

Nos. 24-1021 & 24-1113

IN THE
Supreme Court of the United States

CEDRIC GALETTE, *Petitioner*,

v.

NEW JERSEY TRANSIT CORP., *Respondent*.

NEW JERSEY TRANSIT CORP., ET AL., *Petitioners*,

v.

JEFFREY COLT AND BETSY TSAI, *Respondents*.

**On Writ of Certiorari to the Supreme Court of
Pennsylvania and the New York Court of Appeals**

**BRIEF OF AMICUS CURIAE
AMERICAN ASSOCIATION FOR JUSTICE
IN SUPPORT OF PETITIONER GALETTE AND
RESPONDENTS COLT AND TSAI**

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INTEREST OF AMICUS CURIAE¹

The American Association for Justice (“AAJ”) is a national, voluntary bar association established in 1946 to strengthen the civil justice system, preserve the right to trial by jury, and protect access to the courts for those who have been wrongfully injured. With members in the United States, Canada, and abroad, AAJ is the world’s largest plaintiff trial bar. AAJ members primarily represent plaintiffs in personal injury actions, employment rights cases, consumer cases, and other civil actions. Throughout its 79-year history, AAJ has served as a leading advocate for the right of all Americans to seek legal recourse for wrongful conduct. AAJ addresses this Court regarding the increasingly important issue of when a non-state company, such as Petitioner New Jersey Transit Corporation (“NJ Transit”), can claim to be an “arm of the state” and wrap itself in the interstate sovereign immunity that shields a state from tort liability suits in other states. AAJ submits that, in view of the equal sovereign interests of other states and the deprivation of tort claimants’ right to a remedy, NJ Transit is not entitled to interstate sovereign immunity.

INTRODUCTION AND SUMMARY OF ARGUMENT

1. In the two cases consolidated for this Court’s review, NJ Transit asserted that it is an “arm of the

¹ Pursuant to Rule 37.6, amicus affirms that no counsel for any party authored this brief in whole or in part and no person or entity, other than amicus, its members, or its counsel has made a monetary contribution to its preparation or submission.

state” of New Jersey and therefore shielded from liability lawsuits by interstate sovereign immunity. The Supreme Court of Pennsylvania agreed, but the New York Court of Appeals did not.

That federal question should be answered by the forum court independently. It should not be dictated by the creating state or by the entity itself. Following this Court’s precedents, state courts and the federal circuit courts have developed multifactor tests to arrive at this determination, weighing indicators of whether the state intended to make the entity an arm of the state, which partakes in the state’s immunity, as opposed to a political subdivision, which does not.

The forum court was not obliged to adopt unquestioningly NJ Transit’s characterization of the evidence or to avoid telling New Jersey it was “wrong” in the manner it has set up its state government. That deference might be appropriate if the question were immunity in the state’s own courts. But the Question Presented is whether NJ Transit is entitled to *interstate* immunity. Petitioner argues that New Jersey should be able to strip other courts of jurisdiction over claims arising within their borders, even though it waived immunity for tort suits in its own courts.

To allow an entity’s home state to bestow interstate immunity by fiat invites economic and political self-interest to masquerade as “dignity.” Government officials are politically accountable to the state’s residents and voters, who are most affected by negligent injuries inflicted within the state’s borders. But those officials are largely unaccountable to the victims and potential victims of accidents occurring elsewhere.

The legal obligation to prevent negligent injury and compensate its victims can be seen as expensive, leading some to pressure lawmakers to shift the burden of those costs to victims of accidents occurring in other states. Demands for a bigger immunity umbrella to shield arm-of-the-state entities will continue to grow, leading to an arms race in which states compete to immunize their own favored entities at the expense of victims injured by those entities in other states. For example, a major manufacturing corporation might make a corrupt payment to state leaders in exchange for arm-of-the-state status that will bestow immunity from suit in the other 49 states. Plainly, the sovereign interests of those states and the rights of victims in those states to legal redress must be taken into account.

2. NJ Transit should not be classified as an arm of the state because the affront to New Jersey's dignity interest by being haled into court in another state is outweighed by the harm to the sovereign interests of the other states, who are owed equal dignity.

The doctrine of state sovereign immunity should be narrowly applied. It is not grounded in the text of the Constitution, but in a common-law maxim, "the King can do no wrong," that has no application in the American legal system. The doctrine persists only to preserve the dignity of the sovereign states. Entry into the Union imposed limits on the states' sovereignty: In place of the absolute independent sovereignty exercised by European monarchs, each State's dignity and authority was limited by the *equal* sovereign authority and dignity of the other States and reciprocal obligations imposed by federalism. One state may not use its

sovereign authority to diminish the sovereign authority and dignity of another state within the other's own territory.

This Court's precedents, then, require courts to balance the creating state's sovereign authority to share its immunity with a state-created entity against the harm to the sovereign authority to hold accountable foreign corporations that do business in the state and negligently cause harm there. The multifactor test must balance the creating state's sovereign dignity against the harm to the equal sovereignty of the forum state.

In this case, the balance is clear. On the one hand, New Jersey has already indicated that its dignity is not seriously offended by being required to respond in court to claims for personal injury damages. The New Jersey Tort Claims Act waived the state's sovereign immunity and consented to suits arising out of vehicular accidents and similar types of claims. As Petitioner concedes, if NJ Transit is deemed to be an arm of the state, the claims at issue here would be tried in court. Additionally, the New Jersey legislature specifically waived any sovereign immunity defense to claims arising under the Federal Employers Liability Act, the Federal Railroad Safety Act, and several other federal statutes, including in courts outside of New Jersey.

On the other side of the balance, interstate immunity for NJ Transit would significantly harm the sovereign dignity of New York and Pennsylvania, the forum states where the accidents occurred. Like all states, they are vested with the general police power to regulate conduct and provide for the health and

safety of the people within their borders. They have a manifest interest in providing a means of legal redress for wrongful injury to their residents. And their resources are called into action when vehicle accidents occur within their boundaries. To the extent that the responsible party cannot be held accountable for the resulting harms, the burden may fall on government programs. To the extent that the responsible party is immunized, it is sheltered from the financial incentive to invest in safety, making future accidents more likely.

The affront to the dignity of the forum court is significant when a foreign corporation comes into the state to do business but cannot be held accountable for the tortious harms it causes there. This Court has noted the long history of states' efforts to exert personal jurisdiction in that situation and has upheld, as consistent with federalism, statutes conditioning the right to do business in a state on the corporation's consent to jurisdiction in the state's courts.

Petitioner asserts that New Jersey lawmakers intended that the state's sovereign dignity entitles it to infringe upon the sovereignty of New York and Pennsylvania by prohibiting them from adjudicating suits in their courts arising out of accidents caused by NJ Transit within their borders, despite consenting to being sued on the same type of claims in New Jersey courts. It is unlikely that New Jersey's legislature intended such an absurd result.

3. Petitioner is not an arm of the state because New Jersey's dignity interest in avoiding liability for inju-

ries caused by the negligence of NJ Transit is far outweighed by the right of victims to access a court to seek legal remedy for their wrongful injuries.

Like every state's tort claims statute, New Jersey's requires that claims against the state be filed in the state's own courts. Unlike most states, however, New Jersey's venue rule requires that tort claims against the state be filed in the county in which the cause of action arose. If NJ Transit is treated as a non-state corporation, persons injured in accidents in New York or Pennsylvania can sue in the place where the accident occurred or in New Jersey. But if NJ Transit is deemed to be an arm of the state, those claimants cannot sue in New Jersey, and they cannot sue anywhere else either. In Petitioner's view, the very statute that was intended to provide a remedy to victims of governmental negligence would deny access to any court and deny any remedy to them altogether.

The right to access to courts to seek a remedy for wrongful injury is a fundamental tenet of American law. It is grounded in the principle that Coke and Blackstone derived from the Magna Carta: Where there is invasion of a legal right, the law must provide a remedy. This Court adopted that very principle in *Marbury v. Madison* and has adhered to it steadfastly. Indeed, 40 states have enshrined the right to a remedy in their own constitutions.

Although the common law provided no legal right to sue the King for damages, the common law did not deprive the King's subjects of all remedies. Those who suffered tortious injury at the hands of the King's ministers, officers, or agents could sue the responsible person for damages.

The American colonists were closely familiar with two such cases. John Wilkes brought suit against the agents of the Crown who searched his home and the offices of his printer on the basis of an illegal general warrant, along with the minister who issued the warrant, ultimately winning a large jury award. The colonists closely followed the case and its outcome influenced the drafters of the Constitution. The second case, brought by John Entick, also succeeded in recovering a jury award of damages for an illegal search and seizure using a general warrant. The outcome influenced the Fourth Amendment to the U.S. Constitution.

If New Jersey lawmakers had truly intended to make NJ Transit an arm of the state, they would have made provision for victims of NJ Transit's negligence occurring in New York and Pennsylvania—where it sends hundreds of buses and trains daily. Such provisions are not uncommon in the tort claims statutes of other states. For example, Virginia's tort claims act specifically provides an alternative in-state venue for victims of governmental torts outside the Commonwealth. Other states' tort claims statutes similarly provide alternate venues so that victims of torts arising out of state are not deprived of a remedy. The fact that the legislature did not enact similar protection for those injured in other states suggests it did not intend to include NJ Transit under the New Jersey Tort Claims Act. Rather, it is far more likely that lawmakers intended NJ Transit to be held accountable like any political subdivision or private corporation, amenable to suit in the jurisdiction where the cause of action arose.

ARGUMENT

I. WHETHER NJ TRANSIT IS AN ARM OF THE STATE IS TO BE DECIDED INDEPENDENTLY BY THE FORUM STATE.

A. Courts Employ Multifactor Assessments to Determine Whether an Entity Is an “Arm of the State.”

Cedric Galette was injured in Philadelphia when a NJ Transit bus hit the car he was riding in on Market Street. *Galette v. NJ Transit*, 332 A.3d 776, 779 (Pa. 2025). Jeffrey Colt was struck by a NJ Transit bus in Manhattan as he was crossing 40th Street in the crosswalk. *Colt v. New Jersey Transit Corp.*, 264 N.E.3d 774, 776 (N.Y. 2024). Both brought negligence lawsuits against the transportation company in their home states’ courts. In both cases, NJ Transit asserted that it was an “arm of the state” of New Jersey and thus shielded by that state’s sovereign immunity from lawsuits in the courts of other states. The Pennsylvania court agreed. *Galette*, 332 A.3d at 780. The New York Court of Appeals, upon similar analysis, denied NJ Transit’s motion. *Colt*, 264 N.E.3d at 776.

A State, including its agencies, departments, and officers, is shielded from lawsuits in their own courts by the judicial doctrine of state sovereign immunity. *Alden v. Maine*, 527 U.S. 706, 713 (1999). It is similarly shielded from suits in the courts of other states, by interstate sovereign immunity. *Franchise Tax Bd. of California v. Hyatt (Hyatt III)*, 587 U.S. 230, 246–47 (2019).

That immunity does not extend to political subdivisions, like counties and municipalities. *See Moor v. County of Alameda*, 411 U.S. 693, 717–21 (1973). The line of demarcation is not always clear. This Court indicated in *Mt. Healthy* that an entity created by state law, while not part of state government, might partake of its immunity as an “arm of the state.” *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 280 (1977). The Court, weighing Ohio’s own classification of the school district, the degree of control exercised by the State, and the degree of its financial dependence on the State, determined that it was not such an entity. *Id.* at 280–81. This Court thereafter determined that a regional planning authority was not an arm of the state. *Lake Country Ests., Inc. v. Tahoe Reg’l Plan. Agency*, 440 U.S. 391, 401 (1979). Nor was a bistate railway authorized by interstate compact. *Hess v. Port Auth. Trans-Hudson Corp.*, 513 U.S. 30, 32 (1994). Nor a state university. *Regents of the Univ. of Cal. v. Doe*, 519 U.S. 425, 431 (1997).² Nevertheless, the Pennsylvania Supreme Court ventured that this Court “has yet to articulate how a State-created entity qualifies as an arm or instrumentality of a State such that interstate sovereign immunity attaches to that entity.” *Galette*, 332 A.3d at 785.

State courts and the federal circuit courts have distilled from this Court’s precedents varied multifactor tests. The New York Court of Appeals considered: “(1) how the State defines the entity and its functions, (2) the State’s power to direct the entity’s conduct, and

² This Court did not address the arm-of-the-state test in *Hyatt III*.

(3) the effect on the State of a judgment against the entity.” *Colt*, 264 N.E.3d at 781. The court concluded that “New Jersey’s lack of legal liability or ultimate financial responsibility for a judgment” against NJ Transit outweighs the other factors. *Id.* at 781.³

Petitioner suggests very similar factors. See Pet. Br. 18, 26, and 33. Its disagreement with the New York court has more to do with their application and with the court’s independent assessment of the supporting evidence offered by NJ Transit.

B. Petitioner Would Drastically Broaden the Scope of Interstate State Immunity by Requiring Other States to Accept the Home State’s Designation as Conclusive, Increasing the Opportunity for Undue Influence.

Petitioner strenuously and repeatedly argues that the *Colt* court was not entitled to disagree with the NJ Transit’s own characterization and weight of the relevant evidence. By doing so, Petitioner asserts, New York subjected New Jersey to “the indignity of another sovereign’s courts overruling the State’s choices as to how it has shared its sovereignty.” Pet. Br. 16. In Petitioner’s view, “telling a State that it was *wrong* to view its entity as sharing in its immunity . . . is itself no small indignity.” *Id.* at 19. Because “the true arbiter of a State’s own law is the State itself,” courts must

³ The New York Court of Appeals collected decisions setting out the multifactor tests employed by the federal courts of appeals. *Id.* at 780.

“respect[] a State’s express intent rather than overruling the State’s understanding of its own law.” Pet. Br. 20.

On this basis, Petitioner contends that the “New York court erred in deciding on its own “how the State defines the entity and its functions” and the appropriate weight to assign to the evidence presented by NJ Transit. Pet. Br. 24. Instead, Petitioner asserts, even where the text and structure could yield alternative meanings, the New York court was conclusively bound to the construction assigned by NJ Transit. Pet. Br. 24–25. For the New York court to make its own determination, “illustrates the dangers of one State’s court assessing the status of another State’s entity—instead of deferring to the latter’s characterizations.” Pet. Br. 32.

Petitioner’s contention would not be out of place in a dispute whether an entity is the state’s alter ego and thus immune from liability in the state’s own courts absent consent. *E.g.*, *Alden*, 527 U.S. 706. But the Question Presented in this case is “Whether New Jersey Transit is an arm of the State for *interstate sovereign immunity purposes*.” Pet. Br. ii (emphasis added). The forum state, as discussed below, is entitled to equal sovereign dignity, and need not grant undue deference to a sister state’s efforts to shield its own creation from accountability.

To allow an entity’s home state to bestow interstate immunity by fiat invites economic and political self-interest to masquerade as “dignity.” The state’s elected officials, responsive to political realities, have waived sovereign immunity for vehicle accidents when they arise in New Jersey and would largely affect New

Jersey residents and voters.⁴ *See id.* at 10 (indicating that NJ Transit “is suable under the [New Jersey Tort Claims Act]”).

Those officials, however, are largely unaccountable to the victims and potential victims of accidents occurring outside of New Jersey. This Court has wisely cautioned that political accountability can keep lawmakers on the straight and narrow. When “regulation is of such a character that its burden falls principally upon those without the state, legislative action is not likely to be subjected to those political restraints which are normally exerted on legislation.” *South Carolina State Highway Dep’t v. Barnwell Bros., Inc.*, 303 U.S. 177, 185 n.2 (1938).

NJ Transit “sends hundreds of buses, trains, and ferries into and out of Pennsylvania and New York every day.” Galette Pet. for Cert. 14. Unfortunately, but inevitably, negligent actions of NJ Transit employees will result in injury or death to passengers, pedestrians, and other drivers in those states. Petitioner’s supporting *amici* view sovereign immunity as “an immediate and relatively low-cost way for such entities to end [expensive] litigation.” National Governors

⁴ A striking example of the importance of political accountability followed this Court’s decision in *Alden*, that state probation officers seeking federally mandated overtime wages could not sue the State of Maine in state court. The officers’ labor union waged a lengthy lobbying campaign which culminated in new legislation which law waived Maine’s sovereign immunity in future government employee wage dispute suits. *See* Jameson B. Bilborrow, *Keeping the Arms in Touch: Taking Political Accountability Seriously in the Eleventh Amendment Arm-of-the-State Doctrine*, 64 Emory L.J. 819, 841 (2015).

Ass’n Br. 6. *See also* Commuter Rail Coalition Br. 3, 26 (pointing out the expense of purchasing railroad liability insurance); Texas, et al. Br. 18 (noting cost of designing programs “to avoid litigation risk”). Interstate immunity incentivizes lawmakers to shift those costs from favored interests or constituencies inside the state to others outside its borders.

The demand for a bigger immunity umbrella to shield arm-of-the-state state entities will continue to grow as “the growth and fragmentation of state government and the increasing pressure for government to provide additional services . . . have spawned numerous hybrid government entities that are difficult to classify.” *Bilsborrow, supra*, at 858. These entities, like NJ Transport, would prefer that this Court make immunity readily obtainable. “No one, after all, has ever liked greeting the process server.” *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 592 U.S. 351, 380 (2021) (Gorsuch, J., concurring in judgment). As states are persuaded to share their interstate immunity with more entities, other states will likely join the arms race, further diminishing the legal and political accountability of the providers of important services to Americans. A cautionary scenario described by Petitioner’s supporting *amici* poses the example of “one State accepting payment from a product manufacturer to declare it an arm of the State merely for the purpose of immunizing it from product liability law.” Texas, et al. Br. 11.

Plainly, a regime where a state can unilaterally declare an entity it creates immune from litigation arising out of tortious harms in sister states, while

consenting to suits for the same causes of action arising in-state is not sensible and harkens back to the absolute immunity of monarchs gone by. In the modern era in the United States, the interstate immunity of a state-created entity must also take account of immunity's impact on the equal sovereign dignity and authority of the forum state and its impact on the individual's fundamental right to legal remedy for wrongful injury.

II. NJ TRANSIT IS NOT AN ARM OF THE STATE BECAUSE NEW JERSEY'S DIGNITY INTEREST IN IMMUNITY FROM SUIT FOR HARM CAUSED IN OTHER STATES IS OUTWEIGHED BY THE HARM TO THE EQUAL DIGNITY OF OTHER STATES.

A. State Sovereign Immunity Should Be Narrowly Applied and Extended Only When Necessary to Preserve the State's Sovereign Dignity.

"[T]he doctrine that a sovereign could not be sued without its consent," is a judicial doctrine mentioned nowhere in the Constitution, but was "well established in English law" and "universal in the States when the Constitution was drafted and ratified." *Alden*, 527 U.S. at 715–16 (citing 1 William Blackstone, Commentaries *234–235). As well, the immunity of the States is unexpressed, but is implied in "the Constitution's structure, its history, and the authoritative interpretations by this Court." *Id.* at 713.

The doctrine traces back to *Rex non potest peccare*, "a maxim of the law that the King can do no wrong," 1 William Blackstone, Commentaries *238. Justice

Souter correctly stated that this justification “has always been absurd.” *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 95 (1996) (Souter, J., dissenting). The colonists’ famous “recitation in the Declaration of Independence of the wrongs committed by George III made that proposition unacceptable on this side of the Atlantic.” *Id.* The notion that the King is above the law is also foreign to “the Constitution’s structure, its history, and the authoritative interpretations by this Court.” *Alden*, 527 U.S. at 713. In our democracy, there is no prince, but “the *people* . . . are the sovereign,” *United States v. Lee*, 106 U.S. 196, 208 (1886), and it is emphatically the role of the coequal judicial branch “to say what the law is.” *Marbury v. Madison*, 5 U.S. 137, 177 (1803).

Justice Stevens rightly viewed sovereign immunity, atextual and of questionable origin, as a “polite falsehood.” *United States v. Dalm*, 494 U.S. 596, 622 (1990) (Stevens, J., dissenting). That it persists to serve our own nation’s policies “cannot be denied but ought not to be celebrated” or expanded. *Id.* Consequently, this Court has instructed, the doctrine of sovereign immunity should be narrowly confined and waiver under tort claims statutes should be broadly applied. *See, e.g., Block v. Neal*, 460 U.S. 289, 298 (1983) (“The exemption of the sovereign from suit involves hardship enough where consent has been withheld. We are not to add to its rigor by refinement of construction where consent has been announced.”) (quoting *Anderson v. Hayes Constr. Co.*, 153 N.E. 28, 29–30 (1926) (Cardozo, J.)); *Indian Towing Co. v. United States*, 350 U.S. 61, 69 (1955) (Frankfurter, J.) (holding the Court should not “import immunity back into a statute designed to limit it”).

B. The Sole Purpose of State Sovereign Immunity Is to Preserve the Equal Dignity of the Sovereign States.

Petitioner repeatedly states that “the primary function of sovereign immunity is . . . to afford the States the dignity and respect due sovereign entities.” Pet. Br. 17 (quoting *Fed. Mar. Comm’n v. S.C. State Ports Auth. (FMC)*, 535 U.S. 743, 769 (2002)). *See also id.* at 13, 17, & 19. The “founding generation thought it ‘neither becoming nor convenient that the several States of the Union . . . should be summoned as defendants to answer the complaints of private persons.’” Pet. Br. 4–5 (quoting *Alden*, 527 U.S. at 748).

But Petitioner’s argument falls far short of engaging with the Question Presented. Every state has rejected the absolute sovereign immunity familiar to the founding generation. State tort claims statutes generally consent to answering in court for harms in circumstances where a private actor would be subject to a tort action, such as vehicular collisions. *See generally* Miles McCann, *State Sovereign Immunity*, Nat’l Ass’n of Att’ys Gen. (Nov. 11, 2017), <https://www.naag.org/attorney-general-journal/state-sovereign-immunity>.

But the Question Presented here is whether New Jersey Transit is an arm of the State “for *interstate sovereign immunity purposes*.” Pet. Br. ii (emphasis added). For interstate immunity purposes, the dignity accorded to the sovereign states is not the dignity that a European monarch might have commanded. It is both less and more.

This Court in *Hyatt III* observed that during the period between independence and ratification of the

Constitution, “the States considered themselves fully sovereign nations.” 587 U.S. at 237. Under both the common law and the Law of Nations, they were not amenable to suit by private parties in any court, absent consent. *Id.* at 238–39 (internal quotes omitted).

Upon entry into the Union, “the Constitution affirmatively altered the relationships between the States, so that they no longer relate to each other solely as foreign sovereigns. *Id.* at 245. In place of the absolute and independent sovereignty of nations, the Union is based on the “fundamental principle of *equal* sovereignty among the States.” *Id.* at 246 (quoting *Shelby County v. Holder*, 570 U.S. 529, 544 (2013)) (emphasis in original). “Each State’s *equal* dignity and sovereignty under the Constitution implies certain constitutional limitation[s] on the sovereignty of all of its sister States.” *Id.* at 245 (emphasis added). The Constitution “implicitly strips States of any power they once had” to disregard the immunity of other states. *Id.* at 247. Rather, equal sovereignty entails “reciprocal responsibilities” owed to and owed by each state to the others. *Id.* at 246.

The Question Presented in the cases before this Court today is the corollary of that addressed in *Hyatt III*. There, the Court held that the forum state is required to recognize the sovereign immunity of the alleged offending state. Here, the offending state asks whether its own immunity entitles it to disregard the sovereign dignity and authority of the forum states by negating a suit to hold an entity liable for harms it caused within the borders of the forum states. The an-

swer must be no. New Jersey must accord to Pennsylvania and New York “equal dignity and sovereignty,” *Id.* at 245–46, no more but no less.

C. The Dignity Interest of a State That Has Caused Harm in Another State Is Outweighed by That State’s Interests in Exercising Sovereign Authority over Activities Within Its Borders.

Petitioner contends that it must be held to be an arm of the state, because “telling a State that it was *wrong* to view its entity as sharing in its immunity” is “no small indignity.” Pet. Br. 19. But respect for sovereign dignity in our constitutional system is not a one-way street governed by one state’s fiat. Federalism imposes “reciprocal obligations.” to give effect to each state’s sovereignty. *Hyatt III*, 587 U.S. at 246. One state cannot be allowed to expand its own sovereignty by conferring interstate immunity on its own created entity at the expense of other states’ “equal dignity and sovereignty under the Constitution.” *Id.* at 245. Stated another way, the sovereignty of New York and Pennsylvania impose “certain constitutional limitation[s] on the sovereignty of all of [their] sister States,” including New Jersey’s authority to freely grant interstate sovereign immunity. *Id.* (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 293 (1980)).

Thus, *Hyatt III* requires courts to add an important consideration to the multifactor balancing test. If the value of preserving the dignity of New Jersey outweighs the harm to the sovereign dignity and authority of Pennsylvania and New York, that balance

favors NJ Transit’s status as an arm of the state. In this case, allowing NJ Transit to evade accountability for the harms caused by its accidents in Pennsylvania and New York would be an affront to the sovereign authority and dignity of those states that far outweighs the slight suffered by New Jersey.

1. New Jersey Itself Has Placed Lesser Value on Avoiding the “Indignity” of Defending the Acts of NJ Transit Employees Against Claims of Wrongful Injury.

First, New Jersey views the prospect of being haled into court by private parties to answer for vehicular accidents caused by its employees with considerably less indignity than Blackstone’s English King. The legislature has already waived New Jersey’s sovereign immunity for precisely the kind of tortious harms alleged in *Galette* and *Colt*.

The New Jersey legislature has also signaled it is not affronted by the prospect that individuals might sue NJ Transit in the courts of other states. Under the New Jersey Transit Corporation Employee Protection Act, NJ Transit may not assert sovereign immunity for claims “in State or federal court” under the Federal Employers Liability Act, the Federal Railroad Safety Act, or several related laws.⁵

⁵ The Federal Employers Liability Act, for example, specifically provides that suit may be brought in federal district court or state court where the cause of action arose. 45 U.S.C. § 56.

2. *The Dignity Interests of Pennsylvania and New York, as States Where the Tortious Harms Occurred, Greatly Outweigh New Jersey's Dignity Interest.*

On the other side of the balance, sovereign states are vested with general police power so that “the regulation of health and safety matters is primarily, and historically, a matter of local concern.” *Hillsborough County v. Automated Med. Labs., Inc.*, 471 U.S. 707, 719 (1985). This Court has repeatedly recognized “the legitimate and substantial interest of the State in protecting its citizens.” *Farmer v. United Bhd. of Carpenters & Joiners*, 430 U.S. 290, 302–04 (1977).

A state has “manifest interest in providing effective means of redress for its residents.” *McGee v. Int’l Life Ins. Co.*, 355 U.S. 220, 223 (1957). Indeed, this Court has pronounced it “the duty of every State to provide, in the administration of justice for the redress of private wrongs” under the. *Missouri Pac. Ry. Co. v. Humes*, 115 U.S. 512, 521 (1885).

Tort lawsuits also serve as an important tool for regulating potentially harmful conduct within the state’s borders, providing financial incentives for others to invest in safety and prevent future harms. See *Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504, 521 (1992) (“The obligation to pay compensation can be, indeed is designed to be, a potent method of governing conduct and controlling policy.”) (internal quotes omitted).

As a matter of “interstate federalism,” this Court has recognized, the state where the tortious harm occurred, has a “significant interest” in “providing [its]

residents with a convenient forum for redressing injuries inflicted by out-of-state actors’ as well as enforcing [its] own safety regulations.” *Ford Motor Co.*, 592 U.S. at 368 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473 (1985)).

The substantial weight of that interest was made clear by this Court in *Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122 (2023). Justice Gorsuch reviewed the historical efforts of states to gain jurisdiction over foreign corporations that entered the state to do business. “As the use of the corporate form proliferated in the 19th century . . . [c]orporations chartered in one State sought the right to send their sales agents and products freely into other States.” *Id.* at 129. But “when confronted with lawsuits in those other States, some firms sought to hide behind their foreign character,” asserting they could not be sued in the courts where the harm occurred. *Id.* at 129–30. “Lawmakers across the country soon responded to these stratagems” by demanding that outside corporations seeking to do business in the state consent to being sued there. *Id.* at 130. The Court upheld such efforts as consistent with “the very nature of the federal system that the Constitution created and in numerous provisions that bear on States’ interactions with one another. *Id.* at 154. It was, after all, “a fundamental aim of the Constitution” to “foster[] the creation of a national economy and avoid[] the every-State-for-itself practices that had weakened the country under the Articles of Confederation.” *Id.* at 157.

In the balance of factors as to whether a state-created entity ought to be granted arm-of-the-state immunity, the interests of the state where the damage

occurred must be accorded the greater weight. As Chief Justice Wilson of the Appellate Division pointed out:

Applying sovereign immunity to bar New York's courts from hearing a case concerning injury to one of its own residents that occurred within its own territory would deny an essential element of New York's own sovereignty, while not protecting any core function of New Jersey's.

Colt, 264 N.E.3d at 793 (Wilson, C.J., concurring).

III. NJ TRANSIT IS NOT AN ARM OF THE STATE BECAUSE NEW JERSEY'S DIGNITY INTEREST IN AVOIDING LIABILITY FOR INJURIES CAUSED BY THE NEGLIGENCE OF NJ TRANSIT IS FAR OUTWEIGHED BY THE RIGHT OF VICTIMS TO SEEK LEGAL REMEDY FOR WRONGFUL INJURY.

Another factor must be taken into account in determining whether an entity should be shielded by state sovereign immunity: The impact on the individual's right to seek legal remedy for wrongful injury. The fact that arm-of-the-state designation would deprive the injured parties of any remedy at all strongly suggests that New Jersey did not intend to immunize NJ Transit.

A. Deeming NJ Transit to Be an Arm of the State Would Deprive Accident Victims Injured in Out-Of-State Accidents of Access to Any Court to Obtain Legal Redress.

Like all state tort claims statutes, the New Jersey Claims Act defines the scope of the state’s consent to be sued and the procedural requirements for such lawsuits. It is undisputed that the negligent actions of NJ Transit’s employees in these cases “are ministerial actions that are not afforded immunity under the New Jersey Tort Claims Act.” *Galette*, 332 A.3d at 790; *see also Colt v. New Jersey Transit Corp.*, 169 N.Y.S.3d 585, 589 (App. Div. 2022) (same).

The applicable venue provision requires that plaintiffs file actions against the state in the superior court “in the county in which the cause of action arose.” N.J. Ct. R. 4:3-2(a).⁶ Consequently, as the New York Appellate Division explained, if NJ Transit were deemed to be an arm of the state, plaintiffs would have a legal right of action that they can file *only* in New Jersey superior court. *Colt*, 169 N.Y.S.3d at 589. But due to the venue requirement, “plaintiffs cannot commence an action in New Jersey because the cause of action arose outside its borders.” *Id.* Ironically, the result of applying the state’s waiver of sovereign immunity to NJ Transit would result in complete immunity. Plaintiffs Cedric Galette and Jeffrey Colt would have

⁶ This venue rule applies to claims against “public agencies,” which includes the state. *J. J. Nugent Co. v. Sagner*, 376 A.2d 945 (N.J. App. Div. 1977); *Doyle v. Schroeter*, 465 A.2d 583 (N.J. Law Div. 1983).

a cognizable right of action that they cannot file in New Jersey and cannot file anywhere else. It is an outcome that the Appellate Division properly termed “absurd.” *Id.* at 591.

B. Right to Legal Remedy Is a Fundamental Right.

The principle that for every legal wrong the law must provide a remedy is a bedrock of English common law, an essential mandate of the Constitution of the United States, and a widely adopted guarantee of state constitutions. Because vesting NJ Transit with state immunity would violate this fundamental right, it is unlikely the New Jersey legislature would have so intended.

Edward Coke was “widely recognized by the American colonists ‘as the greatest authority of his time on the laws of England.’” *Payton v. New York*, 445 U.S. 573, 594, 594 n.36 (1980) (quoting A.E. Dick Howard, *The Road from Runnymede* 119 (1968)). His explication of the Magna Carta, asserted:

[E]very subject of this realm, for injury done to him in goods, lands, or person . . . may take his remedy by the course of law, and have justice, and right for the injury done to him, freely without sale, fully without any denial, and speedily without delay.

Edward Coke, *The Second Part of the Institutes of the Laws of England* 55–56 (Brooke 5th ed. 1797).

This principle was well-known to those who crafted the Constitution. Indeed, the Fifth Amendment guarantee of due process is itself an “affirmation of Magna Charta according to Coke.” *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 29 (1991) (Scalia, J., concurring).

William Blackstone was “the preeminent authority on English law for the founding generation.” *Alden*, 527 U.S. at 715. Among the “absolute rights” of all persons, Blackstone declared, was that of personal security of life and limb. 1 William Blackstone, *Commentaries* *125, *129–30. “[T]he principal aim of society is to protect individuals in the enjoyment of those absolute rights.” *Id.* at *124. It was the obligation of the common-law courts to ensure that “where there is a legal right, there is also a legal remedy, by suit or action at law, whenever that right is invaded.” 3 William Blackstone, *Commentaries* *23.

Chief Justice John Marshall restated Blackstone’s principle as a foundational principle of the new constitutional government:

“[I]t is a general and indisputable rule, that where there is a legal right, there is also a legal remedy by suit or action at law whenever that right is invaded[] . . . for it is a settled and invariable principle in the laws of England that every right, when withheld, must have a remedy, and every injury its proper redress.” . . . The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if

the laws furnish no remedy for the violation of a vested legal right.

Marbury, 5 U.S. at 163 (quoting 3 William Blackstone, Commentaries at *109). Marshall declared:

The 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.

Id.

This Court has adhered to this principle as a constitutional command. “[T]he right of access to courts for redress of wrongs is an aspect of the First Amendment right to petition the government.” *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883, 896–97 (1984). It is among “the rights and freedoms so fundamental to liberty that they cannot be bargained away,” even with a state government employer. *Borough of Duryea v. Guarnieri*, 564 U.S. 379, 386 (2011). *See also id.* at 387 (collecting cases). This Court has located the fundamental right of access to the courts to seek legal redress in multiple provisions of the Constitution. *Christopher v. Harbury*, 536 U.S. 403, 415 n.12 (2002).

In addition, as Texas Supreme Court Chief Justice Phillips points out, 40 states have enshrined in their state constitutions express guarantees of the right to seek legal remedy for legal wrongs, patterned on the commentaries of Coke and Blackstone. *See* Thomas R. Phillips, *The Constitutional Right to a Remedy*, 78 N.Y.U. L. Rev. 1309, 1320–22 (2003). *See also* Paul Blakeslee, “*Certain Remedy Afforded for Every*

Wrong”: State Constitutional Right-to-Remedy Provisions as a Vehicle for Climate Litigation, 104 B.U. L. Rev. 1829, 1857–61 (2024) (setting out the full text of the relevant state constitutional provisions of the 40 states).

C. The Fact That New Jersey Did Not Alter Its State Tort Claims Venue Rule to Ensure Access to a Remedy for Out-of-State Claimants Indicates That New Jersey Did Not Intend NJ Transit to Be an Arm of the State.

The advocates of immunity may reject the notion that the constitutional right to a remedy has any bearing here. Because the King can do no wrong, an aggrieved subject has no legal claim and is owed no remedy by the sovereign. The argument is only partially correct. The subject who suffered harm could not hale his King into court to demand damages. But it is not true that the King’s subject was left with no remedy at all. Following his declaration that the government is duty-bound to provide protection of the law for one who receives an injury, Chief Justice Marshall added: “In Great Britain the king himself is sued in the respectful form of a petition, and he never fails to comply with the judgment of his court.” *Marbury*, 5 U.S. at 163.

The same common-law history that pronounced that the King could not be sued in his own courts devised a workaround that preserved some remedy for the wrongfully injured subject.

As Justice Stevens observed, “British subjects found a gracious means of compelling the King to obey

the law.” *Will v. Michigan Dep’t of State Police*, 491 U.S. 58, 87–88 (1989) (Stevens, J., dissenting). Although the King himself could not be brought into court to respond in damages, ministers, officers, and agents of the Crown could. See Herbert Barry, *The King Can Do No Wrong*, 11 Va. L. Rev. 349, 356 (1925). On the eve of the American Revolution, the colonists were captivated by two such cases.

In 1762, the *North Briton* newspaper published an anonymous article harshly criticizing the Prime Minister’s address to Parliament and the administration’s policies. Secretary of State Lord Halifax issued a general warrant directing the King’s messengers to search the offices of the printer and publisher. They also searched the house and seized the papers of John Wilkes, a popular member of the opposition party in Parliament and the author of the offending article. Wilkes and the printer sued for trespass, alleging the illegality of the general warrant. A jury returned a verdict in Wilkes’ favor, awarding £1,000 against Robert Wood, one of the messengers who made the search, and £4,000 against Lord Halifax himself. See *Huckle v. Money*, 2 Wils. 205, 95 Eng. Rep. 768 (C.P. 1763); *Wilkes v. Wood*, Lofft 1, 98 Eng. Rep. 489 (C.P. 1763); *Boyd v. United States*, 116 U.S. 616, 626–27 (1886); see Thomas Y. Davies, *Recovering the Original Fourth Amendment*, 98 Mich. L. Rev. 547, 562–65 (1999).

The American colonists were captivated. The *Wilkes* case “was probably the most famous case in late eighteenth century America, period.” Akhil Reed Amar, *Fourth Amendment First Principles*, 107 Harv. L. Rev. 757, 772 (1994). Accounts appeared in newspapers and pamphlets throughout the colonies. See Eric

Schnapper, *Unreasonable Searches and Seizures of Papers*, 71 Va. L. Rev. 869, 876 n.38 (1985).

A related case involved John Entick, author of the *Monitor* newspaper, who also was the victim of a general warrant issued by the Secretary of State authorizing the search of Entick's house and seizure of his papers and other property with no charge of wrongdoing. Like Wilkes, he successfully sued the officials responsible for trespass. *Entick v. Carrington*, 95 Eng. Rep. 807 (C.P. 1765). Lord Camden's opinion for the court upholding the verdict as "perhaps the most important of all constitutional law cases to be found in the law reports of England; for it gave security under the law to all who may be injured by the torts of government servants." E.C.S. Wade, *Liability in Tort of the Central Government of the United Kingdom*, 29 N.Y.U L. Rev. 1416, 1416–17 (1954). Its propositions were in the minds of those who framed the fourth amendment." *Boyd*, 116 U.S. at 626–27.

The "understanding of sovereign immunity shared by the States that ratified the Constitution," *Hyatt III*, 587 U.S. at 236, grounded in the *Wilkes* and *Entick* cases, was that respecting the immunity of the sovereign did not require that the victims of governmental torts be deprived of legal redress altogether. This should be all the more compelling in the United States, where the people themselves are the true sovereigns. *Lee*, 106 U.S. at 208. In England, the right to a remedy was preserved by allowing the agents of the Crown to answer in court for the King. In the United States, by virtue of the Federal Tort Claims Act, the federal government steps in to answer for the negligence of the government's employees.

Petitioner suggests to this Court that New Jersey lawmakers, without so much as a footnote in the legislative history, intended to create two classes of persons injured by NJ Transit's negligence. Those injured in New Jersey could freely sue NJ Transit in New Jersey courts because sovereign immunity was waived. Others, who may have suffered the same harms in an identical accident outside of New Jersey cannot sue NJ Transit in New Jersey or anywhere else. New Jersey's legislators could not have intended such an absurd result.

If New Jersey lawmakers had truly intended to make NJ Transit an arm of the state, they would have made provision for victims of NJ Transit's negligence occurring in New York and Pennsylvania—where it sends hundreds of buses and trains daily. Such provisions are not uncommon in the tort claims statutes of other states. For example, Virginia's tort claims act specifically provides: "If the claimant resides outside the Commonwealth and the act or omission complained of occurred outside the Commonwealth, [the preferred venue is] the City of Richmond." Va. Code Ann. § 8.01-257. Nebraska's tort claims act similarly provides: "Suits shall be brought in the district court of the county in which the act or omission complained of occurred or, if the act or omission occurred outside the boundaries of the State of Nebraska, in the district court for Lancaster County." Neb. Rev. Stat. Ann. § 81-8,214. Other states more broadly ensure that persons with claims against the state are not deprived of their remedy by identifying alternate venue, typically the county of the state capital. *E.g.*, Okla. Stat. Ann. tit. 51, § 163 ("Venue for actions against the state within the scope of this act shall be either the county in which

the cause of action arose or Oklahoma County”); Utah Code Ann. § 63G-7-502 (designating Salt Lake County or “the county in which the claim arose” as the venues of actions brought under the Governmental Immunity Act of Utah). Other states have enacted similar provisions. *See, e.g.*, Fla. Stat. Ann. § 47.011; La. Stat. Ann. § 13:5104 N.M. Stat. Ann. § 41-4-18; 42 Pa Cons Stat § 8523(a); Wyo. Stat. Ann. § 1-39-117(b).

The fact that the legislature did not enact similar protection for those injured in other states suggests it did not intend to include NJ Transit under the New Jersey Tort Claims Act. Rather, it is far more likely that lawmakers intended NJ Transit to be held accountable like any political subdivision or private corporation, amenable to suit in the jurisdiction where the cause of action arose.

CONCLUSION

For the foregoing reasons, the American Association for Justice asks this Court to reverse the Pennsylvania Supreme Court’s judgment in *Galette* and affirm the New York Court of Appeals’ judgment in *Colt*.

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