

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**

PETITIONER'S REPLY

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PETITIONER'S REPLY

1. The Pennsylvania Supreme Court held in this case that the New Jersey Transit Corporation (NJ Transit) is entitled to interstate sovereign immunity because it is an “arm” of the State of New Jersey. It thus foreclosed relief in Pennsylvania state court to all plaintiffs alleging damages proximately caused by NJ Transit’s negligence. But just a few months earlier, the New York Court of Appeals held the precise opposite, holding that NJ Transit is *not* an “arm” of the State of New Jersey; it thus allowed a suit against NJ Transit to proceed in New York state court. See *Colt v. New Jersey Transit Corp.*, 2024 WL 4874365 (N.Y. 2024).

As we explained in the petition (at 13-15), the crisp conflict between the Pennsylvania and New York courts reflects broader confusion among the lower courts over the proper analytical approach to the arm-of-the-State test. Whereas some state high courts and federal courts of appeals use a multifactor framework that emphasizes the autonomy of the state entity and the impact of an adverse judgment on the State’s treasury, others place principal emphasis on the manner in which the entity is characterized by the State’s statutory code. The petition showed (at 15) that these profoundly divergent analytical approaches have produced squarely conflicting outcomes even outside the context of NJ Transit.

2. NJ Transit agrees (at 1) that this Court should grant the petition “to resolve the untenable split in which New Jersey finds itself.” In doing so, it acknowledges (at 3) that this case “involves not only [a] direct conflict on [the] immunity holding” with respect to NJ Transit, “but also a deeper split on the underlying methodology for determining when a state-created entity” is entitled to immunity under the arm-of-the-State analysis. It thus concurs (*ibid.*) that “resolution of this conflict can come from this Court alone.”

NJ Transit furthermore recognizes (at 4) that these “issues are consequential both in theory and in practice,” given the importance of sovereign immunity to the Nation’s federalist constitutional structure and the frequent recurrence of the question presented. And it agrees (at 4, 16-19) that this is a “strong,” “ideal,” “suitable,” and “appropriate” vehicle for resolving the division of authority. NJ Transit thus concludes (at 28) that “[t]his Court should grant the Petition.”

Typically, a respondent joins in a petitioner’s request for further review only when “there is a clear conflict of decisions” and “the question is undoubtedly of such importance as to need a Supreme Court determination.” Stephen M. Shapiro, et al., *Supreme Court Practice* 510 (10th ed. 2013).¹ That is the case here.

3. Much of NJ Transit’s brief is directed to the merits of the question presented. It contends (at 21-28) that immunity should turn on “each State’s dignity” rather than “the impact of a judgment on the [State’s] treasury,” which it implies would produce a different outcome.

The merits are for the Court to decide after it grants review and takes full merits briefing and argument. But it warrants repeating here that NJ Transit is wrong. No

¹ See, e.g., Brief for Respondent 1, *Barr v. American Association of Political Consultants*, No. 19-631 (Dec. 4, 2019) (agreeing “that certiorari should be granted” on a “question of far-reaching importance”), cert. granted 140 S. Ct. 812 (2020); Brief for Respondent 11, *Culbertson v. Berryhill*, No. 17-773 (April 5, 2018) (agreeing that “this Court’s review is warranted to resolve the division of authority” and that “this case is a suitable vehicle”), cert. granted 584 U.S. 992 (2018); Brief for Respondent 3, *NLRB v. Murphy Oil USA, Inc.*, No. 16-307 (Nov. 10, 2016) (similar), cert. granted, 580 U.S. 1089 (2017); Brief for Respondent 7, *Mach Mining, LLC v. EEOC*, No. 13-1019 (May 27, 2014) (similar), cert. granted, 573 U.S. 944 (2014) (Mem.); Brief for Respondent 18, *American Broadcasting Company v. Aereo, Inc.*, No. 13-461 (Dec. 12, 2013) (similar), cert. granted, 571 U.S. 1118 (2014) (Mem.).

matter what factors the Court emphasizes or downplays, NJ Transit simply is not an alter ego of the State: It is expressly “independent of any supervision or control” by the executive department in which it is located (N.J. Stat. § 27:25-4(a)); it is governed by an independent board with the autonomous power to establish its own bylaws, sue and be sued using outside counsel, collect and expend its own funds, and enter into agreements with other public and private entities (*id.* § 27:25-5); it bears sole responsibility for its debts, which are not collectible from the state treasury (*id.* § 27:25-17); and it is expressly characterized by state law as a general “public entity” and *not* an element of the “the State,” akin to municipalities that have never been accorded sovereign immunity (*id.* § 59:1-3). NJ Transit insists that these considerations are unimportant, but without meaningfully addressing their substance.

4. Finally, NJ Transit confirms (at 20) that it intends to file a petition for a writ of certiorari in *Colt* in the coming week. As of this writing, no petition has yet been filed in that case. And the parties agree that “this Court need not await the *Colt* Petition to consider these legal issues.” Resp. Br. 20; see Pet. 16. Rather, “[i]f this Court grants certiorari” here, “it can simply hold *Colt* pending its decision on the merits of” the immunity question presented here. Resp. Br. 20.

NJ Transit notes (at 20) that there is a petition also pending in *Higher Education Loan Authority v. Good*, No. 24-992. That case involves the arm-of-the-State test in an Eleventh Amendment case concerning a student loan agency. NJ Transit observes (at 21) that *Good* neither implicates a square conflict of outcomes (the conflict is methodological only) nor presents an opportunity for the Court to clarify the contours of interstate sovereign immunity following *Franchise Tax Board v. Hyatt*, 587 U.S. 230 (2019). Regardless whether it also grants certiorari

in *Good*, the Court should grant the petition in this case to ensure that the interstate immunity context is properly before the Court. Accord Resp. Br. 21.

For the foregoing reasons and those stated in the petition, the petition should be granted.²

Respectfully submitted.

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² NJ Transit's brief restates the question presented in the petition and proposes to add a second question. See Resp. Br. i. Because the single question stated in the petition subsumes both questions stated in NJ Transit's brief, the second question posed by NJ Transit is, respectfully, unnecessary. See Rule 14.1(a) ("The statement of any question presented is deemed to comprise every subsidiary question fairly included therein.").