as changing from “a loose league of friendship into a perpetual Union” means forgoing the right to settle disputes through “raw power” and other “political means,” that union meant giving up a pre-Founding right to assert “compulsory judicial process over another State.” *Id.*, at 246-247. Permitting one State’s courts to decide the scope of another State’s sovereignty is therefore fraught to begin with. And it is particularly important to ensure that state courts analyze such an “essential component of federalism” correctly—and consistently. *Id.*, at 247 (quoting *Nevada v. Hall*, 440 U.S. 410, 430 (1979) (Blackmun, J., dissenting)).

The practical stakes are also exceptionally high—not just the doctrinal ones. As explained above, *supra* at 13-14, the underlying immunity methodology often is outcome-determinative, and of course the conflict on NJ Transit’s immunity was outcome-determinative in this case (as well as in *Colt*). Where the entity is an arm of the State, that entity has immunity from suit—and cannot face *any* liability in its sisters States’ courts absent a waiver. But where the entity is not an arm of the State, it has no immunity at all, and can face significant litigation and judgments in sister States’ courts. Resolution of the question is thus of grave importance to these entities and to the States that consider them part of the State’s own sovereignty, as New Jersey does here.

The issue will also continue to recur in numerous contexts, because state-created entities are common. At least half a dozen other States have created entities that operate road, rail, and ferry services to help their

citizens move about the region.² Nor are potential defendants limited to transportation agencies. State universities frequently find themselves defendants in other States' courts, see, *e.g.*, *Farmer v. Troy Univ.*, 879 S.E.2d 124, 125 (N.C. 2022), as do other state-created entities, ranging from ports and highway authorities, *e.g.*, *PRPA v. FMC*, 531 F.3d, at 870; *Mancuso v. N.Y. State Thruway Auth.*, 86 F.3d 289, 292 (CA2 1996); to hospitals and museums, *e.g.*, *Montano v. Frezza*, 393 P.3d 700, 702-703 (N.M. 2017); *Ex parte Space Race, LLC*, 357 So. 3d 1, 2 (Ala. 2021); to student-loan providers and state bar associations, *e.g.*, *Good*, 121 F.4th, at 792-794; *Kohn*, 87 F.4th, at 1023.

This case alone underscores how consequential the inquiry can be, as Petitioner correctly notes that NJ Transit is one of the largest public transportation systems in the country, with roughly “a quarter of a billion riders” per year. Pet.14. And as noted above, the test that a court applies will often be outcome-determinative, which accounts for why multiple state-created entities are deemed an arm of their creator in one forum but not another. See *supra* at 13 (discussing Puerto Rico Ports Authority and Kentucky’s student-loan body). Here, two high courts came to conflicting

² These entities include the Alaska Marine Highway (also serving Washington); the Chicago Regional Transportation Authority (Wisconsin); the Northern Indiana Commuter Transit District (Illinois); the Southeastern Pennsylvania Transportation Authority (New Jersey and Delaware); the New York Metropolitan Transportation Authority (New Jersey and Connecticut); and the Massachusetts Bay Transportation Authority (Rhode Island).

conclusions on the same entity, three months apart, based on core methodological disagreements. Absent review by this Court, such divisions will only increase.

2. NJ Transit agrees with Petitioner that this case provides an appropriate vehicle for considering these questions and resolving the splits they implicate. The opinion below extensively, and exclusively, addresses NJ Transit's sovereign immunity as an arm of New Jersey. App.1-24. Its analysis squarely implicates the acknowledged split over what, if any, factor should be the "driving force" in the arm-of-the-State analysis. App.22-23. And the question is dispositive of whether this suit against NJ Transit will continue, or whether immunity bars the claims. Accord Pet.15 & n.1. There is no further factual development required to consider this question of law, and no percolation needed given the square and acknowledged split—with a plethora of opinions fleshing out these issues well.

Moreover, this case is an especially strong vehicle because it arises in the interstate immunity context, which means that it allows this Court to clarify the test in the wake of *Hyatt III* directly. In overruling *Nevada v. Hall*, 440 U.S. 410 (1979), which had for decades held that States lack sovereign immunity altogether in the courts of their sister States, *Hyatt III* reaffirmed that "[e]ach State's equal dignity and sovereignty" before its sister States' courts is indeed fundamental to our "constitutional design," 587 U.S., at 245. In the wake of *Hyatt III* (which did not itself present an occasion to address the arm-of-the-State test), the proper application of this test is particularly crucial not just in the federal courts, but in state

courts as well. See, e.g., *Farmer*, 879 S.E.2d, at 128; *Space Race*, 357 So. 3d, at 5.

If anything, the immunity questions are *especially* consequential here. For one, as state high courts have embarked on these immunity analyses in the wake of *Hyatt III*, they have quickly conflicted on which sister state entities merit immunity—as the Pennsylvania and New York decisions here illustrate. For another, the danger posed to “[e]ach State’s equal dignity and sovereignty under the Constitution” is at its apogee when a State is told by a sister State that it is wrong to consider its own entity to be its instrumentality for purposes of its immunity. See *Hyatt III*, 587 U.S., at 245. Taking up these questions in this posture puts this “essential component of federalism” before the Court. See *id.*, 587 U.S., at 247 (quoting *Hall*, 440 U.S., at 430 (Blackmun, J., dissenting)).

Nor are there any superior vehicles pending before this Court. Importantly, this Court need not wait for NJ Transit’s forthcoming petition in *Colt*. While NJ Transit believes that *Colt* presents an equally worthy vehicle for addressing this pure issue of law, *contra* Pet.16, this petition is already pending, and the cases are two sides of the same split, so this Court need not await the *Colt* Petition to consider these legal issues. If this Court grants certiorari, as NJ Transit believes it should, it can simply hold *Colt* pending its decision on the merits of these immunity questions.

NJ Transit also notes that another petition raising overlapping questions is currently pending, although briefing on the petition is not yet complete. See *Higher Educ. Loan Auth. of Mo. v. Good*, No. 24-992 (docketed Mar. 18, 2025). The *Good* Petition raises the broader

methodological question raised here—namely, on the role of the treasury factor in the arm-of-the-State test. For the reasons given above, NJ Transit believes this is a particularly compelling case to take up these legal questions, as it presents the methodological dispute in the context of a square conflict on the outcome as well. See *supra* at 2-3 (discussing NJ Transit’s immunity turning on or off across its route). And for the reasons given above, NJ Transit also believes these questions will benefit from resolution in the context of interstate immunity—in the wake of *Hyatt III*, and in light of the unique threats to sovereign dignity presented. At the very least, if this Court grants certiorari in *Good*, No. 24-992, this Court should still grant certiorari here (or in *Colt*) and simply hear the cases together.

III. Although Certiorari Is Warranted, This Court Should Affirm.

While NJ Transit agrees certiorari is warranted given the striking conflict between the Pennsylvania and New York high courts, it of course disagrees and believes this Court should ultimately affirm both as to the methodology and the immunity holding.

1. Begin with the broader methodological dispute. The Pennsylvania Supreme Court was correct to hold that, in assessing whether a particular state entity is an arm of the State, the so-called “treasury factor”—which considers the impact of legal judgments against the entity on the state treasury—is not entitled to enhanced (let alone dispositive) weight. See App.17.

That ruling is consistent with precedent and first principles alike. As to first principles, any formalistic view that focuses heavily (or entirely) on the impact of

a judgment on the treasury fails to appreciate the scope of a state-created entity's relationship with its creator State. That means it will regularly fail to capture the harms to each State's dignity and coequal status that interstate sovereign immunity exists to protect. *E.g.*, *Hyatt III*, 587 U.S., at 238-241, 243, 246-248. It is also inconsistent on its own terms. The chief reason that courts look to the treasury factor is that sovereignty entails the power to protect the public fisc from financial catastrophe. See *Hess*, 513 U.S., at 48; see also *id.*, at 39 (noting that when States ratified the Eleventh Amendment, they were responding "most immediately to ... fears that 'federal courts would force them to pay their Revolutionary War debts, leading to their financial ruin'"). Yet when States disclaim formal liability for the debts of state-created entities, they do the same thing: ensuring that they do not leave their citizenry defenseless to ruinous judgments. Treating the existence of a such firewall as a weighty or dispositive basis to find a *waiver* of sovereignty thus takes a core feature of sovereignty that the States preserved in forming a Union, *Hyatt*, 587 U.S., at 239-240, and punishes them for using it.³

³ Placing extra weight on the treasury factor may be particularly inappropriate in interstate sovereign immunity cases where, as noted, the importance of State dignity is at its apex, and where the harms entailed from one State defining the other's entity are especially high. See *supra* at 20; *Hyatt III*, 587 U.S., at 238-241, 243, 246-248. The court below was thus correct to give "primacy" to New Jersey's characterization of NJ Transit, App.17—though NJ Transit would prevail even if that factor were not itself given special weight. See *Karns*, 879 F.3d, at 518-519 (coming to same conclusion after "giving equal consideration to all ... factors").

Indeed, this dispute illustrates the flaws of an overly formalistic analysis. As this Court instructed in *Hess* and reiterated in *Regents*, any consideration of the treasury factor must proceed “both legally and practically.” *Hess*, 513 U.S., at 51; see *Regents*, 519 U.S., at 431 (declining to “convert the inquiry into a formalistic question of ultimate financial liability”). Petitioner’s analysis, by contrast, focuses entirely on the fact that a financial judgment against NJ Transit is not formally “collectible from the New Jersey treasury.” Pet.17. Yet while that is true as a literal matter, and while the court below acknowledged as much, App. 20 (also acknowledging that NJ Transit is authorized to collect revenue independently), that overlooks New Jersey’s financial commitment to NJ Transit,⁴ as well as the fact that NJ Transit cannot incur debt or issue bonds, N.J. Stat. Ann. §§ 27:25-5, 27:25-17, and thus depends upon appropriations from the New Jersey Legislature to meet operating deficits. It overlooks as well the commonsense point that these realities reflect: no objective observer believes New Jersey would simply walk away from its public-transit system, one of the largest in the nation, which its own Legislature identifies as “an instrumentality of the State exercising public and essential governmental

⁴ See, e.g., *Annual Report 2023: FY2023 Financial Report*, N.J. Transit Corp., at 10-11, 20 (2023), <https://content.njtransit.com/sites/default/files/marketing/website/pdf/2023%20NJTRANSIT%20Annual%20Report.pdf> (reflecting an FY2024 capital appropriation of over \$800 million in state funds); *Annual Report 2022: FY2022 Financial Report*, N.J. Transit Corp., at 10, 20 (2022), <https://content.njtransit.com/sites/default/files/pdfs/annualreports/2022%20NJ%20TRANSIT%20Annual%20Report.pdf> (similar)

functions.” See N.J. Stat. Ann. § 27:25-4(a). So asking if a judgment runs directly against a state treasury—and ignoring the financial responsibility the State still has for the entity—misses the mark entirely.

Precedent dictates the same. Although a number of lower courts have interpreted this Court’s decision in *Hess* to require a particular focus on impacts that a judgment against the entity will have on the treasury, *Hess* simply noted that the majority of circuits treat the treasury factor as “the most salient” in rejecting the position that state “control” over the entity should itself be “dispositive.” 513 U.S., at 48. But *Hess* hardly said that the treasury factor *should* be most salient—let alone nearly dispositive. And *Regents* subsequently confirmed that the treasury factor was merely meant to be one of multiple “indicator[s] of the relationship between the State and its creation,” and it cautioned against “convert[ing]” the analysis “into a formalistic question of ultimate financial liability.” 519 U.S., at 430-431; see also *Karns*, 879 F.3d, at 513 (explaining the Third Circuit no longer ascribes “primacy” to the treasury factor after *Regents*). That makes sense: as this Court has made clear repeatedly, the “preeminent purpose of state sovereign immunity is to accord States the dignity that is consistent with their status as sovereign entities.” *Fed. Maritime Comm’n v. S.C. State Ports Auth.*, 535 U.S. 743, 760 (2002). That gives the States and their “arms” immunity from suit more generally, and not just a defense to monetary liability for their treasuries.

2. The Pennsylvania high court was also correct that NJ Transit is an arm of New Jersey. It properly found that New Jersey understands NJ Transit to be

“an instrumentality of the State exercising public and essential governmental functions,” and to serve “an essential public purpose.” App.17-18 (quoting N.J. Stat. Ann. § 27:25-2(a), -4(a)); App.18 (acknowledging that “the exercise by the corporation of the powers conferred” by state law “shall be deemed and held to be an essential governmental function of the State” (quoting N.J. Stat. Ann. § 27:25-4(a)). Those provisions leave no doubt that New Jersey considers NJ Transit to be a part of itself—underscoring the affront to New Jersey’s dignity from another state contradicting its coequal sovereign on that score. See App.17; cf. U.S. Const. art. IV, § 1 (Full Faith and Credit Clause); *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 106 (1984).

New Jersey’s governmental control of NJ Transit further bolsters the Pennsylvania high court’s ruling. As the court below recognized, NJ Transit is governed by a thirteen-member Board, chaired by the State’s Transportation Commissioner (a cabinet official in the Executive Branch). App.18-19 (citing N.J. Stat. Ann. § 27:25-4(b)). All thirteen members are appointed by the Governor, and all voting members are subject to the advice and consent of the New Jersey Senate or to recommendation by the leader of one of the legislative houses. *Ibid.* And while Petitioner observes the Board members are only removable for cause, Pet.18-19, that hardly undermines NJ Transit’s status as part of New Jersey, since the same is true for other State offices—including the undersigned Attorney General himself. See N.J. Const. art. V, § 4, ¶¶ 1-3, 5. It is also true, for that matter, of Amtrak’s directors—whose governance structure this Court already found to weigh in favor of

Amtrak's governmental status for First Amendment purposes. See *Lebron v. Nat'l R.R. Passenger Corp.*, 513 U.S. 374, 397-398 (1995).

NJ Transit's actions are subject to extensive public oversight and veto authority too. As noted, its Board must deliver the minutes of each NJ Transit meeting to the Governor, and "no action taken at such meeting by the board shall have force or effect until approved by the Governor or until [ten] days" have passed. N.J. Stat. Ann. §27:25-4(f); see App.19, 22; see also N.J. Stat. Ann. §27:25-13(h) (legislative power to override NJ Transit's eminent-domain decisions). And far from suggesting a lack of oversight, contra Pet.19, that veto mechanism is a familiar feature of New Jersey law, wholly consistent with core sovereign acts. Indeed, it is a simplified version of the same mechanism that the New Jersey Constitution provides for legislation that "finally passed both houses" of the Legislature and reaches the Governor's desk. See N.J. Const. art. V, §1, ¶ 14(b)-(c); John J. Farmer, Jr., Commentary, *The Evolution of New Jersey's Gubernatorial Power*, 25 Seton Hall Legis. J. 1, 12 (2001).

The Pennsylvania high court properly recognized that NJ Transit performs core state functions as well. Those functions begin with operation of a statewide public transportation network, App.17-18; see N.J. Stat. Ann. §27:25-2(a), -4(a), but extend far beyond it. For one, NJ Transit has the ability to pass rules and regulations with "the force and effect of law," N.J. Stat. Ann. §27:25-5(e). For another, it has the power to exercise eminent domain across the State, App.19 (citing N.J. Stat. Ann. §27:25-13)—a quintessential "attribute of sovereignty," *Boom Co. v. Patterson*, 98

U.S. 403, 406 (1878). Still more, it enjoys the power to operate a police force using authority “in all criminal and traffic matters at all times throughout the State.” App.20. While Petitioner is correct that municipalities can also exercise such powers, see Pet.17, that is in no way dispositive, see, *e.g.*, *Ernst*, 427 F.3d, at 361 (retirement system was arm of Michigan, although “many local governments” “create and fund” retirement systems), and moreover, municipalities cannot exercise such powers statewide. *E.g.*, N.J. Stat. Ann. § 40A:14-152 (granting “powers of peace officers” “within the territorial limits of the municipality”). NJ Transit can.

Petitioner gets no further in suggesting that NJ Transit is not an arm of New Jersey simply because it exists “within the Department of Transportation” but is “independent of any supervision or control by any body or officer thereof.” N.J. Stat. Ann. § 27:25-4(a); see Pet.17. While that structure may look odd to a non-New Jerseyan, it is a familiar quirk of New Jersey law, given the State Constitution’s requirement that the Legislature establish no more than “twenty principal departments.” N.J. Const. art. V, § 4, ¶ 1. When the Legislature places an executive agency “in’ a department of the Executive Branch,” it satisfies that “constitutional requirement,” even as it may also choose to insulate the agency from the level of control to which other offices in the Department are subject. See generally *In re Plan for Abolition of Council on Affordable Hous.*, 70 A.3d 559, 570-572 (N.J. 2013). But that does not mean such agencies are *independent* of Executive Branch control, much less viewed by the State as less than one of its instrumentalities. See,

e.g., *id.*, at 572 (explaining how “[e]nabling statutes can set limits to an agency’s independence,” such as by “empower[ing] the Governor to appoint and remove an agency’s members” or providing for an “executive veto”). The control the NJ Transportation Act reserves for the Governor illustrates that principle perfectly.⁵

Finally, NJ Transit’s status as a “public entity” that can sue and be sued under the NJTCA does not support Petitioner’s position. See N.J. Stat. Ann. §59:1-3; Pet.17-18. All that distinction in the NJTCA accomplishes is to make clear that while some State entities must defend and indemnify their employees, N.J. Stat. Ann. §59:10-1; *id.* §59:10A-1, sue-and-be-sued entities like NJ Transit have the discretionary choice whether to do so, *id.* §59:10-4. That cannot override the unambiguous evidence that New Jersey has classified NJ Transit “as an instrumentality of the State exercising public and essential governmental functions,” *id.* §27:25-4(a), and that it should therefore be subject to suit only in the forum where New Jersey has consented: its own state courts.

CONCLUSION

This Court should grant the Petition.

⁵ By the same token, such unique facets of state law highlight the risks of one State’s courts underappreciating a fellow State’s sovereignty by inappropriately giving that State’s law a cramped interpretation. See, *e.g.*, *Colt*, 2024 WL 4874365, at *6.

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