Nos. 24-1021, 24-1113

IN THE

Supreme Court of the United States

CEDRIC GALETTE, PETITIONER

v.

NEW JERSEY TRANSIT CORPORATION

NEW JERSEY TRANSIT CORPORATION, ET AL., PETITIONERS

v.

JEFFREY COLT AND BETSY TSAI

ON WRITS OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA AND THE COURT OF APPEALS OF NEW YORK

BRIEF FOR THE NEW JERSEY TRANSIT PETITIONERS

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QUESTION PRESENTED

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

PARTIES TO THE PROCEEDINGS BELOW

Petitioner in 24-1021, plaintiff-appellant below, is Cedric Galette.

Respondent in 24-1021, defendant-appellee below, is New Jersey Transit Corporation, which was one of two defendants in the action. Julie E. McCrey was the second defendant. McCrey is a private individual who did not appear in the action below.

Petitioners in 24-1113, defendants-appellants below, are New Jersey Transit Corporation, NJ Transit Bus Operations, Inc., and Ana Hernandez (collectively "NJ Transit").

Respondents in 24-1113, plaintiffs-appellees below, are Jeffrey Colt and Betsy Tsai.

DISCLOSURE STATEMENT

New Jersey Transit Corporation and its wholly owned subsidiary NJ Transit Bus Operations, Inc. are governmental entities.

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BRIEF FOR THE NEW JERSEY TRANSIT PETITIONERS

OPINIONS BELOW

The opinion of the Supreme Court of Pennsylvania is reported at 332 A.3d 776. See also *Galette* Pet.App.1-24.

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

The opinion of the Pennsylvania Court of Common Pleas is unreported but available at 2021 WL 11551626. See also *Galette* Pet.App.38-39.

The opinion of the New York Court of Appeals is reported at 43 N.Y.3d 463. See also *Colt* Pet.App.1-89.

The opinion of the Supreme Court of New York, Appellate Division, First Department, is reported at 169 N.Y.S.3d 585. See also *Colt* Pet.App.90-116.

The decision of the Supreme Court of New York, New York County, is not reported, but is available at 2020 WL 5893749. See also *Colt* Pet.App.117-121.

JURISDICTION

The Supreme Court of Pennsylvania entered judgment on March 12, 2025. The New York Court of Appeals entered judgment on November 25, 2024. This Court's jurisdiction over both petitions is invoked under 28 U.S.C. §1257(a).

INTRODUCTION

Interstate sovereign immunity protects each State from the indignity of being haled into another's courts without its consent. *Franchise Tax Bd. of Cal. v. Hyatt*, 587 U.S. 230, 245-247 (2019) (*Hyatt III*). As this

Court has recognized, the States possessed "inviolable sovereignty" when they entered the Union, and their "immunity from private suits" remained both "well established and widely accepted at the founding." *Id.*, at 238. That immunity applies, as well, in the courts of their sister States: because "it is inherent in the nature of sovereignty not to be amenable to the suit" absent "consent," *id.*, the Constitution thus ensured "the inability of one State to hale another into its courts without the latter's consent," *id.*, at 245.

The State's inviolable immunity applies not only to lawsuits formally brought against the State, but also to any "arm of the State." *Regents of the Univ. of Cal. v. Doe*, 519 U.S. 425, 431 (1997). The rule could hardly be otherwise: a lawsuit against the New Jersey Office of the Attorney General, or a State's Department of Transportation, offends a State's dignity no less than one styled as against "the State of New Jersey" itself. That requires courts to consider which entities share in their creator State's sovereignty—that is, which are among its sovereign arms. And that, in turn, requires courts to look principally at the textual and structural evidence that bears on the State's intent to "structure" the entity as one of its arms, *Lake Country Ests., Inc. v. Tahoe Reg'l Plan. Agency*, 440 U.S. 391, 401 (1979), to avoid the indignity of overruling a State's own view regarding how it organized its own government, *Fed. Mar. Comm'n v. S.C. State Ports Auth.*, 535 U.S. 743, 769 (2002) (*FMC*) (confirming "the primary function of sovereign immunity" is to protect the States' dignity as sovereigns). And it requires courts to consider both the control the State exercises over the entity and its overall financial relationship with the entity too. See *Lake Country*, 440 U.S., at 401-402; *Hess v. Port Auth. Trans-Hudson Corp.*, 513 U.S. 30, 51 (1994).

These two tort suits against NJ Transit cannot go forward in light of these established principles. Although NJ Transit is suable in New Jersey state court under the New Jersey Tort Claims Act (NJTCA), under which the State waived its sovereign immunity in relevant part, these tort suits were filed in the New York and Pennsylvania trial courts instead. The Pennsylvania Supreme Court unanimously agreed that sovereign immunity barred such suits, recognizing NJ Transit as an arm of New Jersey. But a fractured New York Court of Appeals allowed such suits to proceed in its trial courts.

This Court should reverse the New York judgment below, because the evidence that NJ Transit is an arm of the Garden State is overwhelming. The Legislature could hardly have been clearer that it was structuring NJ Transit as one of its sovereign arms. It established the entity as an "instrumentality" of the State, and it placed that instrumentality in the State's Executive Branch. It created NJ Transit to fulfill an "essential public purpose." It delegated to NJ Transit a series of statewide powers, including general law-enforcement powers, eminent-domain authority, and the power to issue regulations that have the force of law. It deemed NJ Transit's property to be state property. It entitled NJ Transit to be represented by the State's Attorney General—as it is here. And it specifically instructed NJ Transit on narrow contexts where it could not assert sovereign immunity—an odd choice if the Legislature structured NJ Transit to lack immunity at all.

Other evidence abounds. The Governor enjoys both appointment and removal powers as to all NJ Transit Board members, and has the authority to veto any and all actions the Board takes—a plain distinction from private companies or local governments. And while the

state treasury is not itself formally liable for money judgments against NJ Transit, NJ Transit is financially dependent on the State for both capital and operating expenses—resulting from the Legislature's decision to restrict NJ Transit's ability to incur debt, raise revenue, or lower costs. Because all the statutory evidence demonstrates that the State established NJ Transit as one of its arms, state-law tort claims cannot proceed against it in other States' courts absent consent.

STATEMENT OF THE CASE

A. Interstate Sovereign Immunity.

The States' sovereign immunity is "integral to the structure of the Constitution." *Hyatt III*, 587 U.S., at 246. The States possessed immunity as a part of their "inviolable sovereignty" when they chose to enter into the Union, *id.*, at 238 (quoting Federalist No. 39, at 245 (Madison) (Clinton Rossiter ed., 1961)), as they considered themselves to be "fully sovereign nations" after declaring independence, *id.*, at 237-238 (citing *McIlvaine v. Coxe's Lessee*, 8 U.S. (4 Cranch) 209, 212 (1808)). Because the States retained core aspects of that sovereignty when they ratified the Constitution, *id.*, at 241-247, the States' preexisting "immunity from private suits" remained "well established and widely accepted at the founding," *id.*, at 238.

The Founders viewed the "preeminent purpose of state sovereign immunity" as ensuring to the "States the dignity that is consistent with their status as sovereign entities." *FMC*, 535 U.S., at 760. The "founding generation thought it 'neither becoming nor convenient that the several States of the Union, invested with that large residuum of sovereignty which had not been delegated to the United States,

should be summoned as defendants to answer the complaints of private persons.'" *Alden v. Maine*, 527 U.S. 706, 748 (1999) (quoting *In re Ayers*, 123 U.S. 443, 505 (1887)). As they saw it, because "it is inherent in the nature of sovereignty not to be amenable to the suit of an individual without its consent," *Hyatt III*, 587 U.S., at 238 (quoting Federalist No. 81, at 487 (Hamilton) (Clinton Rossiter, ed., 1961)), exercising jurisdiction against the States in private suits would indicate that the States were not true sovereigns after all—contrary to the promises made during the ratification process, *id.*, at 241-243.

That immunity means the States cannot "be haled involuntarily before each other's courts." *Id.*, at 239. Although the States through Article III agreed to "a neutral federal forum" in which the States would "be amenable to suits brought by other States," *id.*, at 241, the opposite was true in each other's courts. Not only that, but the Constitution "divests the States" of "tools that foreign sovereigns possess" to protect their own dignity. *Id.*, at 245. So in addition to ceding such "political means" for resolving conflicts among sovereigns, the States also agreed to relinquish "any power they once had to refuse each other sovereign immunity." *Id.*, at 247. In other words, "each State's equal dignity and sovereignty under the Constitution" carries alongside it a corollary "inability of one State to hale another into its courts without the latter's consent." *Id.*, at 245.

That immunity applies across myriad contexts. Consistent with its "primary function" to "afford the States the dignity and respect due sovereign entities," *FMC*, 535 U.S., at 769 (rather than to "protect state treasuries"), sovereign immunity applies regardless of whether the relief is financial or injunctive, *Seminole*

Tribe of Fla. v. Florida, 517 U.S. 44, 58 (1996). It extends to lawsuits before administrative agencies, *FMC*, 535 U.S., at 747, in a State's own courts, *Alden*, 527 U.S, at 712, and by a foreign country, *Monaco v. Mississippi*, 292 U.S. 313, 332 (1934). And it applies when a State is the real party against which "relief is asked," *Ayers*, 123 U.S., at 506—extending immunity to each State *and* to any entity "acting as an arm of the State, as delineated by this Court's precedents," *N. Ins. Co. of N.Y. v. Chatham County*, 547 U.S. 189, 194 (2006). In all these contexts, the "constitutional design" shows that no State—nor its arms—may be haled into another State's courts "without [its] consent." *Hyatt III*, 587 U.S., at 245.

B. NJ Transit.

NJ Transit has operated New Jersey's statewide public transportation system since the Legislature created it in 1979. See N.J. Public Transportation Act of 1979, N.J. Stat. Ann. §27:25-1 *et seq.* Today, it operates one of the largest public transit agencies in the country, providing "nearly 270 million passenger trips each year." *Colt* Pet.App.78. In addition to managing a network of bus and rail services extending across the State and into both New York and Pennsylvania, NJ Transit administers "publicly funded transit programs for people with disabilities, senior citizens, and people living in the state's rural areas." *Id.*

The entity's creation arose from public challenges with the fragmented provision of transportation in our Nation's most densely populated State. In the 1960s, facing increased highway congestion, the Legislature began experimenting with efforts to support mass transit. See generally *City of Bayonne v. Palmer*, 217 A.2d 141, 145-150 (N.J. Sup. Ct. Ch. Div. 1966)

(summarizing legislation from 1959 to 1964); 1966 N.J. Laws ch. 301, at 1357-1365 (establishing Commuter Operating Agency in the New Jersey Department of Transportation). In 1969, the Legislature enacted stop-gap legislation to provide a one-year subsidy of $500,000 to "bail out" struggling private companies contracted to provide public transportation services; by 1979, the subsidy had ballooned to "nearly $50 million" and "threaten[ed] to approach $100 million."[1] But relying on subsidies to private industry left New Jersey with limited control over service provision and costs, leaving commuters to navigate fragmented services. Rising inflation and the energy crisis of the 1970s made matters worse.[2]

In creating NJ Transit, the Legislature concluded 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 create a system to provide it. N.J. Stat. Ann. §27:25-2(a)-(b). The Legislature thus established NJ Transit as "an instrumentality of the State," designed to perform "public and essential governmental functions." *Id.* §27:25-4(a).

New Jersey structured its transit system as "a body corporate and politic" within "the Executive Branch of the State Government." *Id.* Consistent with NJ Transit's placement in the Executive Branch, the Governor appoints all eleven voting members of NJ Transit's Board—including two *ex officio* members of

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[1] 1 *N.J. Public Transportation Act of 1979: Hearing on S. Bill 3137 Before Sen. Transp. & Comm'cns Comm.*, 130th Sen., at 2 (N.J. 1979) (*Sen. Hrgs.*) (Sen. Herbert); *id.*, at 8-9, 12, 19 (Transp. Comm'r Gambaccini).

[2] See 2 S*en. Hrgs.*, at 19 (Bergen Cty. Transp. Dir. Frank E. Tilley).

his cabinet, six members appointed with the advice and consent of the Senate, and two appointed on the recommendation of the President of the Senate and Speaker of the General Assembly. *Id.* §27:25-4(b). The New Jersey Commissioner of Transportation serves as Board chair. *Id.* §27:25-4(d). The Governor retains authority to remove any Board member for cause (and *ex officio* members at will). *Id.* §27:25-4(b). And the Governor has authority to veto any or all action the Board takes. *Id.* §27:25-4(f). The Board must convey minutes of every meeting to the Governor, and its actions do not take effect for ten days to afford him a chance to veto them. *Id.*

The Legislature delegated NJ Transit a number of statewide governmental powers. It is authorized to promulgate rules and regulations with "the force and effect of law." *Id.* §27:25-5(e). It has a police force with statewide jurisdiction; its law-enforcement officers can enforce "all criminal and traffic matters at all times throughout the State." *Id.* §27:25-15.1(a). It has statewide eminent-domain powers. *Id.* §27:25-13. And its property is deemed untaxable property belonging to the State. *Id.* §27:25-16.

NJ Transit's regulatory actions follow the same procedures as state agencies. It must promulgate rules in compliance with the New Jersey Administrative Procedure Act (NJAPA). *Id.* §27:25-5(e); see *Acad. Bus Tours, Inc. v. N.J. Transit*, 622 A.2d 1335, 1340 (N.J. App. Div. 1993). Any challenges to its administrative actions start in the State's Office of Administrative Law, see *In re McGee*, No. A-0566-22, 2024 WL 4404145 (N.J. App. Div. Oct. 4, 2024), the State's central forum for administrative adjudications for state agencies alone, *N.J. Civ. Serv. Ass'n v. State*, 443 A.2d 1070, 1071-1072 (N.J. 1982). And consistent with

New Jersey's specialized judicial-review process for state administrative agencies, N.J. Ct. R. 2:2-3(a)(2), appeals from NJ Transit actions are available directly in the state intermediate appellate court, *e.g.*, N.J. Admin. Code §16:83-3.8.

The Legislature attached to these statewide public powers statewide political oversight—beyond the Governor's appointment, removal, and veto powers. The Legislature requires that the Board publish its agendas at least five days before each meeting, and that at least half the Board meetings take place after 6:00 p.m., to allow NJ Transit riders to more easily attend. N.J. Stat. Ann. §27:25-4(g)(1). The Legislature subjects NJ Transit to special legislative-reporting requirements. *Id.* §27:25-5.25(a). And NJ Transit's records, including financial information, are "declared to be government records … open to public inspection in accordance with" New Jersey government-transparency laws and NJ Transit regulations. *Id.* §27:25-20(c). These measures seek to ensure NJ Transit follows its charge to "exercise [its] powers … in all respects for the benefit of the people of the State." *Id.* §27:25-16.

NJ Transit relies on the State for funding, as the entity operates at a consistent financial loss.[3] While the State is not formally liable for money judgments against NJ Transit, the Legislature has always heavily subsidized its operations, for example funding 46% of NJ Transit's FY2026 operating expenses, via an appropriation of just under $1.5 billion in total for this purpose through New Jersey's Corporate Transit

[3] See NJ Transit, *2023-2024 Annual Financial Report* 9, tbl. A-2 (2024), https://tinyurl.com/5xxfjpvr (operating losses over $2.5 billion each of past three years).

Fee and direct spending authorization. See 2025 N.J. Laws ch. 74 (S.2026) at 2, 259-261 (FY2026 Appropriations Act), https://tinyurl.com/2ubd2xeu. Indeed, with one exception, the Legislature forbids NJ Transit from incurring any debt or selling bonds, see N.J. Stat. Ann. §§27:25-5(w), -17, meaning that NJ Transit can (and does) receive non-federal capital funding solely through appropriations or disbursements via another state instrumentality, the Transportation Trust Fund Authority (TTFA), see *id.* §§27:1B-7, -21.6; *id.* §27:25-5(h). So given the expected reliance on legislative appropriations, the Legislature requires NJ Transit to submit yearly a "proposed budget recommendation," along with an "annual report of its activities for the preceding fiscal year" and "a complete operating and financial statement covering its operations and capital projects." *Id.* §27:25-20(b), (g).

The Legislature, to be sure, has agreed that NJ Transit can be subject to some suits. NJ Transit can sue and be sued, *id.* §27:25-5(a), and is suable under the NJTCA in New Jersey state trial courts, *id.* §59:1-1 *et seq.*; see *Muhammad v. N.J. Transit*, 821 A.2d 1148, 1153 (N.J. 2003). NJ Transit also cannot assert its "sovereign immunity with respect to any claim or cause of action arising from the Federal Employers Liability Act," the Federal Railroad Safety Act, or several related laws. N.J. Stat. Ann. §27:25-24.2. NJ Transit can also be sued in contract—but only under the New Jersey Contractual Liability Act, *id.* §59:13-1 *et seq.*; see *id.* §27:25-19, which limits the types of claims and damages available against it, *id.* §59:13-3. And finally, when sued, NJ Transit is entitled to be represented by the New Jersey Attorney General's Office, *id.* §27:25-5(z), as it is here.

C. Factual and Procedural History.

1. *NJ Transit v. Colt.*

Jeffery Colt and Betsy Tsai sued NJ Transit in the New York Supreme Court in 2017. *Colt* Pet.App.2. They alleged that an NJ Transit bus negligently struck Colt at a Manhattan crosswalk. *Id.* NJ Transit moved to dismiss on sovereign immunity grounds. *Id.*, at 123-129. The state trial court denied the motion, *id.*, at 121, and a divided state appellate court affirmed, *id.*, at 90-116.

A fractured majority of the New York Court of Appeals affirmed, holding NJ Transit is not an arm of New Jersey. *Id.*, at 1-19. The majority looked to three factors from precedent: "(1) how the State defines the entity and its functions, (2) the State's power to direct the entity's conduct, and (3) the effect of on the State of a judgment against the entity." *Id.*, at 13. The court held that New Jersey's characterization of NJ Transit only "lean[ed] toward" sovereign immunity, *id.*, at 13-16, and that the State's control over NJ Transit did not "weigh heavily in either direction," *id.*, at 16-17. The majority instead relied on the third factor, and held that because New Jersey was not formally liable for money judgments against NJ Transit, haling NJ Transit into New York court "would not be an affront to New Jersey's dignity." *Id.*, at 17-18.

Judge Halligan concurred, *id.*, at 20-32, finding it "understandable" to read the majority as focused more on "a concern for state solvency, rather than dignity," *id.*, at 22, even as this Court's cases have emphasized the latter. Chief Judge Wilson concurred in the result, *id.*, at 33-71, averring that the appropriate test was "whether the function performed by the entity is what would, under customary international law and the

common law, be considered a core governmental function," *id.*, at 34, and that NJ Transit's operations "are not core functions necessary to the operation of a state government," *id.*, at 54.

Judge Rivera dissented. *Id.*, at 72-88. She found that the "majority's most significant mistake" was its overreliance on the lack of formal financial liability for a judgment against NJ Transit. *Id.*, at 84. Instead, she would have asked whether allowing the state-court lawsuit to proceed absent New Jersey's consent would "alter[] New Jersey's coequal status among the states, in contravention of the constitutional design." *Id.* Because New Jersey's own view of NJ Transit, the powers given the entity, and New Jersey's "significant control" indicated that NJ Transit was an arm of New Jersey, Judge Rivera found that it would offend New Jersey's sovereignty to proceed. *Id.*, at 88.

2. *Galette v. NJ Transit.*

Cedric Galette sued NJ Transit in the Pennsylvania Court of Common Pleas in 2021, alleging that an NJ Transit bus had struck the car in which he was riding on a Philadelphia street. *Galette* Pet.App.2. The state trial court denied NJ Transit's motion to dismiss. *Id.* at 2-3, 38-39. The intermediate appellate court affirmed, *id.* at 3-5, 25-37.

The Pennsylvania Supreme Court unanimously reversed, holding NJ Transit is an arm of New Jersey and thus not suable in Pennsylvania absent consent. *Id.*, at 1-24. Noting that interstate sovereign immunity "ensures that each State honors the coequal sovereign status of her sister States," *id.*, at 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," *id.*, at 17,

the court reasoned that courts must give "primacy" to "the manner in which the sister State classifies and describes the entity within the structure of that State," *id.* New Jersey's own definition of NJ Transit and the entity's functions were thus "the driving force in concluding that NJ Transit is an arm of the State of New Jersey." *Id.*, at 21-23.

This Court granted certiorari in *Galette* and *Colt*, consolidating them for briefing and argument.

SUMMARY OF ARGUMENT

New Jersey Transit is an arm of New Jersey. This Court's cases make clear that an entity's status as an arm of the State turns on whether that State intended to structure the entity to fall within its sovereignty. To answer that, this Court evaluates (1) the textual and structural evidence of the State's own intent; (2) the State's control over the entity; and (3) the State's overall financial relationship with the entity. *E.g.*, *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 280-281 (1977); *Hess*, 513 U.S., at 44-46; *Lake Country*, 440 U.S., at 401-402. Each compels the conclusion that NJ Transit has immunity.

A. The textual and structural evidence that New Jersey structured NJ Transit as one of its arms is overwhelming. Because "the primary function of sovereign immunity" is to protect each State's dignity, *FMC*, 535 U.S., at 769, evidence of the State's intent often drives the arm-of-the-State analysis—to avoid the indignity of another State's courts overruling the creator State's own views about the status of its own entities within its own government. And the evidence that New Jersey sought to establish NJ Transit as a sovereign arm is clear: the Legislature characterized NJ Transit as a state "instrumentality"; put it in the

State's "Executive Branch"; and clarified that it was created to perform "public and essential governmental functions." N.J. Stat. Ann. §27:25-4(a). The State also indicated that it had shared its sovereignty with NJ Transit by instructing the entity on contexts in which it may not assert sovereign immunity—a choice that would make no sense if New Jersey had structured NJ Transit to lack immunity to begin with. *Id.* §27:25-24.2. The Legislature also delegated to NJ Transit substantial statewide public powers—including the powers to issue regulations with the force of law, to enforce criminal laws statewide, and to condemn property across the State—and deemed all NJ Transit property untaxable and belonging to the State.

B. New Jersey also subjected NJ Transit to extensive statewide political control, consistent with its treatment of other state agencies. Such control helps distinguish sovereign entities from private entities and political subdivisions, and reflects that each State's arms are (like the State itself) politically accountable to the statewide populace. See *Biden v. Nebraska*, 600 U.S. 477, 491 (2023) (*Nebraska*); *Schooner Exch. v. McFaddon*, 11 U.S. (7 Cranch) 116, 137 (1812) (Marshall, C.J.). Here, the Governor appoints all NJ Transit Board members, and each is subject to his at-will or for-cause removal. N.J. Stat. Ann. §27:25-4(b). The Governor can also veto any or all actions the NJ Transit Board takes. *Id.* §27:25-4(f). The New York court erred in holding that this evidence of control did not support NJ Transit's sovereign status.

C. Financial considerations likewise support NJ Transit's arm-of-the-State status. NJ Transit relies upon the State Legislature to cover sizable annual operating deficits, which the Legislature anticipated by limiting the entity's own ability to lower costs, raise

revenue, and issue debt. That is further evidence that New Jersey structured NJ Transit as one of its arms, and that a money judgment against NJ Transit would impact New Jersey. The New York Court of Appeals asked only if the state treasury is formally liable for money judgments against NJ Transit, but this Court already warned lower courts not to "convert [the arm-of-the-State] inquiry into a formalistic question of ultimate financial liability." *Regents*, 519 U.S., at 430-431. And for good reason: it is illogical that a state statute committing to pay a significant portion of an entity's *liabilities* would be dispositive, whereas a law covering a large share of the entity's *budget* would (on the *Colt* Court's view) be irrelevant. Regardless, the *Colt* court also erred in making such financial considerations paramount, ignoring that "the primary function of sovereign immunity is not to protect state treasuries," but to protect States' dignity as coequal sovereigns. *FMC*, 535 U.S., at 769.

D. That state law establishes NJ Transit as a body corporate and politic that can sue and be sued in its name is not to the contrary. States have established a range of sovereign executive departments in precisely this way, including state Departments of Corrections, Departments of Transportation, and nearly the entire Louisiana cabinet. This Court's cases have thus long clarified that sue-and-be-sued clauses shed little light on sovereign status, precedent that coheres with the Founding-era view that an entity's corporate form itself "neither gives nor prevents" governmental status. *Trs. of Dartmouth Coll. v. Woodward*, 17 U.S. (4 Wheat.) 518, 636, 638 (1819) (Marshall, C.J.). Instead, sue-and-be-sued clauses primarily go to the question of *waiver*—not a question of whether an entity shares its creator State's sovereignty in the first place.

ARGUMENT

NJ Transit Is An Arm Of New Jersey

Whether NJ Transit enjoys New Jersey's sovereign immunity turns on whether NJ Transit falls within New Jersey's sovereignty and is thus an "arm" of the State. "It has long been settled" that state sovereign immunity "encompasses not only actions in which a State is actually named as the defendant, but also certain actions against state agents and state instrumentalities." *Regents*, 519 U.S., at 429 (citing *Ayers*, 123 U.S., at 487). It could hardly be otherwise; no one disputes that a State's immunity extends not just to the State, but also to entities like the Office of the Attorney General and to other traditional state agencies. Whether denominated as a State's "arms," "instrumentalities," or "alter egos," they fall within the State's sovereignty, such that a suit against the entity "walks, talks, and squawks very much like a lawsuit" against the State. See *FMC*, 535 U.S., at 757. These entities thus share the State's immunity.

Since a sovereign's prerogative to structure itself is inherent in the nature of sovereignty, the "arm of the State" test—while a question of federal law—turns on an analysis of the relevant state statutes. See *Regents*, 519 U.S., at 429, n.5 (noting that the "federal question" of state immunity "can be answered only after considering the provisions of state law that define the agency's character"). In assessing the state laws governing the entity, this Court primarily looks at textual and structural evidence that the sovereign intended the entity to fall within its sovereign scope, see *Hess*, 513 U.S., at 44-45; *Lake Country*, 440 U.S., at 401; *Mt. Healthy*, 429 U.S., at 280, which avoids the indignity of another sovereign's courts overruling the State's choices as to how it has shared its sovereignty.

Courts also assess what control the State maintains over the entity, *Hess*, 513 U.S., at 44; *Lake Country*, 440 U.S., at 401, which confirms that the entity is integrated into and accountable to the State, and thus distinguishes a State's "arms" from private, local, or multistate entities. Courts consider too the financial relationship between the entity and its creator, see *Hess*, 513 U.S., at 45-46; *Lake Country*, 440 U.S., at 401-02; *Mt. Healthy*, 429 U.S., at 280, as yet further evidence showing whether an entity was structured to be an arm of the State.

Said another way, this Court's cases provide three considerations to test whether a sovereign created an entity that shares in its sovereignty: (1) "express[]" indications of "state intent"; (2) "state control" of the entity; and (3) the State's financial relationship with the entity—that is, the entity's "overall effects on the state treasury." *Puerto Rico Ports Auth. v. Fed. Mar. Comm'n*, 531 F.3d 868, 874 (CADC 2008) (*PRPA*) (Kavanaugh, J.).[4] Because "the primary function of sovereign immunity is not to protect state treasuries but to afford" States equal dignity, *FMC*, 535 U.S., at 769, textual and structural evidence of the State's intent often drives this analysis. Here, however, these three considerations each compel the finding that NJ Transit—an "instrumentality" of New Jersey, housed in its Executive Branch and subject to the Governor's statutory appointment, removal, and veto powers—retains immunity in other States' courts.

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[4] Then-Judge Kavanaugh was hardly the only judge to distill this Court's arm-of-the-State precedents this way. See, *e.g.*, *Kohn v. State Bar of Cal.*, 87 F.4th 1021, 1027-1030 (CA9 2023) (en banc); *Karns v. Shanahan*, 879 F.3d 504, 513 (CA3 2018); *Fresenius Med. Care Cardiovascular Res., Inc. v. P.R. & Caribbean Cardiovascular Ctr.*, 322 F.3d 56, 61-68 (CA1 2003).

A. Textual And Structural Evidence Of State Intent.

The evidence of New Jersey's intent to establish a sovereign arm is particularly clear. The State created NJ Transit as an "instrumentality" in its Executive Branch, imbued NJ Transit with public purposes and powers, and subjected it to the procedures governing state agencies—among other compelling evidence.

1. To understand "the nature of the entity created by state law," *Mt. Healthy*, 429 U.S., at 280, this Court begins by assessing whether a State "structured" the entity as one of its arms. *Lake Country*, 440 U.S., at 401; *Hess*, 513 U.S., at 43-44; see also *PRPA*, 531 F.3d, at 873; *Colt* Pet.App.13-14; *Galette* Pet.App.21. As this Court has explained, these "indicators of immunity or the absence thereof," *Hess*, 513 U.S., at 44, include the State's own express characterizations of an entity, see *id.*, at 44-45; *Mt. Healthy*, 429 U.S., at 280-281, as well as other signals of how the State integrated the entity into its state governmental work, *see Hess*, 513 U.S., at 44-46; *Lake Country*, 440 U.S., at 401-402. See also *Arkansas v. Texas*, 346 U.S. 368, 370-371 (1953) (for standing, considering how state law characterized university to find that harms to university supported suit by State). Those precedents reflect a longstanding historical approach, with this Court's earliest cases indicating that whether an entity "share[s] in the civil government of the country" logically stems from "the purpose for which it was created." *Dartmouth*, 17 U.S., at 636; see also, *e.g.*, *id.*, at 638; *Briscoe v. Bank of Ky.*, 36 U.S. (11 Pet.) 257, 325-326 (1837) (concluding that Kentucky could not have intended to give sovereignty to bank); *Bank of Ky. v. Wister*, 27 U.S. (2 Pet.) 318, 323-324 (1829) (same).

There are good reasons why statutory indications of state intent have always played a critical role in the analysis. Because the "preeminent purpose of state sovereign immunity" is to protect States' "dignity" by preventing them from being haled into court without their consent, *FMC*, 535 U.S., at 760, it stands to reason that courts will seek first to understand what a State's own intentions were. After all, telling a State that it was *wrong* to view its entity as sharing in its immunity—and subjecting that entity "to the coercive process of judicial tribunals at the instance of private parties" despite the State's own understanding to the contrary—is itself no small indignity. *Ayers*, 123 U.S., at 505; see also *Hyatt III*, 587 U.S., at 245 (noting the indignities that follow from a State's courts subjecting nonconsenting States to private suit); *Schooner Exch.*, 11 U.S., at 137 ("A foreign sovereign is not understood as intending to subject himself to a jurisdiction incompatible with his dignity….").

Looking to States' express textual and structural indications also makes sense given the discretion they enjoy "to structure themselves as they wish." *Berger v. N.C. State Conf. of NAACP*, 597 U.S. 179, 183 (2022). In our federalist system, "[h]ow power shall be distributed by a state among its governmental organs is commonly, if not always, a question for the state itself." *Highland Farms Dairy, Inc. v. Agnew*, 300 U.S. 608, 612 (1937). This freedom "allows local policies more sensitive to the diverse needs of a heterogeneous society, permits innovation and experimentation, enables greater citizen involvement in democratic processes, and makes government more responsive by putting the States in competition for a mobile citizenry." *Bond v. United States*, 564 U.S. 211, 221 (2011) (cleaned up). Because "the structure of its government, and the character of those who exercise

government authority," is a fundamental feature of how "a State defines itself as a sovereign," *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991), the stakes of one State incorrectly countermanding another's views as to the latter's own entities are especially great.

Looking to express indicators of state intent also polices against impostors. In *Lake Country*, a bistate entity claimed to share California and Nevada's sovereign immunity, but neither agreed. 440 U.S., at 400-401. Compare *PRPA*, 531 F.3d, at 876 (noting Puerto Rico filed brief "declaring that PRPA is an arm of the Commonwealth"). Looking to the State's indications of its intent helps separate the entities it had structured to include within its sovereign scope (typically eligible for immunity) from those it did not (ineligible).

Finally, while the ultimate sovereign immunity question is federal, it is intertwined with state law. *Regents*, 519 U.S., at 429 & n.5; see also *Arkansas*, 346 U.S., at 370 ("as we read Arkansas law the University of Arkansas is an official state instrumentality"). And the true arbiter of a State's own law is the State itself. Thus, particularly to the extent procedures like certification are unavailable, courts must err on the side of respecting a State's express intent rather than overruling the State's understanding of its own law. Cf. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 106 (1984) (noting grave "intrusion on state sovereignty" when court "instructs state officials on how to conform their conduct to state law"). For this reason, too, the inquiry must begin with whether New Jersey structured NJ Transit to serve as its arm.

2. New Jersey plainly structured NJ Transit to share in its sovereignty.

To start, consider how New Jersey characterizes NJ Transit. The Legislature established NJ Transit as "an instrumentality of the State," in "the Executive Branch," established to perform "public and essential governmental functions." N.J. Stat. Ann. §27:25-4(a); see *id.* §27:25-16 (similar). That is powerful evidence that the Legislature intended to structure NJ Transit as a sovereign arm—because it matches a preexisting dividing line in the New Jersey Constitution between "executive and administrative offices, departments, and instrumentalities of the State," N.J. Const. art. V, §4, ¶1, and "municipal corporations formed for local government" and "counties" that have distinct rights and roles, *id.* art. IV, §7, ¶¶10-11. The state Supreme Court thus describes the term "instrumentality" as offering "unassailable" evidence of the Legislature's intent to create "a state agency," *Infinity Broad. Corp. v. N.J. Meadowlands Comm'n*, 901 A.2d 312, 318 & n.2 (N.J. 2006), as New Jersey courts have expressly confirmed in NJ Transit's case, see *Colt* Pet.App.14 (admitting that "state cases describe NJT as a state agency" (citing *N.J. Transit PBA Local 304 v. N.J. Transit Corp.*, 675 A.2d 1180, 1181 (N.J. App. Div. 1996))); see also *Muhammad*, 821 A.2d, at 1153. Nor is New Jersey unusual in using "instrumentality" in this way. See *Nebraska*, 600 U.S., at 491 (finding that MOHELA's status as an "instrumentality" with public purpose established Missouri's standing); see also, *e.g.*, *Arkansas*, 346 U.S., at 370 (same, where state high court had identified state university as "an instrument of the state in the performance of a governmental work" (citing *Vincenheller v. Reagan*, 64 S.W. 278, 284 (Ark. 1901)).

There is plentiful other evidence that New Jersey designed NJ Transit as its arm, including delegating to NJ Transit substantial plenary public powers. NJ Transit can operate a police force, with jurisdiction over "all criminal and traffic matters at all times throughout the State." N.J. Stat. Ann. §27:25-15.1(a). NJ Transit can exercise eminent domain statewide, and can condemn facilities of any "public or private entity providing public transportation services within the State." *Id.* §27:25-13(a), (b), (h). NJ Transit's property is deemed untaxable property of the State. *Id.* §27:25-16. And notably, NJ Transit can promulgate regulations that have "the force and effect of law." *Id.* §27:25-5(e). Just as "Amtrak act[s] as a governmental entity" for nondelegation purposes in issuing binding rules, *Dep't of Transp. v. Ass'n of Am. R.R.s*, 575 U.S. 43, 54 (2015), this and NJ Transit's other powers underscore that the entity has been "invested with" substantial "political power" relating to "the administration of civil government" in the State, *Dartmouth*, 17 U.S., at 634.

In numerous other ways, New Jersey's statutes treat NJ Transit like other state agencies. They subject the entity to public-meetings laws, N.J. Stat. Ann. §27:25-4(g)(1), and to public-records laws, *id.* §27:25-20(c) (NJ Transit records are "government records"). And when NJ Transit adopts its binding rules, it must follow the same NJAPA requirements that bind virtually every state agency, *id.* §27:25-5(e), and handle challenges to its actions with the same special processes that govern challenges to state agency decisions. See *supra* at 8-9; *In re Protest of Contract for Retail Pharm. Design*, 314 A.3d 768, 777-779 (N.J. 2024). And, like other state agencies, NJ Transit is entitled to be represented by the New Jersey Attorney General when it wishes, N.J. Stat. Ann.

§27:25-5(z), as it is here—confirming that the State sees NJ Transit as its arm. A lawsuit against NJ Transit thus "walks, talks, and squawks very much like a lawsuit" against any other state agency. See *FMC*, 535 U.S., at 757.

The list continues. NJ Transit can largely hire only New Jersey residents, N.J. Stat. Ann. §52:14-7(a), and must consult with state authorities in developing its compensation schedule, *id.* §27:25-15. Its funds may be deposited in a special trust fund only for "public moneys," *id.* §52:18A-90.4(a); see *id.* §27:25-5(p), and NJ Transit's books and records must be periodically audited by the State Auditor, *id.* §27:25-20(e). See *Dep't of Emp't v. United States*, 385 U.S. 355, 359 (1966) (Red Cross instrumentality of United States in state-tax case because, *inter alia*, it was subject "to governmental supervision and to a regular financial audit by" U.S. Government). Time and again, the Legislature treats NJ Transit like a state agency.

It is also clear that the Legislature believes NJ Transit shares in its immunity. It specifically forbade NJ Transit from asserting "sovereign immunity" as to claims brought under a series of federal railroading laws. N.J. Stat. Ann. §27:25-24.2. The only sensible reading of that command, however, is that the State intended for NJ Transit to share its sovereignty in the first place, or there would be nothing for NJ Transit to waive. See *Burgos v. State*, 118 A.3d 270, 287 (N.J. 2015) (disfavoring any statutory "interpretations that render statutory language as surplusage").

The New York court erred in declaring that "how the State defines the entity and its functions" merely "lean[ed] toward according NJT sovereign immunity," based on its view that state law's "characterization of NJT conflicts somewhat." Pet.App.13-16. Against all

the textual and structural evidence of New Jersey's intent to create a sovereign arm as an instrumentality in the Executive Branch to fulfill public purposes and subject to the laws that govern state agencies, the *Colt* majority mostly cited the NJTCA's distinct definitions for "public entities" (which covers NJ Transit) and "State" (which does not). *Id.*, at 15; see N.J. Stat. Ann. §59:1-3. But this merely highlights the dangers of New York courts overruling New Jersey's own view as to which entities share its own sovereignty. Terms "can mean different things in different places," including as to immunities. *Kohn*, 87 F.4th, at 1032. That is the case here: the NJTCA's distinction between "public entities" and "State" plays an entirely different role, establishing which government entities categorically must indemnify and defend their employees. Compare N.J. Stat. Ann. §59:10A-1, with *id.* §59:10-5. It has no bearing on which entities fall within the sovereignty of the State, and which fall outside. See also *id.* §59:1-3 (NJTCA also differentiating "Employee[s]" from "State," even as officers in their official capacity still enjoy sovereign immunity). Indeed, another provision of the NJTCA specifically distinguishes "[l]ocal public entities," *id.* §59:10-4—yet another sign that NJ Transit is a *state* entity, part of the Executive Branch, and not a political subdivision.

New Jersey also evidenced its intent that NJ Transit be its sovereign arm by creating NJ Transit to perform delegated "public and essential governmental functions." *Id.* §27:25-4(a). *Colt* doubted "whether operating an intrastate and interstate transportation network is a traditional state governmental function," because private entities could "provide similar services." Pet.App.15 (but conceding that NJ Transit's status is "unique"). But whatever New York courts believe to be proper public functions, New Jersey

has specifically found that its "provision of efficient, coordinated, safe and responsive public transportation is an essential public purpose," and that it was thus a "responsibility of the State" to provide it. N.J. Stat. Ann. §27:25-2(a)-(b); see also *supra* at 19-20 (discussing state authority "to structure themselves as they wish" to address their own public needs). Nor was New Jersey's conclusion surprising or unusual: This Court has confirmed that Amtrak fulfills "governmental goals" across cases. See *Lebron v. Nat'l R.R. Passenger Corp.*, 513 U.S. 374, 397 (1995); *Am. R.R.s*, 575 U.S., at 52-53. NJ Transit, just like this Court found regarding Amtrak, does not "advanc[e] its own private economic interests," but the public's. *Am. R.R.s*, 575 U.S., at 53.

Nor is there any merit to the suggestion that this public function is insufficiently historically grounded to divest NJ Transit of its arm-of-the-State status. See *Colt* Pet.App.54 (Wilson, C.J., concurring). Initially, it is unclear that such a test is applicable for identifying sovereign entities, see, *e.g.*, *Nebraska*, 600 U.S., at 491 (finding MOHELA's education lending is a "public function" without regard to whether States engaged in loan servicing at the Founding), because a central part of sovereignty is the ability to innovate and respond to the "needs of a heterogeneous society," *Gregory*, 501 U.S., at 458. Indeed, this Court has already rejected the idea of judges deciding which sovereign functions are "integral" or "traditional" as "unsound in principle and unworkable in practice," *Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528, 546-547 (1985). More fundamentally, this Court's recognition that public transportation serves a public function *is* consistent with history. Sovereigns have facilitated transportation for millennia—going back to the Roman Empire's road construction. See, *e.g.*,

Joseph Berechman, *Transp.—Econ. Aspects of Roman Highway Development: The Case of Via Appia*, 37 Transp. Rsch. Part A: Policy & Practice 453, 454 (2003). Nor was that public good far from the Framers' minds: the Constitution establishes a federal power to establish post roads, U.S. Const. art. I, §8, cl. 7, and the 1817 Erie Canal project "served as a model for similar state transport enterprises elsewhere in the nation," Harry Scheiber, *State Law & "Industrial Policy" in Am. Dev.*, 75 Calif. L. Rev. 415, 420-421 (1987); see also Harry Scheiber, *The Transp. Revolution & Am. Law: Constitutionalism & Public Policy*, in *Transp. & the Early Nation* 19-21 (1981).[5] New Jersey built upon this tradition in assigning this essential public function to NJ Transit, a state instrumentality in its Executive Branch.

B. State Control Over The Entity.

Because all NJ Transit Board members are subject to gubernatorial appointment and removal, and all of their actions are subject to gubernatorial veto, control overwhelmingly supports NJ Transit too.

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[5] That the specific activity at issue here—driving a bus—is also performed by private companies makes no difference. *Ex Parte New York*, 256 U.S. 490 (1921), for example, extended sovereign immunity to admiralty suits, even though the particular action there was operating a tugboat. *Id.*, at 495. And undisputedly sovereign entities also employ drivers and others who perform duties available on the open market, yet do not lose sovereignty as to those activities. For good reason: "[t]he status of an entity does not change from one case to the next." *PRPA*, 531 F.3d, at 873; *Kohn*, 87 F.4th, at 1031 (noting the contrary "activity-based approach would allow parties to relitigate an entity's immunity by articulating the challenged activity at a different level of generality," "undermining the very purpose of immunity").

1. Since the Founding, this Court has considered the sovereign's control over an entity when assessing its status. As early as *Schooner Exchange*, this Court reasoned that a "public armed ship" was an extension of a foreign sovereign not just because of the "national objects" that ship served, but because it "act[ed] under the immediate and direct command of the sovereign." 11 U.S., at 144. Dartmouth, by contrast, fell outside New Hampshire's reach because it had been founded, maintained, and governed by private individuals for their own purposes—unlike an institution "founded by government, and placed entirely under its immediate control, the officers of which would be public officers, amenable exclusively to government." *Dartmouth*, 17 U.S., at 631-635, 640-641.[6]

This Court's modern precedents have likewise looked to direct State control to assess shared immunity. *Mt. Healthy*, for example, found that a school board was not an arm of Ohio because—though it received "guidance from the State Board of Education" and funding from Ohio—the board was independent of state control, with its own extensive authority to issue bonds and to levy taxes. See 429 U.S., at 280 (noting this made it "more like a county or a city than … an arm of the State"). So too in *Lake Country*, where the Court emphasized—in denying sovereign immunity to

[6] Beyond intent, the absence of control also undergirded this Court's series of rulings finding state-connected banks did not qualify as agents of those States. See *Bank of U.S. v. Planters' Bank of Ga.*, 22 U.S. (9 Wheat.) 904, 907-908 (1824) (concluding that Georgia "waive[d] all the privileges of [its sovereign] character" for bank where it held a noncontrolling interest and just "act[ed] merely as a corporator," exercising essentially "no other power in the management of the affairs of the corporation"); *Briscoe*, 36 U.S., at 325-326 (similar); *Wister*, 27 U.S., at 323-324 (similar).

a bistate agency—that the majority of that agency's governing members were "appointed by counties and cities, and only 4 by the 2 States." 440 U.S., at 401; see also *Hess*, 513 U.S., at 44 (considering that "8 of the Port Authority's 12 commissioners must be resident voters of either New York City or other parts of the Port of New York District").

This Court's decisions in related contexts confirm the role of control. *Nebraska* held that MOHELA was part of Missouri for standing purposes, emphasizing not only its "public purpose," but also its governance "by state officials and state appointees," and the state-law requirements that it "report[] to the State." 600 U.S., at 491. And *Lebron* likewise found Amtrak to be part of the Federal Government for First Amendment purposes (despite federal laws denying it government status) because the Federal Government had created Amtrak by special law in order to serve "governmental objectives" and had retained "authority to appoint a majority of the directors of that corporation." 513 U.S., at 399; see also *Am. R.R.s*, 575 U.S., at 54-55 (similar, rejecting private non-delegation challenge).

This Court has long looked to control for good reason. For one, a State's choice to retain close control over the entity is a strong sign the State believes it falls within its sovereignty. After all, one indicator of entities that fall within the scope of the sovereign is the sovereign's ability to resolve internal disputes without resort to litigation. See *Lake Country*, 440 U.S., at 402 (that entity was "not in fact an arm of the State" was "perhaps most forcefully demonstrated" by State having "resorted to litigation in an unsuccessful attempt to impose its will on" the entity); compare *Va. Off. for Prot. & Advoc. v. Stewart*, 563 U.S. 247, 264 (2011) (*VOPA*) (Kennedy, J., concurring) (observing

"striking novelty of permitting a state agency to sue officials of the same State in federal court"). Not only that, but control over an entity means accountability for that entity, and a hallmark of sovereignty in our American tradition is political accountability for the government's actions. Cf. *Seila Law LLC v. CFPB*, 591 U.S. 197, 224 (2020); Federalist No. 46, at 294-295 (Madison) (Clinton Rossiter ed., 1961). If an agency is controlled by the State's officials, it is accountable to those officials—and through them, to the statewide citizenry. See, *e.g.*, *PRPA*, 531 F.3d, at 877-878.

For another, control—and, relatedly, statewide accountability—serves as a tool to distinguish arms of the State from other entities, such as municipalities, private corporations, and any interstate entities not entitled to their creators' sovereignty. Even though localities are often created by state laws and exercise States' police powers, localities are accountable to just a slice of the State's citizens. See, *e.g.*, *Lincoln County v. Luning*, 133 U.S. 529, 530-531 (1890) (county was "part of the state only in that remote sense in which any city, town, or other municipal corporation may be said to be").[7] Bistate entities are accountable to more than just one sovereign's voters. See *Hess*, 513 U.S., at 40-42 (presumption that interstate agencies lack immunity). And private corporations are accountable only to shareholders or private parties, not the State. See, *e.g.*, *Dartmouth*, 17 U.S., at 632-635.

2. Evidence that New Jersey controls NJ Transit is overwhelming. Initially, NJ Transit is subject to the

[7] Indeed, control provides a better distinction than the entity's geographic authority, because sovereigns will sometimes focus on regional undertakings in service of the State's broader public goals. See, *e.g.*, *PRPA*, 531 F.3d, at 875-876. That is academic here, however, because NJ Transit operates statewide.

Governor's appointment and removal powers, a classic sign of government status. This Court has emphasized the President's powers to appoint and to remove board members in finding that Amtrak had governmental status for the non-delegation and First Amendment claims in *American Railroads*, 575 U.S., at 55, and *Lebron*, 513 U.S., at 397-398. So too as to MOHELA, 600 U.S., at 490-491, and the University of Arkansas, 346 U.S., at 370.

Appointment and removal demonstrates control here too. The Governor appoints all members of NJ Transit's Board, and many are subject to advice-and-consent by the state Legislature. All are subject to removal, whether at-will or for-cause. N.J. Stat. Ann. §27:25-4(b). The Transportation Commissioner (a state cabinet member) chairs the NJ Transit Board. *Id.* §§27:1A-2, 27:1A-4, 27:25-4(d). This Court has already recognized these features as creating political accountability for corporations like Amtrak. See *Lebron*, 513 U.S., at 398-399 (noting even ability to appoint a majority of Amtrak's board members supported public status). NJ Transit is thus easily distinguished from entities whose members are appointed by localities, compare *Lake Country*, 440 U.S., at 401-402, or who, as private corporations, are not accountable to the state citizenry at all, compare *Dartmouth*, 17 U.S., at 626, 632-635 (trustees could fill vacancies and pick successors).

That the Governor's removal power is largely "for cause" in no way undermines arm-of-the-State status. For one, the lack of *any* statutory language providing for the removability of Amtrak board members did not undermine government status in the First Amendment context. *Lebron*, 513 U.S., at 398-399. For another, while the fact that an entity's head is

removable for cause might cut against control in a State wholly structured around a unitary executive, it is consonant with control where even some cabinet officials like the Attorney General and the Secretary of State are insulated. N.J. Const. art. V, §4, ¶¶1-3, 5. This inquiry thus again requires sensitivity to States' choices on how to structure their governments, and confirms the dangers of one State's courts ignoring the creator State's express intent.

But even setting aside appointment and removal as proxies for control, the Governor has a direct veto over NJ Transit's actions. Compare *Hess*, 513 U.S., at 44 (gubernatorial veto supported immunity), with *Auer v. Robbins*, 519 U.S. 452, 456 n.1 (1997) (lack of "direction or control" cut against state status for local board of police commissioners); *Lake Country*, 440 U.S., at 402 (that rules "not subject to veto at the state level" undermined arm-of-the-State status). For NJ Transit's Board to take any official act, it must convey the minutes of its meetings to the Governor. N.J. Stat. Ann. §27:25-4(f). All Board action faces a ten-day waiting period, when the Governor can veto the action, offer approval, or take no action (allowing it to take effect). See *id.* Such provisions serve "to provide the Governor with direct executive control" over state instrumentalities. *In re Veto by Gov. Chris Christie*, 58 A.3d 735, 742 (N.J. App. Div. 2012). Subjecting NJ Transit to a plenary gubernatorial veto is yet another compelling indication that NJ Transit is nothing like a private company or local government.

Additional controls reinforce this conclusion. State law allows the Legislature to demand that NJ Transit appear before it to present testimony, provide documents, and respond to questions. N.J. Stat. Ann. §27:25-5.25(a). The Legislature can also veto certain of

NJ Transit's eminent-domain actions. *Id.* §27:25-13(h). And the Legislature controls who NJ Transit hires and how—restrictions that are, of course, consistent with governmental rather than private status. *Supra* at 23. All of these additional controls only underscore NJ Transit's status.

That the New York Court of Appeals believed control did "not weigh heavily in either direction," *Colt* Pet.App.17, is untenable. The *Colt* court mostly emphasized that NJ Transit is "independent of any supervision or control by" the State's Department of Transportation. See Pet.App.16 (quoting N.J. Stat. Ann. §27:25-4(a)). But that again illustrates the dangers of one State's court assessing the status of another State's entity—instead of deferring to the latter's characterizations—since that court badly misunderstood New Jersey law. Making an agency independent of a department in which it sits is a state-law quirk, because the New Jersey Constitution caps the number of Executive Branch "departments" at twenty. N.J. Const., Art. 5, §4, ¶1. Because the Legislature has nevertheless created more than twenty executive agencies, it will formally place any new agencies "in" another state department "to satisfy the Constitution," but sometimes clarify that the new agency is not functionally part of that department's chain of command by making it (among other formulations) "'independent of any supervision or control' of the department where [it is] located.'" *In re Plan for Abolition of Council on Affordable Hous.*, 70 A.3d 559, 570-571 (N.J. 2013) (citing examples). But the relevant legal question is whether the entity is subject to *state* control, not that of a particular executive agency. And an agency like NJ Transit that is within another state department but outside of that department's authority is nonetheless still part of the overall

Executive Branch, and subject to the control of its Chief Executive, see *id.*, at 572—including, for NJ Transit, through the above-discussed appointment, removal, and veto powers.

The New York court likewise erred in relying on a state law requiring Board members to "exercise their 'independent judgment in the best interest of [NJ Transit], its mission, and the public'" in exercising their authority. Pet.App.16 (quoting N.J. Stat. Ann. §27:25-4.1(b)(1)). As this Court explained last Term, a statutory instruction to be "'independent' … means at most that [board] members can exercise independent judgment in generating recommendations on the front end," not that they fall outside traditional Executive control. *Kennedy v. Braidwood Mgmt., Inc.*, 145 S. Ct. 2427, 2450 (2025) (discussing similar instructions for federal officials). What matters is that their exercise of that judgment is still subject to back-end review by politically accountable superiors: in *Braidwood*, the U.S. Secretary of Health, *id.*; here, the Governor. If anything, this law supports NJ Transit, emphasizing yet again that NJ Transit is not accountable to private interests but to the people of New Jersey.

C. The State's Financial Relationship With The Entity.

Financial considerations can also clarify a State's relationship with the disputed entity, and here they further support NJ Transit's arm-of-the-State status. *Colt*'s contrary holding rested on two errors: looking only to the State's formal liability for legal judgments, and giving that fact outsized importance.

Precedent and first principles explain why courts look to the overall financial relationship between the sovereign and the entity in assessing the latter's arm-

of-the-State status, especially when other "indicators of immunity point in different directions." *Hess*, 513 U.S., at 47. First, it yet again indicates "the relationship between the State and its creation." *Regents*, 519 U.S., at 431. On top of characterization, structure, and control, the extent of a State's fiscal ties with the entity can shed light on whether it intended the entity to be a sovereign arm. Second, even though "the primary function of sovereign immunity is … to afford the States the dignity and respect due sovereign entities," *FMC*, 535 U.S., at 769, immunity also protects States from financial injuries, *id.*, at 765. If a state-funded entity is liable in another sovereign's courts, such a judgment inflicts "the same practical consequences as a judgment against the State itself." *Lake Country*, 440 U.S., at 401.

NJ Transit is financially integrated with the State and financially dependent on it. Although New Jersey is not formally liable for NJ Transit's debts, N.J. Stat. Ann. §27:25-17, in statutory design and in practice the entity depends on state funding. State law requires NJ Transit, before each appropriations cycle, to "make an annual report of its activities for the preceding fiscal year," which includes "a complete operating and financial statement covering its operations and capital projects during the year," *id.* §27:25-20(b); an annual report about its real property, *id.* §27:25-20(f); and a "proposed budget recommendation," *id.* §27:25-20(g). See *Nebraska*, 600 U.S., at 490-491 (discussing MOHELA's financial-reporting requirements); *Am. R.R.s*, 575 U.S., at 52 (discussing Amtrak's reporting and budget oversight).

The State has also consistently appropriated sums to NJ Transit throughout its history. At its creation, the Legislature appropriated NJ Transit's full initial

operating budget. See N.J. Dep't of Treasury, *Appropriation Handbook: Fiscal Year 1979-1980*, at 363-364 (1979). The Governor added that the Department of Transportation would "maintain budgetary control over the Corporation's capital and operating expenses." Press Release, Office of the Governor (July 17, 1979). A $475 million voter-approved bond in 1979 funded the entity's first acquisitions.[8] And the Legislature has continued to fund NJ Transit ever since, including nearly $19 billion in state resources since 1984 for NJ Transit's capital projects alone.[9]

The Legislature continues to financially backstop NJ Transit, as its fare receipts and other revenues do not come close to covering its operating expenses. Over the last 35 fiscal years, the Legislature subsidized between 15 and 40 percent of NJ Transit's operating budget. For fiscal year 1991, for example, it appropriated $218.5 million, or approximately 32% of NJ Transit's operating budget.[10] For 2011, the number was $276 million (roughly 15%).[11] And for 2026, the Legislature appropriated nearly $1.5 billion (about 46%). See FY2026 Appropriations Act, at 2, 259-261. Combined with the $767 million that the Legislature appropriated for NJ Transit's capital projects, the State's total subsidy for NJ Transit this fiscal year will be approximately $2.2 billion. See *id*. Given NJ Transit's reliance on state funding to function, a legal

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[8] Joseph Sullivan, *Jersey Transit Bonds Pass*, N.Y. Times, Nov. 7, 1979, https://tinyurl.com/cz2ukdy4.

[9] *NJDOT/NJ Transit Capital Program*, N.J. TTFA (Feb. 21, 2025), https://www.nj.gov/ttfa/capital/.

[10] NJ Transit, *Annual Report 1992*, at 19 (1992).

[11] NJ Transit, *FY 2012 Consolidated Financial Statements* 12 (2012), https://dspace.njstatelib.org/server/api/core/bitstreams/87165a79-e4c3-4134-8e9a-5a236ef1e5bc/content

judgment against NJ Transit would "necessarily" impact New Jersey "itself." *Nebraska*, 600 U.S., at 491.

That financial reliance directly results from how New Jersey has chosen to structure NJ Transit. The Legislature sharply limited NJ Transit's ability to incur debt: with one narrow exception, NJ Transit is prohibited from incurring any "liability or obligation" "beyond the extent to which moneys are available." N.J. Stat. Ann. §27:25-17; see *id.* §27:25-5(w). That renders NJ Transit unable to issue bonds in its name—unlike New Jersey localities, *id.* §40A:2-3, and unlike private businesses. And even as NJ Transit can seek federal and other grants, *id.* §27:25-5(g), it must typically rely on other state instrumentalities—like the State's Transportation Trust Fund Authority—to secure such financing for capital projects, or make up shortfalls in federal funding, *id.* §27:1B-21.6, -21.9; see *supra* at 9-10. And the State's TTFA, for its part, uses state appropriations to support that bonding activity. See *id.* §§27:1B-7, 27:1B-9.[12]

Nor is NJ Transit free to maximize fare revenue or minimize costs in the way private businesses do. State law mandates certain NJ Transit services, including reduced "fares for senior citizens, persons with disabilities, and all disabled veterans at State expense." *Id.* §27:1A-66. And if NJ Transit wants to curtail rail service or implement fare hikes, it must hold at least two public hearings (ten for fare hikes) under specific conditions, *id.* §27:25-8(d); respond to public comments, *id.*; and secure gubernatorial assent, see *id.* §27:25-4.1(a); *supra* at 31.

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[12] See also *Flow of Funds*, N.J. TTFA (Aug. 12, 2020), https://www.nj.gov/ttfa/financing/flowfunds.shtm.

These constraints make NJ Transit a far cry from the Port Authority that this Court found to lack immunity in *Hess*. Beyond functioning as a bistate agency subject to the "significantly different position" of such entities, see 513 U.S., at 40, the Port Authority had "anticipated and actual financial independence," *id.*, at 49, because it could "borrow money and secure the same by bonds or by mortgages," *id.*, at 35, "generate[] its own revenues," and "for decades [had] received no money from the States," *id.*, at 45-46 (discontinuation of state appropriations in 1934).

By contrast, NJ Transit's situation is comparable to "transit facilities that place heavy fiscal tolls on their founding States"—entities that *Hess* recognized *could* have immunity. *Id.*, at 49. *Hess* contrasted two such entities with the Port Authority: Alaska's "thinly capitalized railroad that depends for its existence on a state-provided 'financial safety net,'" and WMATA, which was likewise "dependent on funds from the participating governments to meet its sizable operating deficits." *Id.*, at 49-51 (citing *Alaska Cargo Transp., Inc. v. Alaska R.R. Corp.*, 5 F.3d 378 (CA9 1993), and *Morris v. WMATA*, 781 F.2d 218 (CADC 1986)). *Hess* specifically suggested the circuit rulings finding immunity for each entity could stand. *Id.* & n.20; see also *Am. R.R.s*, 575 U.S., at 53, 55 (noting Amtrak is "dependent on federal financial support," and citing such "practical" control of its annual budget as affirmative evidence of governmental status). Here too, NJ Transit operates as an "instrumentality" with some fare-setting authority, but limited power to issue debt; a fisc "dependent upon and controlled by the will of the governor and the legislature," *Alaska Cargo*, 5 F.3d, at 381; and deficits heavily subsidized by its creator every year, see *Morris*, 781 F.2d, at 226.

Colt reached a contrary conclusion based on two errors: treating the sole issue as whether New Jersey has formal liability for money judgments against NJ Transit, and over-relying on this issue. As to the former, the financial analysis does not end with whether a State has "legal" or "ultimate liability" for judgments against the entity. Contra *Colt* Pet.App.18. Although the fact that a "money judgment against a state instrumentality … would be enforceable against the State is of considerable importance" as *one* way to show the State's financial interests are harmed, this Court has rebuffed efforts to "convert the inquiry into a formalistic question of ultimate financial liability." *Regents*, 519 U.S., at 430-431; see also *Lake Country*, 440 U.S., at 401 (looking as well to the "practical consequences" of a potential judgment).[13]

Instead, courts look to the State's and the entity's broader financial relationship, of which formal legal liability is just one part. The core aim of the arm-of-the-State analysis is to determine which unconsented-to suits offend the sovereign's dignity. See *FMC*, 535 U.S., at 769; *supra* at 19. But the State's choice to make entities liable for their own judgments—while financially supporting them—reflects a policy choice, not a sign the State has removed the entity from its sovereignty. See *Regents*, 519 U.S., at 431 (assessing overall "relationship" of entity and sovereign); *supra* at 19-20 (noting importance of state experimentation

[13] *Colt* went even further astray when asking whether New Jersey would be formally liable for a specific judgment "in this case." Pet.App.18. "An entity either is or is not an arm," *PRPA*, 531 F.3d, at 873; see *supra* n.4, and regardless, status does not turn on financial liability for one specific judgment, *Regents*, 519 U.S., at 429-431 (university not precluded from being arm of California just because damages would have been indemnified).

and need to avoid regime limiting States' internal discretion). Exclusively focusing on formal liability in the name of protecting the sovereign fisc would thus be perverse, as it would mean that efforts to conserve taxpayer funds in form (by dividing up liabilities and bank accounts) would actually make such funds more vulnerable in practice.

Even with respect to sovereign immunity's second aim of protecting the state fisc, see *Hess*, 513 U.S., at 49, the overall financial relationship between a State and its entity—and the "practical consequences" that flow from that structure, *Lake Country*, 440 U.S., at 401—offer better insight than an inquiry into formal liability alone. After all, a judgment against the entity can have "essentially the same practical consequences as a judgment against the State itself," *id.*, not just if a State must formally pay up, but also when the State supports (in whole or in part) the entity's budget. It is illogical to make conclusive a state law that obligates the State to pay a large share of an entity's *liabilities*, but treat as irrelevant a structure wherein the State regularly covers a large share of the entity's *budget*. See *Hess*, 513 U.S., at 51 (immunity should be assessed "legally and practically"). That is why *Hess*—even as it noted the Port Authority's lack of reliance on its States—distinguished "transit facilities that place heavy fiscal tolls on their founding States." *Id.*, at 49; *Nebraska*, 600 U.S., at 490 (noting "financial harm" to MOHELA can injure Missouri despite legal separation between their treasuries); *PRPA*, 531 F.3d, at 878-880.

At the very least, *Colt* erred in allowing formal financial liability to overcome the more powerful statutory evidence of state intent and control. In recent years, this Court has emphasized—based on

Founding-era evidence—that the "primary function of sovereign immunity is not to protect state treasuries, … but to afford the States the dignity and respect due sovereign entities." *FMC*, 535 U.S., at 769. It could hardly be otherwise, as sovereign immunity applies to claims seeking non-monetary and monetary relief alike—and the arm-of-the-State test applies to both. See *P.R. Aqueduct & Sewer Auth. v. Metcalf & Eddy*, 506 U.S. 139, 146 (1993). So although financial considerations can have "considerable importance," *Regents*, 519 U.S., at 430, as a "*sufficient* condition" for finding sovereign immunity (because they reveal harm to the state fisc), they can never be a "*necessary* condition" (given the other ways in which the suit can harm state dignity), *PRPA*, 531 F.3d, at 879. So long as New Jersey has structured NJ Transit to share its sovereignty, it matters little how the State structured its bank accounts. That is dispositive: a suit against NJ Transit offends New Jersey's sovereignty because the State made the entity one of its instrumentalities, in its Executive Branch, for essential public purposes, bound by extensive gubernatorial control, and reliant on state funding—even as it formally separated NJ Transit liabilities from the overall state treasury.

D. Sue-And-Be-Sued Clauses.

Nor does the result change just because state law created NJ Transit as a "body corporate and politic" that can "sue and be sued" in its name. N.J. Stat. Ann. §§27:25-4(a), 27:25-5(a). Pivoting from the inquiry above, the *Colt* Respondents have suggested that this Court scrap its traditional arm-of-the-State considerations and impose a new rule—assertedly from original meaning—that makes such provisions dispositive. See *Colt* BIO.21-22 (citing *Springboards to Educ., Inc. v. McAllen Indep. Sch. Dist.*, 62 F.4th 174, 188 (CA5

2023) (Oldham, J., concurring); *PRPA*, 531 F.3d, at 881 (Williams, J., concurring)). But that rule does not actually identify state arms, contravenes longstanding precedent, and misconstrues history. Instead, while such provisions regularly bear on whether a State *waived* its entity's immunity, they have no talismanic effect on whether that entity is an arm of the State in the first place.

Initially, formal corporate status or a sue-and-be-sued clause cannot resolve which entities can share their creators' sovereignty. Consistent with a need to protect States from the indignity of suits without consent, see *supra* at 4-5, 19, this Court has long looked "behind and beyond the legal form" of the case, *Arkansas*, 346 U.S., at 371, to consider whether the claim—whether styled against a specific entity or official—truly "operate[s] against the [State]." *Pennhurst*, 465 U.S., at 101; see *Dugan v. Rank*, 372 U.S. 609, 620 (1963) (asking if claims would effectively "restrain the Government from acting, or [] compel it to act"). So if States actually did use such clauses to indicate entities that lack sovereign status, then suits could proceed against such entities with little offense. But if States use such provisions in other ways, that proposed rule would subject States to unconsented-to suits.

That is fatal, because States do *not* employ such clauses to indicate a lack of sovereignty. Instead, especially as administrative systems grew in the early twentieth century, multiple States sought to "cut[] 'red tape'" and "escap[e] the traditionalism of bureaucratic administration" by experimenting with corporate, sue-and-be-sued status. Oliver Field, *Government Corporations: A Proposal*, 48 Harv. L. Rev. 775, 776-777 (1935). These entities were not profit-making

entities, but "[p]ublic administrative agencies of a traditional type" that were nevertheless "organized in the corporate form." *Id.*, at 778. In other words, they were corporations "create[d] … by special law, for the furtherance of governmental objectives," *Lebron*, 513 U.S., at 400—sovereign agencies like any other, with a new form to foster efficiency.

States have thus established a range of executive departments as bodies corporate and/or with sue-and-be-sued status. That includes, *inter alia*, Departments of Corrections, Mo. Ann. Stat. §217.020(2); Wis. Stat. §301.04; Departments of Transportation, Fla. Stat. §334.044(8); Ga. Code Ann. §32-2-5(a); Utah Code Ann. §72-1-207(1); and a Gaming Control Board, 4 Pa. Cons. Stat. Ann. §1202(b)(3). It includes nearly the entire Louisiana cabinet, including the State's Treasury, Revenue, Justice, Public Safety, Children and Family Services, and State departments. *E.g.*, La. Stat. Ann. §§36:401, 36:451, 36:471, 36:701, 36:741, 36:761. And the list goes on. *E.g.*, Alaska Stat. §43.31.091 (Department of Revenue); *id.* §44.83.020 (Energy Authority); 20 Ill. Comp. Stat. 3805/4, 7.8 (Housing Development Authority); Minn. Stat. §462A.06 (Housing Finance Agency); Tex. Gov't Code Ann. §§1232.051, 1232.067(3) (Public Finance Authority); *id.* §2306.053(b)(1) (Department of Housing & Community Affairs); Wash. Rev. Code. §§43.180.040, 43.180.080(2) (Housing Finance Commission); Wis. Stat. §101.02(2) (Department of Safety and Professional Services). Real-world practice therefore makes clear that a State's decision to use a sue-and-be-sued clause or the corporate form does not remove the entity from the State's sovereign scope.

This Court's precedents have likewise acknowledged these entities can be sovereign arms. This Court

confronted a contract suit against such an entity in 1929. *State Highway Comm'n v. Utah Constr. Co.*, 278 U.S. 194. Wyoming's State Highway Commission had a sue-and-be-sued clause, *id.*, at 196, but this Court nevertheless found that the "suit, in effect, [was] against the state and must be so treated"—finding it was "unnecessary … to consider the effect of the general grant of power to sue or be sued," *id.*, at 199. And the Court has made the same point ever since, looking to the actual nature of the entity rather than the presence or absence of such a clause, see *supra* at 18-20, and confirming that a State does not "consent to suit in federal court merely by stating its intention to 'sue and be sued,'" *Coll. Savs. Bank v. Fla. Prepaid Postsec. Educ. Expense Bd.*, 527 U.S. 666, 676 (1999)—a conclusion presupposing sovereign immunity to waive in the first place.

Nor has this point been limited to state sovereign immunity. This Court explained in *Nebraska* that having a "legal personality separate from the State," including the power "to sue and be sued," does not foreclose the particular entity from being "part of the Government." 600 U.S., at 492. This Court reached the same conclusion in *Arkansas*, where—even as the University of Arkansas's board had corporate status—this Court "read Arkansas law" to establish it as "an official state instrumentality," such that "any injury to the University is an injury to Arkansas." 346 U.S., at 370. That is, this Court looked "behind and beyond the legal form" in each case, *id.*, at 371, to ask whether the suit implicated a sovereign state entity.

History does not support plaintiffs either. To start, early precedent makes clear that corporate status was no poison pill to sovereign status. As Chief Justice Marshall explained in *Dartmouth*, rather, "[t]he

character of civil institutions does not grow out of their incorporation, but out of the manner in which they are formed, and the objects for which they are created," and an "incorporating act neither gives nor prevents [governmental] control." 17 U.S., at 638. All of which coheres with this Court's time-honored approach of looking to "the nature of the entity," *Mt. Healthy*, 429 U.S., at 280—a nature that establishes NJ Transit as an arm of the State.[14]

Nor is there merit to the argument that because municipalities lacked immunity at the Founding and are themselves separate legal persons, other entities with corporate status or sue-and-be-sued clauses also must lack immunity. See *Springboards*, 62 F.4th, at 198 (Oldham, J., concurring). To start, the premise is incorrect. Many municipalities in the early Republic were not formally incorporated, and it was not until the early nineteenth century that such municipalities became more commonplace. See Gerald Frug, *City Making: Building Communities Without Building Walls* 36-38 (1999). English law never incorporated counties at all—they instead reflected administrative districts for the sovereign's convenience. See Joan Williams, *The Invention of the Municipal Corporation: A Case Study in Legal Change*, 34 Am. U. L. Rev. 369, 382 & n.77 (1985); Sidney & Beatrice Webb, *English*

[14] Nor is corporate status inherently inconsistent with sovereignty. Several States began as corporations, and Connecticut and Rhode Island continued to use their colonial-era corporate charters as basic laws following Independence. See Nikolas Bowie, *Why the Constitution Was Written Down*, 71 Stan. L. Rev. 1397, 1407, 1498 (2019); see also *Dixon v. United States*, 7 F. Cas. 761, 763 (C.C.D. Va. 1811) (Marshall, C.J.) (describing United States as a "grand corporation which the American people have formed"); 1 Blackstone, *Commentaries* *469 (describing King as a "sole corporation").

Local Gov't From the Revolution to the Mun. Corps. Act: The Parish & the County 305-307 (1906). Yet all agree that U.S. counties lack sovereign immunity. See *Lincoln County*, 133 U.S., at 530.

Instead, municipal corporations' lack of immunity reflects broader origins and characteristics that differentiate them from state-created sovereign entities—and cannot be reduced to corporate form or sue-and-be-sued status. For one, local governments' territorial scope makes them answerable to the "peculiar and special advantage and convenience" of their residents, rather than the State at large. *Soper v. Henry County*, 26 Iowa 264, 267 (1868) (Dillon, C.J.). For another, municipal corporations historically possessed at least some self-determination rights that could be wielded against the King. See 1 Blackstone, *Commentaries* *473 (describing London as a "corporation by prescription" that existed since time immemorial); Magna Carta ch. 13 (1215), *in* J.C. Hoult, *Magna Carta* (3d ed. 2015) (preserving London's "ancient liberties and free customs"). That helps explain why English and early American law treated municipal corporations as "on the same ground … as individuals" and thus lacking immunity, while "*quasi* corporations, created by the legislature for purposes of public policy" were liable only if the sovereign had made them so. *Mower v. Inhabitants of Leicester*, 9 Mass. 247, 250 (1812).

A doctrine that makes such provisions the end-all-be-all thus errs twice-over as a matter of original understanding. It takes a criterion that was not true of all municipalities and counties, yet makes it the dispositive way to distinguish between state and local entities. And it ignores the many other reasons localities are different, including their historical

pedigrees, the sovereign's view of their separateness, and their lack of statewide accountability and control. That is why—even as modern law sees municipalities as creatures of their States, dissolvable by the States at will—canonical opinions suggested municipal corporations might still independently wield certain rights against their States. See *Hunter v. City of Pittsburgh*, 207 U.S. 161, 179 (1907). And it explains why legal challenges between States and municipalities are much more common than fights between intrastate agencies. Compare, *e.g.*, *Washington v. Seattle Sch. Dist. No. 1*, 458 U.S. 457, 459 (1982), with *VOPA*, 563 U.S., at 263-264 (Kennedy, J., concurring). So subdivisions are not eligible to share this immunity, but state entities "create[d] … by special law, for the furtherance of governmental objectives" and subject to state control, *Lebron*, 513 U.S., at 400, remain so eligible.

To be clear, a sue-and-be-sued clause is relevant, but primarily as to the "second-stage" question of a sovereign's *waiver* of its immunity. *Kohn*, 87 F.4th, at 1031. In the federal context, sue-and-be-sued clauses help show whether or to what degree Congress waived the immunity to which a sovereign entity otherwise is entitled. See, *e.g.*, *Thacker v. Tenn. Valley Auth.*, 587 U.S. 218, 221, 223 (2019) (noting the TVA was an entity that "would have enjoyed sovereign immunity from suit" but that Congress's employment of a sue-and-be-sued clause "waived at least some of the corporation's immunity"). The same logic applies to state immunity, where a sue-and-be-sued clause does not even automatically reflect "consent to suit in federal court," much less a lack of immunity at all. *Coll. Savs. Bank*, 527 U.S., at 676. Plaintiffs thus conflate the presence of immunity with what is often only a partial waiver of that immunity. That is no

basis to overcome the mountain of evidence that NJ Transit is an arm of the Garden State.

CONCLUSION

This Court should reverse the judgment of the New York Court of Appeals and affirm the judgment of the Pennsylvania Supreme Court.

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