

Nos. 24-1113, 25A____

In the Supreme Court of the United States

NEW JERSEY TRANSIT CORPORATION, ET AL., PETITIONERS

v.

JEFFREY COLT AND BETSY TSAI, RESPONDENTS

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF NEW YORK

**APPLICATION TO STAY TRIAL DATE SET BY THE SUPREME COURT OF
NEW YORK, NEW YORK COUNTY AND REQUEST FOR
ADMINISTRATIVE STAY**

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PARTIES TO THE PROCEEDINGS BELOW

Petitioners-applicants, defendants-appellants below, are New Jersey Transit Corporation, NJ Transit Bus Operations, Inc., and Ana Hernandez (collectively “NJ Transit”). Respondents, plaintiffs-appellees below, are Jeffrey Colt and Betsy Tsai.

RELATED PROCEEDINGS

Supreme Court of the United States:

Cedric Galette v. New Jersey Transit corporation, No. 24-1113 (cert. granted & consolidated Jul. 3, 2025)

New York Court of Appeals:

Jeffrey Colt et al. v. New Jersey Transit Corporation, et al., Mo. No. 2025-684 (Pin No. 83218) (Sept. 11, 2025)

Jeffrey Colt et al. v. New Jersey Transit Corporation, et al., No. 72 (Nov. 25, 2024)

Supreme Court of the State of New York, Appellate Division, First Department:

Jeffrey Colt et al. v. New Jersey Transit Corporation, et al., Case No. 2025-05314 (Sept. 8, 2025)

Jeffrey Colt et al. v. New Jersey Transit Corporation, et al., Case No. 2021-01180 (May 24, 2022)

Supreme Court of the State of New York, New York County:

Jeffrey Colt et al. v. New Jersey Transit Corporation, et al., Index No. 158309/2017 (Sept. 3, 2025)

DISCLOSURE STATEMENT

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

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To the Honorable Sonia Sotomayor, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Second Circuit:

INTRODUCTION

This application presents an extraordinary and urgent situation: a state trial court insists on subjecting a state defendant to trial on Monday, even after this Court granted certiorari to decide whether that defendant is immune from that very suit in the first place. On July 3, 2025, this Court granted certiorari in *N.J. Transit Corp. v. Colt* and *Galette v. N.J. Transit*, Nos. 24-1113 & 24-1021. These cases arose from tort suits filed by private individuals against NJ Transit in other States’ courts—the New York and Pennsylvania trial courts. The New York Court of Appeals declared that NJ Transit lacked sovereign immunity from suit, because NJ Transit was not an arm of New Jersey for purposes of interstate immunity. The Pennsylvania Supreme Court unanimously disagreed just months later, holding that NJ Transit was indeed an arm of its creator State and that a contrary result would offend New Jersey’s dignity as a coequal sovereign. This Court thus granted certiorari to resolve the split and decide whether NJ Transit is immune from nonconsensual private suits—that is, whether it has “an immunity from suit” in the courts of its sister States, including in the New York trial court. *See Fed. Mar. Comm’n v. S.C. State Ports Auth.*, 535 U.S. 743, 766 (2002) (*FMC*). This merits case is scheduled for a decision this Term: NJ Transit filed its opening brief on September 3, and briefing will conclude in December.

Unfortunately, the New York courts are insisting on subjecting NJ Transit to trial in this very case—a trial scheduled to begin this Monday, September 15—even before this Court can decide whether NJ Transit is immune from this precise suit. In

May, based on its forthcoming petition for certiorari to this Court, NJ Transit filed a motion asking that the New York trial court either stay or postpone this September trial. After this Court granted certiorari, NJ Transit updated the trial court—noting the impropriety of a state court subjecting NJ Transit to a nonconsensual trial before this Court decides whether it is immune. On September 3, 2025—less than two weeks before the trial was to begin—the New York trial court denied the stay and insisted on beginning the *Colt* trial on September 15. Five days later—one week before trial—the state appellate court denied emergency relief, and set the deadline for any further emergency appellate requests in this matter until *after* the September 15 trial begins. And just today, the New York Court of Appeals followed the same unfortunate path: it denied emergency relief in an unreasoned order, leaving NJ Transit to face a state-court trial on Monday, September 15—just four days from now.

A stay of the September 15 trial date is urgently needed to prevent NJ Transit from suffering irreparable harm and to protect this Court’s ability to grant full relief in a case it has already granted. This Court granted certiorari to decide whether NJ Transit is immune from nonconsensual private suits like this one. And that immunity “does not merely constitute a defense to monetary liability,” but instead “provides an immunity from suit” in the first place. *FMC*, 535 U.S., at 766. In other words, because sovereign immunity is an immunity from suit and not merely a defense to monetary liability at that lawsuit’s end, the benefit of sovereign immunity “is effectively lost if a case is erroneously permitted to go to trial.” *P.R. Aqueduct & Sewer Auth v. Metcalf & Eddy*, 506 U.S. 139, 144 (1993) (*PRASA*) (quoting *Mitchell v. Forsyth*, 472 U.S. 511,

526 (1985)); see *id.*, at 146 (rejecting the idea that immunity “confers only protection from liability,” instead holding that it works “to prevent the indignity of subjecting a State to the coercive process of judicial tribunals at the instance of private parties”). So if the New York trial court subjects NJ Transit to a coercive trial in a private tort lawsuit, NJ Transit will have forever lost that part of its immunity and will therefore have been irreparably harmed. And this Court will concomitantly have lost its ability to craft full relief for NJ Transit at this end of this appeal, notwithstanding that this Court already granted certiorari to decide whether NJ Transit retains New Jersey’s immunity. This Court should stay the trial to prevent such a drastic result.

Were that not enough to justify an immediate stay, the merits compel relief as well. Initially, it is obvious that NJ Transit enjoys a sufficient probability of success on its immunity defense to justify maintaining the status quo, because this Court has already granted certiorari to decide the question, and both the Pennsylvania Supreme Court and the Third Circuit have held that NJ Transit is an arm of New Jersey. And were that not enough, the merits brief NJ Transit filed with this Court on September 3 establishes its entitlement to immunity as an arm of New Jersey. The Legislature could hardly have been clearer that it structured NJ Transit as one of its sovereign arms. It established NJ Transit as an “instrumentality” of the State, and it placed that instrumentality within “the Executive Branch of the State Government.” The Legislature created NJ Transit to fulfill an “essential public purpose.” It delegated to NJ Transit a series of statewide powers, including statewide general law-enforcement powers, eminent-domain authority, and power to issue regulations that have the force

of law. The Governor, for his part, enjoys both appointment and removal powers as to all NJ Transit Board members, and the Governor maintains the authority to veto any and all actions that the NJ Transit Board takes. NJ Transit's property is state property. NJ Transit is entitled to be represented by the State's Attorney General, as it is here. And the Legislature specifically instructed NJ Transit on narrow contexts where the entity could not assert sovereign immunity, an odd choice if the Legislature structured NJ Transit to lack immunity in the first place. NJ Transit is likely immune from suit, an immunity that will be vitiated if the trial proceeds.

This is the rare case in which emergency relief is needed even after this Court has granted certiorari, to prevent a state trial court from imposing irreparable harm on one of the parties and thereby undermining this Court's review. Thus, pursuant to Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. § 1651, this Court should grant an administrative stay of the September 15 trial, and ultimately stay the state-court trial pending this Court's decision in *Colt* and *Galette*. The New York trial court may not subject NJ Transit to a coercive trial before this Court can decide this very Term whether NJ Transit is immune from this very suit.

STATEMENT

On July 3, 2025, this Court granted certiorari in *NJ Transit v. Colt* and *Galette v. NJ Transit*, and consolidated these cases for argument. The question presented in these cases is whether New Jersey Transit is an arm of the State of New Jersey for purposes of interstate sovereign immunity. If NJ Transit is an arm of New Jersey, it is entitled to New Jersey's sovereign immunity and can only be subject to private suit

in another State's courts with its consent. While NJ Transit has provided a fulsome background for the case and the relevant principles of interstate sovereign immunity in its opening brief, filed on September 3, NJ Transit provides a summary of the most relevant factual background that bears on its stay application here:

A. *Background On Sovereign Immunity And NJ Transit.*

1. Sovereign immunity provides that the States cannot “be haled involuntarily before each other’s courts.” *Franchise Tax Bd. of Cal. v. Hyatt*, 587 U.S. 230, 239 (2019) (*Hyatt III*). The “preeminent purpose” of this immunity is to ensure “states the dignity that is consistent with their status as sovereign entities.” *FMC*, 535 U.S., at 760, 769 (rather than to “protect state treasuries”). Because the founding generation understood that “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, they recognized that exercising judicial power against States in nonconsensual private suits would impermissibly indicate that the States were not true sovereigns after all. And that concern held especially true for suits filed in the courts of another State: although the States agreed through Article III to “a neutral federal forum” in which they would “be amenable to suits brought by other States,” *id.*, at 241, the States in adopting the Constitution made no such agreement with respect to each other’s courts. Interstate sovereign immunity is therefore “integral to the structure of the Constitution” itself, as this Court confirmed in *Hyatt III. Id.*, at 246.

Sovereign immunity applies not only to suits where a State itself is the named defendant, but also where a State is the real party against which “relief is asked,” *In*

re Ayers, 123 U.S. 443, 506 (1887)—thus extending immunity 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). The rule that sovereign immunity applies to the arms of the State is consistent with sovereign immunity’s role as a doctrine of broad applicability—extending to cases regardless of whether States face demands for monetary damages or for injunctive relief, *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 58 (1996), or whether states are subjected to suit in their own courts, *Alden v. Maine*, 527 U.S. 706, 712 (1999), or federal administrative tribunals, see *FMC*, 535 U.S., at 747. Across these contexts, the “constitutional design” shows that no State—nor any of the State’s arms—may be haled into another State’s courts “without [its] consent.” *Hyatt III*, 587 U.S., at 245.

2. The underlying merits case—on which this Court granted certiorari on July 3—turns on whether NJ Transit is an arm of New Jersey. NJ Transit is New Jersey’s statewide public transportation authority. Finding that the “provision of efficient, coordinate, 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, New Jersey’s legislature established NJ Transit as “an instrumentality of the State” that is to perform “public and essential governmental functions.” N.J. Stat. Ann. §§27:25-2(a)-(b), -4(a). The Legislature structured its transit system as “a body corporate and politic” within “the Executive Branch of the State Government.” *Id.* §27:25-4(a). The Legislature also delegated NJ Transit a number of statewide governmental powers, which it must exercise in accordance with restrictions that govern state agencies. The

Legislature authorized NJ Transit to promulgate state regulations with “the force and effect of law,” *id.* § 27:25-5(e), maintain a police force with statewide jurisdiction, *id.* § 27:25-15.1(a), and exercise statewide eminent-domain powers, *id.* § 27:25-13. The Legislature also clarified that NJ Transit’s property is considered untaxable property belonging to the State. *Id.* § 27:25-16.

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 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 the *ex officio* members at will). *Id.* § 27:25-4(b). And the Governor has authority to veto any or all actions that the Board takes. *Id.* § 27:25-4(f). The Board must convey minutes of each meeting to the Governor, and its actions do not take effect for ten days to afford him a chance to veto them. *Id.*

NJ Transit is also financially integrated with, and dependent on, the State of New Jersey. Although the New Jersey treasury is not formally liable for NJ Transit’s debts, *id.* § 27:25-17, NJ Transit operates at a consistent financial loss, so the entity accordingly receives a substantial annual operating subsidy from the Legislature. See Opening.Br.9-10, 35-36. NJ Transit also faces substantive and procedural restrictions on its ability to improve its finances through cutting services or raising fares. N.J. Stat. Ann §§ 27:1A-66, 27:25-4.1(a), 27:25-8(d). And NJ Transit is also unable to incur

debt or sell bonds, sorely restricting its ability to fund capital projects without outside support. N.J. Stat. Ann. §§ 27:25-5(w), -17. Given its annual reliance on legislative appropriations, NJ Transit must submit annual proposed budgets and reports to the Legislature that cover its operations and capital projects. *Id.* § 27:25-20(b), (g).

B. *Decisions Below, Certiorari, And Subsequent State-Court Proceedings.*

This dispute began when Jeffrey Colt and Betsy Tsai (“Colt Plaintiffs”) 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 as well in November 2024, holding that NJ Transit is not an arm of New Jersey. *Id.*, at 1-71. As part of its analysis below, the New York Court of Appeals majority emphasized that because the New Jersey treasury is not formally liable for the money judgments issued against NJ Transit, haling NJ Transit into New York court “would not be an affront to New Jersey’s dignity.” *Id.*, at 17-18. Two judges concurred, agreeing with the Court of Appeals’ result, but offering separate critiques of the majority opinion’s reasoning. *Id.*, at 20-71. One judge dissented, explaining that the majority had relied too much on whether New Jersey was formally liable for money judgments against NJ Transit, and overlooked that New Jersey treats NJ Transit as one of its sovereign arms—including based on how the State itself characterizes NJ Transit, the powers it delegates to the entity, and the control the State exercises over it. *Id.*, at 72-88. The

dissent would instead have found that allowing this private lawsuit to proceed in the New York state courts would “alter[] New Jersey’s coequal status among the states, in contravention of the constitutional design.” *Id.*, at 84.

Colt and a companion case—*Galette v. NJ Transit*—swiftly reached this Court. In *Galette*, the Pennsylvania Supreme Court decided the same issue just four months later, and unanimously concluded that NJ Transit is indeed an arm of New Jersey entitled to its interstate sovereign immunity—discussing and rejecting the New York high court’s contrary conclusions. See *Galette* Pet.App.16-24. NJ Transit filed a brief acquiescing to certiorari in *Galette*. It then filed a petition for certiorari in *Colt*. On July 3, 2025, this Court granted both petitions and consolidated them for briefing and argument. This Court’s July 22, 2025 order provided that the parties would brief both petitions this fall, for argument this Term. And indeed, NJ Transit already filed its opening merits brief in these consolidated cases on September 3.

In the meantime, *Colt* remained set for trial in the New York state trial court. Facing a September 15, 2025 trial date, NJ Transit sought a stay of proceedings from the state trial court on May 30, 2025—explaining to the state court that it had filed a petition for certiorari with this Court. See App.21. Briefing on NJ Transit’s motion for a stay was complete by June 23. See App.22. NJ Transit filed update letters with the state trial court after this Court granted certiorari, emphasizing to the state court that the grant of certiorari underscored the need for a stay of the trial. See App.23. The trial court heard oral argument on August 21.

The state trial court issued an order denying a stay on September 3, 2025, just 12 days before the Colt Plaintiffs' trial against NJ Transit is scheduled to begin. See App.1-10. The court found that a stay was "not warranted." App.5. The trial court's opinion rejected the notion that "[a] decision by the Supreme Court that New Jersey Transit is entitled to immunity" would be inconsistent with "any finding of damages by a jury." App.5. Instead, the court found that NJ Transit would not be prejudiced by proceeding to a trial here because "incurring the usual costs of litigation" did not constitute undue prejudice, App.7, and that should a jury rule in the Colt Plaintiffs' favor, NJ Transit could just "move to stay the enforcement of the judgment" and not pay the damages. App.7. So long as NJ Transit did not have to pay damages, the state court evidently believed NJ Transit would not face prejudice from the trial.

The trial court went on to find that the Colt Plaintiffs were, at the same time, "entitled to their day in court" and would "be prejudiced if they were prevented from having an opportunity to present their case to a jury." App.8. Likewise, the trial court found that "a verdict for money damages, even if unenforceable," would have "some (intangible) value" to them. App.7. As a result, the trial court concluded that "New York Courts have a compelling interest in holding [NJ Transit] accountable for its alleged negligence," that the State of New York "has an interest in protecting its residents from [the] negligence of others," and that staying the trial pending a decision from this Court on NJ Transit's immunity "would be an extreme miscarriage of justice to plaintiffs." App.9-10. The trial court therefore denied the stay and set NJ Transit's case for imminent trial this coming Monday, September 15.

NJ Transit immediately sought interim relief from New York’s appellate courts to stay the trial date. On September 5—the earliest date possible, given New York’s notice rules—it filed an Application for Interim Relief with the Appellate Division of the New York Supreme Court. See App.25. Its application explained that NJ Transit was entitled to a stay under this Court’s precedents and requested an immediate stay pending this Court’s disposition. See App.25. On September 8, the Appellate Division denied relief in a one-page order by a single judge, stating only that the “[a]pplication for an interim stay is denied.” App.12. The Appellate Division’s single-judge order set a briefing schedule for NJ Transit’s remaining appeal, with a response from the Colt Plaintiffs due September 15, and a return date for the court of September 22. App.12. In doing so, it effectively foreclosed any possibility of the Appellate Division providing further relief from trial to NJ Transit, because the earliest the panel of the Appellate Division could award relief would be an entire week after trial is set to begin. So the next day, NJ Transit asked the Appellate Division to instead allow a full panel to rule on its interim application, seeking relief the same day, to allow it to proceed to the New York Court of Appeals if necessary. App.56-67. The Colt Plaintiffs submitted a short letter in opposition, arguing that NJ Transit would not be harmed if the entity was “compelled to defend a one-week” trial, but the Plaintiffs would be “prejudiced” if they had to “wait yet another half year” for the Supreme Court to rule on immunity before they could be “compensated” for NJ Transit’s conduct. App.58-59. The state intermediate appellate court rejected NJ Transit’s filing and instead required counsel to follow the briefing schedule and its September 22 return date. App.60.

With no relief forthcoming from the Appellate Division, NJ Transit thus sought relief from the New York Court of Appeals on September 10. App.26-55. NJ Transit explained that were the trial to proceed, its immunity from suit would be irreversibly damaged—even after the U.S. Supreme Court had granted certiorari to decide to NJ Transit was immune. App.43-49. NJ Transit’s request explained that the Appellate Division’s briefing schedule and its September 22 return date rendered it impossible for NJ Transit get relief from an erroneous trial on the basis of sovereign immunity. App.47-49. But the New York Court of Appeals, in a single-judge order, today denied interim relief. App.13. Like the Appellate Division, it only allowed for further briefing on the appeal with a return date of September 22, App.13—again, *after* completion of the “one-week trial” that is set to begin this Monday, September 15. App.13.

With no relief left available in the New York court system before trial begins on Monday, NJ Transit then filed the instant motion, seeking both an administrative stay and a stay pending appeal of the September 15 trial date.¹

¹ NJ Transit had no choice but to seek a stay mere days before the September 15 trial date was set to begin, and therefore seeks an interim administrative stay to allow the Court ample time to consider the stay motion. As recounted above, NJ Transit sought a stay of the September trial date in May 2025. The state trial court did not rule until September 3—on the veritable eve of trial—evidently failing to appreciate a need for subsequent emergency appellate review in a case this Court has already granted. NJ Transit, as detailed above, diligently sought review from the intermediate appellate court and the New York Court of Appeals in the eight days since. And it has filed this application for relief the very same day the New York high court denied a stay.

ARGUMENT

In assessing a stay application, this Court considers “(1) whether the applicant is likely to succeed on the merits, (2) whether it will suffer irreparable injury without a stay, (3) whether the stay will substantially injure the other parties interested in the proceedings, and (4) where the public interest lies.” *Ohio v. EPA*, 603 U.S. 279, 291 (2024); see, e.g., *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam); *Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring); *Nken v. Holder*, 556 U.S. 418, 434 (2009). This application easily fits the bill. This Court need not worry about whether this is a case that would merit certiorari, as it must often consider, because it *already* found that this case justified certiorari—granting this case on July 3. As a result, the sole question is whether NJ Transit can justify a stay of the state-court trial date while the *Colt* case remains pending.

It easily can. Most obviously, the risk of irreparable harm and broader equities are overwhelming. Sovereign immunity exists to protect state defendants not merely from financial judgments, but from the burdens of suit—including, in particular, the burdens of a nonconsensual state-court trial at the insistence of a private plaintiff. Those benefits will be forever lost if NJ Transit is forced to defend itself from the *Colt* tort litigation at a damages trial while this case remains pending at this Court—and this Court would, concomitantly, lose its ability to grant the full measure of relief to which NJ Transit is entitled if it prevails. Nor is there any other avenue to avoid the irreparable harm: the New York courts have denied NJ Transit’s stay application at every level, and set a briefing schedule for further emergency requests that makes it

impossible for NJ Transit to obtain relief before the precise trial from which it needs protection. And NJ Transit has made a more than sufficient showing on the merits: this Court granted review to consider its immunity; the Pennsylvania Supreme Court and Third Circuit recognized NJ Transit is an arm of New Jersey; and—as NJ Transit explained in detail in its September 3 opening merits brief—NJ Transit easily falls within New Jersey’s sovereignty and thus cannot be haled into New York courts. This Court should grant a stay pending its disposition of *Colt* and *Galette*.

A. NJ Transit’s Imminent, Irreparable Harm Compels A Stay.

This Court should act now to protect NJ Transit from irreparable injury to its sovereignty and to protect this Court’s ability to grant the full relief to which the state defendant is entitled if it prevails. No countervailing equities overcome a stay.

NJ Transit would be irreparably harmed absent a stay. Without interim relief from this Court, it is inevitable that NJ Transit will be subjected to a damages trial in New York state court in a private tort action without its consent—the paradigmatic injury that interstate sovereign immunity guards against. See *Hyatt III*, 587 U.S., at 245 (holding that “[e]ach State’s equal dignity and sovereignty under the Constitution implies ... the inability of one State to hale another into its courts without the latter’s consent.”). Indeed, immunity reflects more than just the right not to pay a financial judgment at the *end* of a trial; immunity encompasses a right not to be subject to the trial in the first place. See, *e.g.*, *PRASA*, 506 U.S., at 146 n.5 (holding that sovereign immunity is not concerned only “with the States’ ability to withstand suit, but with their privilege not to be sued” at all). As a result, if NJ Transit is forced to stand trial,

its immunity will be irreversibly vitiated—*i.e.*, a key part of the immunity at issue in this pending case would be “effectively lost” if the case is “permitted to go to trial” on Monday. *Id.*, at 144 (quoting *Mitchell*, 472 U.S., at 526). Because a central part of the immunity at issue here would be lost forever, the harm is textbook irreparable.

This Court has made this very point about sovereign immunity repeatedly over the years—emphasizing, time and again, that the States’ immunity is an immunity from suit itself, not just the financial consequences thereof. As this Court explained in *PRASA*, sovereign immunity is not only “protection from liability,” but instead also works “to prevent the indignity of subjecting a State to the coercive process of judicial tribunals at the instance of private parties.” *Id.*, at 146 (quoting *Ayers*, 123 U.S., at 505). For good reason: the immunity reflects not merely “a concern that States not be unduly burdened by litigation” and also one regarding “the importance of ensuring that the States’ dignitary interests can be fully vindicated.” *Id.* Again in *FMC*, this Court emphasized that sovereign immunity “does not merely constitute a defense” to liability, but operates as an “immunity from suit” in the first place. 535 U.S., at 766. And the Court has made this same point repeatedly. See, *e.g.*, *Va. Office for Prot. & Advoc. v. Stewart*, 563 U.S. 247, 258 (2011) (*VOPA*) (noting that the specific injury—the “indignity”—“against which sovereign immunity protects is the insult to a State of being haled into court without its consent”); *Alabama v. North Carolina*, 560 U.S. 330, 362 (2010) (Roberts, C.J., concurring in part) (agreeing that “[i]t is the fact that the private party is allowed to sue a sovereign State—not the burden of litigation or the relief sought—that infringes the immunity of the State”). Interstate sovereign

immunity is no different, just as this Court made clear in *Hyatt III*. See 587 U.S., at 236, 239-240 (noting that because the founding generation “took as given that States could not be haled involuntarily before each other’s courts,” state entities retain an “immunity from private suits brought in the courts of other States.”).

The corollary to immunity’s role as protection against *suit*—not just *liability*—is that the benefits of this immunity are lost as soon as a state defendant is forced to proceed to trial. Sovereign immunity is of tremendous importance: as this Court has explained, it is embedded “within the constitutional design,” *Hyatt III*, 587 U.S., at 245, for the specific and “preeminent purpose” of according States “the dignity that is consistent with their status as sovereign entities.” *FMC*, 535 U.S., at 760. But, as this Court already explained in *PRASA*, the protection that sovereign immunity provides against coercive litigation “is for the most part lost as litigation proceeds past motion practice,” 506 U.S., at 145—and indeed, that immunity from suit is “effectively lost if a case is erroneously permitted to go to trial,” *id.*, at 145 (quoting *Mitchell*, 472 U.S., at 526); cf. also *Siebert v. Gilley*, 500 U.S. 226, 232 (1991) (noting, in the context of qualified immunity, that one central purpose of immunity “is to spare a defendant ... unwarranted demands customarily imposed upon those defending a long drawn out lawsuit”); *Mitchell*, 472 U.S., at 525-527 (similar, for qualified immunity).

Nor was this language discussing the loss of immunity once trial proceeds mere dicta; to the contrary, the fact that the State’s sovereign immunity will forever be lost once a case proceeds to trial is the very reason denials of sovereign immunity can be appealed on an interlocutory basis, before trial begins. Compare, *e.g.*, *Will v. Hallock*,

546 U.S. 345, 350-351 (2006) (noting that the collateral order doctrine protects party “vindicating or claiming a right to avoid trial,” because “the right would be effectively lost” absent immediate appeal), with *PRASA*, 506 U.S. at 143, 147 (confirming that “States and state entities that claim to be ‘arms of the State’” can, in federal court, rely on the collateral order doctrine following denial of sovereign immunity given the loss of that immunity that would otherwise follow); *Vt. Agency of Nat. Res. v. United States ex rel. Stevens*, 529 U.S. 765, 770 n.2 (2000) (“The denial of a motion to dismiss based on a claim of Eleventh Amendment immunity is immediately appealable.”). So allowing NJ Transit to present its case before this Court for sovereign immunity, but in the meantime requiring NJ Transit to undergo a week-long private damages trial, is self-defeating: forcing NJ Transit to undergo a trial from which it could be immune is “like a lock without a key, a bat without a ball, a computer without a keyboard—in other words, not especially sensible.” Cf. *Coinbase, Inc. v. Bielski*, 599 U.S. 736, 743 (2023) (discussing similar stays in context of arbitration denials). Just as NJ Transit was free to petition this Court for review of an interlocutory immunity decision below, so too should it obtain a stay of a trial that would pierce this very immunity.

For related reasons, this stay is also necessary to protect this Court’s ability to fully adjudicate this case. Preliminary relief has an important role to play “to preserve the relative positions of the parties” before a final decision can be reached, to ensure the court can grant full, effectual relief. *Starbucks Corp. v. McKinney*, 602 U.S. 339, 346 (2024); see *A.A.R.P. v. Trump*, 145 S. Ct. 1364, 1368 (2025) (recognizing that this Court may likewise issue a stay order to “preserve the relative positions of the parties

pending further proceedings” and to avoid irreparable harm that the Court would no longer be able to remedy at the end of the case); *John Doe Agency v. John Doe Corp.*, 488 U.S. 1306, 1309 (1989) (Marshall, J., in chambers) (granting stay of a disclosure order where the disclosure itself would “create an irreparable injury” and undermine this Court’s ability to grant full relief if it decided the disclosure was not properly compelled). That describes this posture perfectly: Because NJ Transit has exhausted the avenues available to it New York’s courts before September 15, then absent this Court’s intervention, it will be forced to proceed to trial, depriving it of the practical and dignitary interests that sovereign immunity protects. At that point, if this Court subsequently finds that NJ Transit is an arm of New Jersey and entitled to interstate sovereign immunity, it will still be impossible for this Court to “grant any effectual relief whatever” that saves NJ Transit from the independent harm of this damages trial—the one-week trial will be long complete, and the State will have incurred the expenses (including paying New York outside counsel) of defending that trial. *MOAC Mall Holdings LLC v. Transform Holdco LLC*, 598 U.S. 288, 295 (2023). As a result, the state trial court’s decision to continue with the trial against NJ Transit not only imposes an irreparable harm on the entity, but undermines this Court’s own ability to grant complete relief in a case it has granted. A stay, by contrast, will ensure that this Court can decide whether to protect the interests of NJ Transit and New Jersey in avoiding being improperly haled into court without their consent.

The New York state court rulings badly misunderstood the harms that follow from insisting on moving forward with the *Colt* trial against NJ Transit on Monday.

First, the state trial court believed that NJ Transit would not suffer “prejudice” from the decision to proceed with a September 15 trial, relying on case law that “incurring the usual costs of litigation” does not “constitute prejudice.” App.7. But while that is surely true in the ordinary course, see *FTC v. Standard Oil Co. of Cal.*, 449 U.S. 232, 244 (1980), the nature of immunity *from suit* is different: it is a right not to be subject to suit, a right lost in significant respect once trial begins. See *supra* at 14-18. Indeed, that is why (as explained above) denials of most motions are not reviewable until final judgment, but the denial of immunity is immediately reviewable. Treating prejudice as merely the “usual costs of litigation” thereby badly misunderstands the dignitary interests at stake in a sovereign immunity case. Forcing NJ Transit to undergo a “one week” trial over damages in a private tort action presented to a New York state jury, as the Colt Plaintiffs insist, is precisely what immunity guards against. App.59.

Second, the trial court misunderstood the problem in reasoning that “should a jury award money damages in plaintiffs’ favor,” NJ Transit could *then* “move to stay the enforcement of the judgment.” App.7. The trial court’s response reflects a deep misunderstanding of the object of sovereign immunity—the same misunderstanding that led the New York courts to deny NJ Transit immunity in the first place. As this Court has repeatedly explained, “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. Indeed, that is why sovereign immunity protects the States against suits for injunctive relief, where no damages are at stake at all. See *Seminole Tribe*, 517 U.S., at 58. Those dignitary interests in avoiding suit

in the first place will be irrevocably harmed by subjecting NJ Transit to this trial on Monday—no matter whether a large damages award ultimately issues, and no matter whether the trial court agrees to stay the enforcement of damages payments.

The subsequent orders issued by the intermediate appellate court and the New York Court of Appeals only reinforce the trial court's errors. The Appellate Division's and New York Court of Appeals' respective one-page decisions simply ruling that NJ Transit's "[a]pplication for an interim stay is denied" offered no reasoning at all, see App.12, and did not grapple with the harms to New Jersey's sovereignty that would follow from the September 15 trial. Cf. *Hyatt III*, 587 U.S., at 241 (contrasting role of Article III courts as neutral federal fora for inter-state disputes). And although the appellate courts each purported to offer a further schedule for NJ Transit to continue pursuing appellate relief, the Appellate Division and New York Court of Appeals only allowed for NJ Transit to seek and obtain such relief *after* the "one-week trial" was either nearly or fully concluded. See *supra* at 11-12 (discussing September 22 return date, notwithstanding September 15 trial date). The orders thereby conclusively shut the door to further state-court appellate relief for NJ Transit that would allow it to avoid this trial and the concomitant harms to New Jersey's sovereignty.

On the other side of the ledger, there is no sufficient harm to the *Colt* plaintiffs from staying the trial until after this Court can rule on NJ Transit's immunity. While NJ Transit would forever see its immunity from suit injured if it is forced to undergo a tort trial in New York state court at the insistence of these private plaintiffs, these private plaintiffs would not face any such harm. If this Court concludes NJ Transit

is not an arm of New Jersey, and thus cannot claim sovereign immunity, then their case can move forward—and the trial can happen in 2026, even if it could not happen in September 2025. The Colt Plaintiffs would still have their day in court and have the opportunity to present their case to a New York jury that they seek.² But if this Court reverses the judgment of the New York Court of Appeals, these plaintiffs lacked any entitlement to try their case against NJ Transit in the first place, and demanding the right to move forward merely undermines New Jersey’s sovereignty, undermines this Court’s ability to craft full relief, and leads to a wasteful trial.

The trial court’s sole response is unavailing. The trial court suggested that the Colt Plaintiffs had a good reason to rush forward, even if they could never obtain any damages from a state agency with sovereign immunity, because “a verdict for money damages, even if unenforceable, has some (intangible) value.” App.7. But concerns with the intangible impacts of a trial cut in precisely the opposite direction, showing the impropriety of proceeding to trial at this juncture. This Court has never identified

² The Colt Plaintiffs’ suggestions that they must not see their compensation from NJ Transit delayed for the mere months that it takes this Court to rule, see App.59, fails in two respects. First, even the trial court suggested that it would entertain a motion to stay enforcement of damages payments pending this Court’s decision, see App.7—meaning the Colt Plaintiffs may still not see compensation even if this trial proceeds. Second, it is perfectly normal for a party not to obtain a financial judgment until this Court rules the case can proceed where certiorari has already been granted. It is, by contrast, extraordinary for a party to face the very trial from which it may be immune while that immunity question is pending before this Court. Nor is there any merit to the Colt Plaintiffs’ and trial court’s complaints that NJ Transit waited too long to seek a stay: NJ Transit sought a stay of the September 15 trial date even *before* this Court granted certiorari—filing its motion as early May—and it diligently continued seeking it since the July 3 grant. See *supra* at 9-13.

any harm in private parties being delayed from a trial they are ultimately not entitled to have. By contrast, it is precisely because even unenforceable judgments impact the State's own dignity and sovereignty that this Court held an arm of South Carolina to be immune from a federal commission's adjudications in *FMC*, notwithstanding that the commission could not enforce its orders. *Id.*, at 761. Indeed, to the extent that the New York trial court would subject NJ Transit to trial so that the Colt plaintiffs could have "their day in court" and "an opportunity to present their case to a jury," App.8, its analysis reverses the dignitary considerations at play with sovereign immunity: NJ Transit is ultimately entitled to *avoid* a "day in court" and the "present[ation]" of private claims to a New York jury in a case to which it has not consented. There is no basis whatsoever for trial proceed until this Court has ruled on immunity, in a case it granted in July and is already set to decide later this Term.

B. NJ Transit Has Made A Sufficient Showing On The Merits.

Because the New York state trial court's decision to subject NJ Transit to trial on Monday would irreparably harm the very immunity at issue before this Court, and thereby undermine this Court's ability to grant full relief if it ultimately decides that NJ Transit is indeed immune, a stay would be appropriate so long as there is "a fair prospect that this Court will reverse" and find NJ Transit to be an arm of New Jersey. *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers); see also *Hollingsworth*, 558 U.S., at 190. NJ Transit easily meets that test: this Court already granted certiorari because multiple courts have found that NJ Transit is immune

from nonconsensual suits, and as the opening brief NJ Transit filed on September 3 makes clear, NJ Transit is indeed an arm of the State of New Jersey.

That this Court already granted certiorari to decide whether NJ Transit is an arm of the State in light of the clear split on the question is a strong sign that there is a sufficient prospect of reversal to justify avoiding a trial until this Court can rule. Indeed, as the certiorari papers explained, the New York Court of Appeals held that NJ Transit is not an arm of New Jersey, *Colt* Pet.App.1-19, but both the Pennsylvania Supreme Court and the Third Circuit (and a dissenting judge of the New York Court of Appeals) reached precisely the opposite conclusion, see *Galette* Pet.App.1-24; *Karns v. Shanahan*, 879 F.3d 504, 518 (CA3 2018); *Colt* Pet.App.72-88. Still more, the Pennsylvania Supreme Court explicitly cited the reasoning of the New York Court of Appeals majority and found it wanting—recognizing the New York high court put too much stock in sovereign immunity as a device to avoid financial liability, while giving insufficient respect to the dignitary interests that this immunity has protected since the Founding. *Galette* Pet.App.21-23. This split, the same basis NJ Transit offered in successfully seeking certiorari from this Court, at least provides sufficient evidence of a “fair prospect” of reversal and the need to preserve the status quo between the parties until this Court can adjudicate the immunity question this Term.

Were that not enough, the likelihood that NJ Transit will ultimately prevail is overwhelming. Although NJ Transit filed an opening merits brief on September 3 that lays out its case for sovereign status in full, see *Opening.Br.*16-47, a number of key points bear emphasizing. As NJ Transit explains in its opening brief, this Court’s

cases make clear that to determine whether an entity is an arm of its creator State, the Court evaluates (1) the textual and structural evidence of the State's own intent to create an entity that enjoys its sovereignty; (2) the State's control over the entity; and (3) the State's overall financial relationship with the entity. See, e.g., *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 280-281 (1977); *Hess v. Port Auth. Trans-Hudson Corp.*, 513 U.S. 30, 44-46 (1994); *Lake Country Ests., Inc. v. Tahoe Reg'l Plan. Agency*, 440 U.S. 391, 401-402 (1979). See Opening.Br.16-40 (discussing these considerations). Each of these considerations demonstrates that NJ Transit is an arm of New Jersey for purposes of interstate sovereign immunity.

New Jersey's laws provide powerful textual and structural evidence that New Jersey structured NJ Transit as one of its arms. See Opening.Br.18-26. That evidence takes on particular importance in the typical arm-of-the-State analysis: because "the primary function of sovereign immunity" is to protect each State's dignity, *FMC*, 535 U.S., a 769, evidence of a State's intent helps avoid the indignity of one State's courts overruling another creator State's own views about the status of its own entity with its own state government. See *Berger v. N.C. State Conf. of NAACP*, 597 U.S. 179, 183 (2022) (recognizing States' autonomy to "structure themselves as they wish"). In NJ Transit's case, that evidence is quite clear, see Opening.Br.21-26: the New Jersey 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 Legislature instructed NJ Transit on the contexts in which it may not assert sovereign immunity—a choice that

only makes sense insofar as NJ Transit has immunity to waive at all. *Id.* § 27:25-24.2. The Legislature delegated to NJ Transit substantial statewide public powers to issue regulations that have the force of law, enforce criminal laws statewide, and condemn private property statewide. See *id.* §§ 27:25-5(e), -13, -15.1(a). The Legislature also deemed all NJ Transit property to be untaxable property belonging to the State. *Id.* § 27:25-16. This is all evidence, among other strong textual and structural statutory indications, that New Jersey sees NJ Transit as one of its arms.

New Jersey also subjected NJ Transit to extensive statewide political controls similar to those that bind other state agencies. See Opening.Br.26-33. Those controls can also supply important evidence that an entity is an arm of the State, because they signal that unlike either a private entity or even a political subdivision, a State's arm is politically accountable to the statewide public through its other statewide officials. See Opening.Br.27-29; *Biden v. Nebraska*, 600 U.S. 477, 491 (2023); see also *Schooner Exch. v. McFaddon*, 11 U.S. (7 Cranch) 116, 137 (1812) (Marshall, C.J.) (recognizing that control was informative of vessel's sovereign status). In NJ Transit's case, the statewide controls are particularly extensive. See Opening.Br.29-33. Most obviously, the Governor has the statutory power to appoint and remove (at-will or for-cause) all NJ Transit Board members, including the members of the Governor's cabinet who sit on the NJ Transit Board. N.J. Stat. Ann. § 27:25-4(b). And in addition to his control over the NJ Transit Board via appointment and removal, the Governor also has direct power to veto any or all actions the NJ Transit Board takes. *Id.* § 27:25-4(f). Indeed,

the Board must convey the 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 close financial relationship between NJ Transit and the State writ large is more evidence that NJ Transit is one of New Jersey's arms. See Opening.Br.33-40. NJ Transit relies on the New Jersey Legislature to cover its sizable annual operating deficits: over the last 35 fiscal years, the Legislature subsidized between 15 and 40 percent of NJ Transit's operating budget. See Opening.Br.35-36. And that financial reliance directly results from how the New Jersey Legislature has chosen to structure NJ Transit: it limited NJ Transit's own abilities to lower costs, raise revenue, and issue debt, thus leaving NJ Transit reliant on state appropriations, much like other state agencies. See Opening.Br.36-37; N.J. Stat. Ann. §§ 27:1A-66, 27:25-4.1(a), 5(w), -8(d), -17. That New Jersey has left NJ Transit entangled with state funds is yet one more sign that the State understands NJ Transit to be one of its sovereign arms, and that subjecting NJ Transit to nonconsenting private suit would offend the State's own interests. So consistent with the evidence provided by the text and structure of the relevant state statutes, and by the extensive controls that the Governor has over NJ Transit, the relevant financial considerations likewise support immunity.

This Court will likely reject the *Colt* majority's narrow and contrary approach to sovereign immunity. See Opening.Br.38-40. The majority opinion focused too much on whether the New Jersey treasury is formally liable for money judgments against NJ Transit—treating sovereign immunity as only a protection from financial liability rather than a protection from suit, just as the New York courts are doing by allowing

a trial to proceed on September 15 notwithstanding NJ Transit’s potential immunity. See *Colt* Pet.App.18. But that approach is entirely inappropriate, because it ignores the dignitary interests sovereign immunity also protects, and because it improperly turns the arm-of-the-State analysis “into a formalistic question of ultimate financial liability”—an approach this Court has expressly rejected. *Regents of the Univ. of Cal. v. Doe*, 519 U.S. 425, 430-431 (1997). In short, even though financial liability may be a “sufficient condition” for finding sovereign immunity (as such liability can reveal a harm to the state fisc), a requirement of financial impacts could never be a “necessary condition” (given the other ways that a lawsuit can harm a State’s sovereign dignity). *P.R. Ports Auth. v. Fed. Mar. Comm’n*, 531 F.3d 868, 879 (CADDC 2008) (Kavanaugh, J.); *FMC*, 535 U.S., at 769 (confirming “the primary function of sovereign immunity” is to protect the State’s dignity, which is why immunity bars private suits seeking injunctive relief against the State and its arms too). Because this immunity from suit runs deeper than the mere question of formal financial liability, NJ Transit is an arm of the State—and should not be subject to trial pending this Court’s decision.³

³ Nor is there any basis for a September 15 trial to proceed exclusively against Ana Hernandez, an NJ Transit employee. Most obviously, that is not the trial scheduled to begin on September 15; instead, the actual weeklong damages trial that will begin in four days includes NJ Transit as one of the defendants, over NJ Transit’s strong objections. In any event, it makes little sense to proceed against Ms. Hernandez now, only to have a repetitive trial next year against the other NJ Transit defendants if this Court rules that they lack immunity. Finally, significant New York case law—including from the Appellate Division at prior stages of this litigation—indicates that employees of an immune state entity also benefit from that immunity from suit. See, e.g., *Colt v. N.J. Transit Corp.*, 169 N.Y.S.3d 585, 588 (N.Y. App. Div. 1st Dep’t 2022); *Trepel v. Hodgins*, 121 N.Y.S.3d 605, 606 (N.Y. App. Div. 1st Dep’t 2020). The New

CONCLUSION

This Court should grant NJ Transit's application for a stay of the September 15 trial in the New York court pending its forthcoming decisions in *Colt* and *Galette*, and in the interim, grant an immediate administrative stay.

Respectfully submitted,

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York courts have not had to consider whether this damages suit could proceed against Ms. Hernandez alone, because they have consistently and erroneously found that NJ Transit has no immunity in the first place. Indeed, NJ Transit believes that such an action cannot. So if this Court corrects the mistaken legal view that NJ Transit itself lacks immunity, the parties will have that dispute on remand in the New York courts before a damages trial can properly proceed against Ms. Hernandez.