

Nos. 24-1021 and 24-1113

IN THE
Supreme Court of the United States

CEDRIC GALETTE,

Petitioner,

v.

NEW JERSEY TRANSIT CORPORATION,

Respondent.

(Additional Caption on the Reverse)

*On Writs of Certiorari to the Supreme Court of Pennsylvania,
Eastern District and the New York Court of Appeals*

**BRIEF FOR AMICUS CURIAE
NEW YORK STATE ACADEMY OF
TRIAL LAWYERS IN SUPPORT OF
CEDRIC GALETTE AND JEFFREY COLT, *ET AL.***

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INTEREST OF THE *AMICUS CURIAE*¹

Amicus Curiae - The New York State Academy of Trial Lawyers - is a registered New York not-for-profit corporation with tax exempt status under IRC §501(c)(6). Its current members number approximately 5,100, and include plaintiff and defense attorneys, state and municipal attorneys, members of the judiciary, non-judicial government employees, law professors, law clerks, law secretaries, paralegals and law students. The Mission Statement of the Academy provides that it “maintains a strong commitment to protect, preserve and enhance the civil justice system, while working to rebuild and improve the image of our profession.” The Academy believes their collective responsibility as attorneys is to work to protect, preserve, and enhance the civil justice system, assure fairness in litigation, and provide equal access to justice for all, in accordance with our mission.

Whether petitioner New Jersey Transit Corporation can evade liability for its tortious conduct in New York, as well as in Pennsylvania, harming a

¹ Pursuant to Rule 37.6, *Amicus Curiae* affirms that no counsel for any party authored this brief in whole or in part, and no counsel for any party, or person other than *Amicus Curiae*, its members, or its counsel made a monetary contribution intended to fund the preparation or submission of this brief.

New Yorker and Pennsylvanian, by asserting interstate sovereign immunity because it is an arm of the State of New Jersey is an issue that goes to the heart of the Academy’s Mission Statement. Its *Amicus Curiae* Brief is informed by the Academy’s concerns about the civil justice system and how the doctrine of interstate sovereign immunity impacts it.

SUMMARY OF THE ARGUMENT

New Jersey Transit Corporation (“NJ Transit”) is a public corporation created by the State Legislature to operate a public transportation system for New Jersey citizens, replacing a network of private companies that had been providing such transportation services. It sends hundreds of buses and trains every day into and out of the Philadelphia and New York City metropolitan areas from its operating base in New Jersey. A large share of its riders are New Jersey citizens, commuting to and from their places of employment in those areas.

Both *Galette* (*Galette v. NJ Transit*, 332 A.3d 776 [2025]) and *Colt* (*Colt v. New Jersey Tr. Corp.*, 43 N.Y.3d 463 [2024]) involve tortious conduct perpetrated by NJ Transit and its employees in the operation of its commuter buses in Philadelphia (*Galette*) and New York City (*Colt*). Mr. Colt, a New York resident, was struck by a NJ Transit bus while

crossing a street and Mr. Galette, a Pennsylvania resident, was injured when a NJ Transit bus struck the vehicle in which he was a passenger when the vehicle was stopped. Both Colt and Galette commenced actions in New York and Pennsylvania state courts, respectively, against NJ Transit, alleging common law negligence actions.

NJ Transit seeks to have both actions dismissed contending that the doctrine of interstate sovereign immunity recognized by this Court in *Franchise Tax Board of California v. Hyatt*, 587 U.S. 230 (2019) (“*Hyatt III*”) applies to it. As applied, the doctrine would preclude NJ Transit from being sued in the Pennsylvania and New York state courts for its negligence resulting in serious injuries to Mr. Galette and Mr. Colt.

In essence, NJ Transit is arguing that it can come into the States of New York and Pennsylvania, benefiting the residents of New Jersey who now have a mode of transportation to their places of employment in New York and Pennsylvania, tortiously injure a New Yorker and a Pennsylvanian by ignoring New York’s and Pennsylvania’s vehicle traffic safety laws and a New York and Pennsylvania court cannot provide a forum to allow the injured to sue NJ Transit for its tortious conduct. Brazenly, while NJ Transit points out that it can be sued in a

New Jersey court, suggesting that Mr. Colt and Mr. Galette travel to New Jersey to bring their actions, a classic Catch-22 situation is present. It is doubtful that New Yorkers and Pennsylvanians can sue NJ Transit in a New Jersey court for harms occurring outside of New Jersey because New Jersey venue rules require such an action to be sued in the county in which the accident occurred. Mr. Galette and Mr. Colt therefore cannot commence an action in New Jersey because their claims arose outside its borders.

In *Hyatt III*, this Court held that each State enjoys sovereign immunity from lawsuits in the courts of its co-equal states under the doctrine of interstate sovereign immunity. *Hyatt III*, 587 U.S. at 245-247. NJ Transit argues that this doctrine applies not only to lawsuits in which the State of New Jersey is named as the defendant but also against state created entities or instrumentalities when they are considered an arm of the State, and NJ Transit is such an “arm.” In making this argument, NJ Transit relies on this Court’s Eleventh Amendment arm of the state jurisprudence.

This Court should not look to the Eleventh Amendment’s “arm of the state” case law to determine whether NJ Transit is an “arm” of the State of New Jersey and thus is entitled to assert its interstate sovereign immunity. Rather, as this doctrine “is a

historically rooted principle embedded in the text structure of the constitution,” *Hyatt III*, 587 U.S. at 243, this Court should in determining the issue look at the scope of the immunity the States enjoyed prior to the ratification of the Constitution in 1789, and any modification as effected by the ratification of the Constitution. Surveying Founding era sources, it is “evident that at common law, both in England and the early American Republic, incorporated entities were not entitled to sovereign immunity.” *Springboards to Educ., Inc. v. McAllen Indep. Sch. Dist.*, 62 F.4th 174, 191 (5th 2023) (Oldham, J., concurring). “This rule applied regardless of whether the corporations were private or public and regardless of whether they exercised governmental functions.” *Id.* Thus, the constitutional structure would not view NJ Transit as within the interstate sovereign immunity enjoyed by the State of New Jersey because NJ Transit is an incorporated entity. The fact that New Jersey considers NJ Transit as an “arm of the State” and part of its government structure is largely irrelevant.

To the extent the doctrine of interstate sovereign immunity is intended to protect the “dignity [of the States] that is consistent with their status as sovereign entities,” *Federal Mar. Comm’n. v. S.C. State Ports Auth.*, 535 U.S. 743, 760 (2002), and that a lawsuit against the State in another State would be an affront to that dignity, *Alden v Maine*, 527 U.S.

706, 748 (1999), allowing the *Galette* and *Colt* actions to proceed in the Pennsylvania and New York courts should not be viewed as an affront to the State of New Jersey, much less NJ Transit. After all, the state courts are not reviewing or second-guessing any matter integral to their governance. Rather, NJ Transit is being sued for its negligence in the operations of its buses in Pennsylvania and New York. Any affront created would be to Pennsylvania and New York's dignity in not allowing their courts to even hear the claims of their citizens for injuries they sustained in their states, and allowing NJ Transit to operate without any true oversight in Pennsylvania and New York by those states.

Interstate sovereign immunity should not be interpreted, as NJ Transit would have it, to allow NJ Transit to operate its trains and buses in Pennsylvania and New York negligently and completely avoid any liability for such conduct. Such a result does not reflect sound public policy. As Chief Justice John Marshall held in *Marbury v. Madison*, 5 U.S. 137, 163 (1803) “[t]he very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection.” Immunizing NJ Transit from its negligent conduct in Pennsylvania and New York does violence to that duty and should not be tolerated.

ARGUMENT

THE NATURE OF INTERSTATE SOVEREIGN IMMUNITY AS REFORMULATED IN *HYATT III* DOES NOT PROHIBIT THE STATE COURTS OF PENNSYLVANIA AND NEW YORK FROM HEARING THE *GALETTE* AND *COLT* LAWSUITS AS ALLEGED AGAINST NJ TRANSIT BECAUSE NJ TRANSIT IS A PUBLIC CORPORATION, OPERATING A BILLION DOLLAR TRANSPORTATION ENTERPRISE IN COMPETITION WITH PRIVATE ENTITIES, AND THUS IS NOT CLOTHED WITH SUCH IMMUNITY

I. The Scope Of Interstate Sovereign Immunity Is To Be Determined By Examination Of Common Law, As Modified, If At All, By The Constitution As Ratified In 1789

A. Traditional Sovereign Immunity

Under the traditional doctrine of sovereign immunity - the King can do no wrong - a State as a sovereign entity is largely shielded from suits by private parties unless the State consents. *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 54, 71, n. 15 (1996). Immunity from private suits is “[a]n integral component of a State’s sovereignty. *Federal Maritime Comm’n*, at 751-52.

Historically, the doctrine of sovereign immunity was firmly established in the English common law by the thirteenth century. See *Springboards to Educ.*, 62 F.4th at 188 (Oldham, J., concurring) (discussing historical sources); 1 W. Blackstone, *Commentaries on the Laws of England*, 235 (1765). As this Court noted in *Hyatt III*, this immunity was both common law and law of nations based. *Hyatt III*, 587 U.S. at 238-239. The doctrine’s justification was that “the Crown was above everyone, so it could be amenable to suit by no one,” and that the King was the front of all law, so he could not by definition violate it.” *Springboards to Educ.*, 62 F.4th at 188 (Oldham, J., concurring).

This rule of sovereign immunity is a fundamental aspect of the sovereignty which the States enjoyed before the ratification of the Constitution in 1789. *Alden v. Maine*, 527 U.S. 706, 713, 715-716 (1999). The adoption of the Constitution in 1789 did not strip the States of sovereign immunity, *Id.* at 716-717, but rather the doctrine was “preserved in the constitutional design.” *Hyatt III*, 587 U.S. at 244.

B. Interstate Sovereign Immunity

In *Hyatt III*, this Court held that each State enjoys sovereign immunity in the courts of its co-equal States, referred to as interstate sovereign immunity.

This immunity is “a historically rooted principle embedded in the text and structure of the Constitution.” *Hyatt III*, 587 U.S. at 248. Of note, interstate sovereign immunity “neither derives from, nor is limited by, the terms of the Eleventh Amendment. *Id.* at 243. In so ruling, this Court overruled *Nevada v. Hall*, 440 U.S. 410 (1979), following in large part Justice Blackmun’s dissent in *Hall*. Joined by Chief Justice Burger and then Justice Rehnquist, Justice Blackmun would have held that the Constitution embodies a “doctrine of interstate sovereign immunity.” *Id.* at 430. (Blackmun, J., dissenting). Justice Blackmun pointed to the swift adoption of the Eleventh Amendment after *Chisholm v. George*, 2 U.S. (2 Dall.) 419 (1793), which held that citizens of one State could sue another State in federal court without the defendant State’s consent. “If the Framers were indeed concerned lest the States be haled before the federal courts,” he observed, “how much more must they have reprehended the notion of a State’s being haled before the courts of a sister State.” *Nevada*, 440 U.S. at 431 (Blackmun, J., dissenting). He explained that the “concept of sovereign immunity” that “prevailed at the time of the Constitutional Convention” was “sufficiently fundamental to our federal structure to have implicit constitutional dimension.” *Id.*

II. NJ Transit, A Public Corporation Created By The State To Operate A Transportation System, Is Not Entitled To Assert Interstate Sovereign Immunity In The State Courts Of Pennsylvania And New York As Such State Created Entities Were Not Considered The State When The Constitution Was Ratified In 1789

A. NJ Transit's Argument

NJ Transit is a public corporation created by the New Jersey State Legislature in 1979 to operate a public transportation system for the benefit of New Jersey citizens. N.J. Stat. Ann. §27:25-2(c)(e); §27:25-4 (defining NJ Transit as a “body corporate”). It replaced a network of private companies that had been handling such transportation services. *Id.* §27:25-2(a)-(e); Pet. Br. 7. NJ Transit has the power to sue and be sued. *Id.* §27:25(5)(a). It is also by statute “independent” from executive control, *Id.* §27:25-4(a) (“[T]he corporation shall be independent of any supervision or control by the Department [of Transportation] or by any body or officer thereof.”), and the State of New Jersey is by statute not responsible for any of its liabilities or debts. *Id.* §27:25-17 (“No debt or liability of the corporation shall be deemed or construed to create or constitute a debt, liability, or a loan or pledge of the credit of the State.”).

NJ Transit's transportation system is one of the largest public transit entities in the United States. Pet. Br. 6. It provides "nearly 270 million passenger trips each year." *Id.* As pertinent here, NJ Transit sends hundreds of buses and trains in and out of New York City. *Colt*, 43 N.Y.3d at 485.

NJ Transit argues that although it is not the "State" but a public corporation created by the State to run an interstate transportation system, it nonetheless is clothed with interstate sovereign immunity as an "arm of the state" which makes it effectively the State itself. As argued by NJ Transit, it falls "within the State's sovereignty such that a suit against the entity 'walks, talks, and squawks like a lawsuit' against the State." Pet. Br. 16. In making this argument, NJ Transit relies on, albeit not expressly stating so, this Court's Eleventh Amendment jurisprudence in which this Court addressed the issue of the entitlement of whether a State created entity is immune from suit in a federal court as an "arm of the state" under the Eleventh Amendment. *Id.* at 16-17.²

² *Amicus Curiae* notes that the lower federal courts have uniformly recognized that the "arm of the state" doctrine developed in Eleventh Amendment litigation applies in determining whether a State created entity is entitled to interstate sovereign immunity. However, there is no uniform test for determining whether an entity is an "arm of the state" for purposes of sovereign immunity with various multifactor

B. NJ Transit’s Entitlement To Interstate Sovereign Immunity Shall Be Determined By Whether A State Created Corporation Was Considered The “State” At The Founding In 1789 And Not By Eleventh Amendment Arm of the State Jurisprudence.

The Court in *Hyatt III* made clear that the scope of interstate sovereign immunity possessed by the States is to be determined by an examination of the common law which existed at the time of the Founding in 1789. *Hyatt III*, 587 U.S. at 238-242. This Court further concluded that the Framers of the Constitution intended and desired that the common law remain in effect upon ratification notwithstanding their failure to expressly include any analog to the Eleventh Amendment’s limitation upon “[t]he judicial power of the United States” that would similarly limit the judicial power of the states. *Id.* at 243.³

Notably, this Court in *Hyatt III* expressly stated the doctrine of interstate sovereign immunity

tests developed. See *Colt*, 43 N.Y.3d at 470; 13 Wright & Miller, Federal Practice and Procedure §3524.2 (3d ed).

³ The Eleventh Amendment states: “The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.” U.S. Const. amend XI.

“neither derives from, nor is limited by the terms of the Eleventh Amendment.” *Id.* at 243. The reason is readily apparent: “common law sovereign immunity is different from Eleventh Amendment sovereign immunity.” *Springboards to Educ.*, 62 F.4th at 190 (Oldham, J., concurring). As elaborated by Chief Judge Wilson:

The Eleventh Amendment does not define the common law or law-of-nations concepts of sovereign immunity, nor is it coextensive with those. Instead, it is a decision by the States as to how extensive the power of the federal courts would be vis-à-vis them. In short, the question of whether a state-created entity may invoke the Eleventh Amendment to bar an action in federal court is irrelevant, because the relation of New Jersey to the United States is fundamentally different from the relation between New Jersey and New York.

Colt, 43 N.Y.3d at 486 (Wilson, C.J., concurring).

Thus, NJ Transit’s focus on Eleventh Amendment jurisprudence, and specifically cases holding that a public corporation or entity may be viewed as an “arm-of-the-state” for purposes of Eleventh Amendment immunity, should be disregarded as it has no bearing on the issue before this Court, whether

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

C. NJ Transit's Status As A Public Corporation Created By The New Jersey Legislature To Operate A Transportation Enterprise Precludes It From Invoking Interstate Sovereign Immunity As At The Common Law Such Immunity Did Not Extend To Public Corporations That The States Created As Separate Legal Entities.

Historical sources show that “[a]t the time of our Founding the existence of a separate legal person, with the capacity to sue and be sued, was precisely what set certain non-immune state entities apart from the state itself.” *Puerto Rico Ports Authority v. Fed. Mar. Comm’n.*, 531 F.3d 868, 881 (Williams, J., concurring) (collecting cases). Judge Oldham found it “evident that at common law, both in England and the early American Republic, incorporated entities were not entitled to sovereign immunity.” *Springboards to Educ.*, 62 F.4th at 191 (Oldham, J., concurring). “This rule applied regardless of whether the corporations were private or whether they exercised governmental functions.” *Id.*

The denial of sovereign immunity to a state created corporate entity rested on the “principle . . .

that when a government becomes a partner in any trading company, it divests itself, so far as concerns the transactions of that company, of its sovereign characters, and takes that of a private citizen.” *Bank of United States v. Planters’ Bank of Ga.*, 22 U.S. (9 Wheat.) 904, 907 (1824). Thus, this Court held in *Planters’ Bank* that even though Georgia was a proprietor and corporator of the Bank, the “Planters’ Bank of Georgia [was] not exempt from being sued in the federal courts.” *Id.* at 908. Lest there be any doubt about its holding, this Court concluded the “Planters’ Bank of Georgia is not the State of Georgia, although the State holds an interest in it.” *Id.* at 907; see *Springboards to Educ.*, 62 F.4th at 194-195 (Oldham, J., concurring) (collecting and discussing other similar cases).

From the above, it necessarily follows that immunity is not proper for NJ Transit, a State created public corporation engaged in commercial activities in competition with private companies. Any doubt should be dispelled when one considers if NJ Transit, or a similar State created entity, was immune at the common law from suit for tortious liability when the entity entered into another State and harmed citizens of that State. The courts of that State could not then hear the suit brought by a citizen of the State for an injury inflicted upon that citizen in the State by the State created entity when it engaged in commercial

activities in that State. In other words, immunity would allow NJ Transit to enter Pennsylvania or New York to engage in a transportation enterprise for the benefit of its citizens, and not the citizens of Pennsylvania or New York, and when doing so, operate its transportation devices knowing that it could not be sued in the state courts of Pennsylvania and New York when it ignored the “rules of the road” resulting in serious personal injuries to Pennsylvania or New York citizens.⁴ Suppose this was advanced at the Convention as a statement of the then existing common law or as a modification of existing common law denying immunity. Surely, “can we imagine that such a rule would have been adopted by the States?” *Hans v. Louisiana*, 134 U.S. 1, 15 (1890). The suggestion that Pennsylvania or New York would accept as the “Plan of the Convention” that they could not provide a forum for suits brought by citizens of their State injured in their States as a result of the negligence of an entity created by another State in their State is “almost an absurdity on its face.” *Id.*

⁴ While NJ Transit suggests that Galette and Colt could bring personal injury lawsuits against it in New Jersey, it is highly doubtful that they could because of New Jersey venue rules. See *Colt v. New Jersey Tr. Corp.*, 206 A.D.3d 126, 130 (1st Dept. 2022). *aff. on other grounds* 43 N.Y.3d 463 (2024). These rules require a “tort action against municipal corporations, counties, public agencies or officials” to be filed “in the county in which the cause of action arose.” N.J. Ct. R. 4:3-2(a). Thus, Galette and Colt could not commence an action in New Jersey because their negligence claims arose outside its borders.

In sum, as public corporations and entities were not clothed with sovereign immunity at the Founding, under the common law NJ Transit cannot invoke interstate sovereign immunity in *Galette* and *Colt*.

D. NJ Transit Provides No Compelling Reasons That Supports Its “Arm Of The State” Approach For Determining Whether It Is Entitled To Invoke Interstate Sovereign Immunity.

NJ Transit’s argument that it is entitled to invoke interstate sovereign immunity for dismissal of the *Galette* and *Colt* lawsuits against it is based solely on the contention that since the State of New Jersey cannot be sued in the state courts of Pennsylvania and New York, NJ Transit cannot be sued as it is an arm of the State of New Jersey. In support, NJ Transit cites to an array of cases, plucking from them certain factors which, it claims, show NJ Transit is in fact an arm of the State of New Jersey for purposes of interstate sovereign immunity.

Notably, NJ Transit makes no argument that this Court should not follow the common law approach to sovereign immunity other than observing Judge Oldham’s historical analysis is “incorrect,” a conclusion premised on minimal support. Pet. Br., 44. NJ Transit’s argument instead is, apparently, that

policy reasons override any reliance on the common law. Its claimed reasons are meritless.

Initially, NJ Transit contends that it is the State of New Jersey's sovereign prerogative to structure entities it creates to perform a governmental function in a manner the State deems best for the function and, in doing so, structure that entity to fall within the State's sovereignty, and thus sovereign immunity. Pet. Br. 13, 16-17. As a result, according to NJ Transit, the State of New Jersey's own characterization of NJ Transit as an arm of the state entitled to sovereign immunity is controlling. The argument should be rejected as it is at odds with the fact that the U.S. Constitution, and the Plan of the Convention, is the source of sovereign immunity of the States, and that plan does not indicate or otherwise show that individual States by their own conduct can override that plan except to the extent a State might allow a waiver of sovereign immunity. As noted by Chief Judge Wilson, for good reason the Plan of the Convention did not allow an individual State to create for itself sovereign immunity which otherwise did not exist as:

“States could extend their sovereign immunity to any manner of activity occurring outside of their borders, simply by enacting statutes that, for example, placed a commercial entity under direct executive

branch control, stated that the entity possessed sovereign immunity, and made the State directly liable for judgments against it.”

Colt, 43 N.Y.3d at 499-500 (Wilson, C. J., concurring). It is simply unimaginable that the Founders would tolerate and permit such a situation.

NJ Transit also contends that the maintenance of lawsuits against it in the Pennsylvania and New York state courts offends its dignity, which requires it to assert interstate sovereign immunity to prevent such an affront. Pet. Br., 3, 4-5. It is true that a purpose of interstate sovereign immunity is to protect the State’s dignity as sovereign. *Fed. Mar. Comm’n*, 535 U.S. at 769. To the extent that purpose informs the resolution of the issue of whether NJ Transit is entitled to interstate sovereign immunity when sued in Pennsylvania and New York state courts, see *Colt*, 43 N.Y.3d at 477-479 (Halligan, J., concurring), it initially must be noted that NJ Transit is being sued in *Galette* and *Colt* as a result of the negligent operation of its buses in Pennsylvania and New York. There is no issue involving NJ Transit’s governance or established policies for its bus operators, which challenges might be viewed as an affront to its dignity. But here, nothing more than a mere negligence claim in the operation of its buses by its employees is present. Why these lawsuits then

should be deemed an affront to NJ Transit's dignity is perplexing and not at all explained by NJ Transit. Surely, there is no affront to NJ Transit's dignity when it is responding to claims its employees were negligent. Indeed, NJ Transit should not be heard to complain about an affront to its dignity when it sends hundreds of buses into Pennsylvania and New York and then is sued in the courts of those States when its bus harms a citizen of Pennsylvania or New York.

If any State's dignity would be affronted, it would be the State of Pennsylvania's or New York's. After all, the applicability of interstate sovereign immunity would prevent Pennsylvania and New York from providing a forum for its citizens when injured in Pennsylvania or New York. That would be an affront to their dignity. As Chief Justice John Marshall stated in *Marbury v. Madison*, 5 U.S. 137, 163 (1803), "[t]he very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection." Preventing this duty from being implemented against NJ Transit would be an affront to the State of Pennsylvania's and New York's dignity.

CONCLUSION

This Court should reverse the Pennsylvania Supreme Court's order in *Galette* and affirm the New York Court of Appeals' order in New Jersey Transit.

Respectfully Submitted

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