Nos. 24-1021, 24-1113

IN THE

Supreme Court of the United States

CEDRIC GALETTE, PETITIONER

v.

NEW JERSEY TRANSIT CORPORATION

NEW JERSEY TRANSIT CORPORATION, ET AL., PETITIONERS

v.

JEFFREY COLT AND BETSY TSAI

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

REPLY BRIEF FOR THE NEW JERSEY TRANSIT PETITIONERS

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REPLY BRIEF FOR THE NEW JERSEY TRANSIT PETITIONERS

INTRODUCTION

Overwhelming evidence shows that NJ Transit is an arm of New Jersey, and Plaintiffs cannot dispute most of it. Plaintiffs cannot dispute that the New Jersey Legislature intended NJ Transit to be a State arm in form and substance—placing it in the Executive Branch, subjecting it to myriad restrictions applicable only to state agencies, commanding it to waive sovereign immunity as to certain federal claims, and more. Nor can they seriously dispute the Governor exercises control over NJ Transit, not just by appointing its voting members (some removable at will), but by holding veto power over all their actions. And Plaintiffs cannot dispute that the Legislature structured NJ Transit to be financially dependent on the State, limiting its abilities to increase revenue, cut costs, or issue debt. As the Pennsylvania Supreme Court recognized, NJ Transit is an arm of the State under established law.

That result makes sense. States have discretion in creating an arm—*i.e.*, an entity sufficiently connected to the State to be eligible for its immunity. So to decide whether a State sought to and objectively did create a state entity, rather than a private or municipal one, courts consider "the relationship between the State and the entity," *Regents of the Univ. of Cal. v. Doe*, 519 U.S. 425, 429 (1997)—as revealed by textual and structural evidence of intent, sovereign political control, and financial integration, see *id.*, at 429-431; *Hess v. Port Auth. Trans-Hudson Corp.*, 513 U.S. 30, 44-46 (1994); *Lake Country Estates v. Tahoe Reg'l*

Plan. Agency, 440 U.S. 391, 401-402 (1979); *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 280 (1977); *P.R. Ports Auth. v. Fed. Mar. Comm'n*, 531 F.3d 868, 873-874 (CADC 2008) (*PRPA*). In that light, NJ Transit is like other state agencies, and unlike any municipality or private company. Allowing a sister-state court, misunderstanding New Jersey law, to tell New Jersey it failed to share its sovereignty flouts basic interstate-immunity principles.

Perhaps mindful that settled law dismantles their case, Plaintiffs demand this Court discard a staggering amount of precedent. But even as Plaintiffs attack decades of jurisprudence, they cannot agree on a replacement, whether a magic-words test turning on corporate status, formal financial separation, and/or "traditional government functions." For good reason: none of their theories accord with original understanding or first principles, and all would disrupt longstanding practice on the ground. Much more is needed to justify that upheaval, and Plaintiffs' multifarious theories cannot come close.

ARGUMENT

I. Plaintiffs' Novel Tests Fail.

Plaintiffs' efforts to avoid the result of this Court's precedents by overturning them all fall short. Rather than consider an entity's substance—by assessing text and structure, sovereign control, and financial integration—Plaintiffs advocate for a mélange of wooden replacement rules. But see *Cummings v. Missouri*, 71 U.S. 277, 325 (1866) ("The Constitution deals with substance, not shadows."). Some amici treat separate personhood (via corporate or sue-and-be-sued status) as dispositive. See Baude.Br.2-26. Colt relies on corporate status but only if a corporation is formally

liable for its own debts. Br.24. And Galette asks whether the entity has "(1) sole responsibility for paying judgments entered against it and (2) operational independence from its state creator, including sue-and-be-sued authority." Br.12; compare Colt.Br.26 (arguing "sue-and-be-sued clauses aren't dispositive," but "corporate form is"). But none of these variegated tests work, because the premise is wrong: the view that government corporations always lack sovereignty contravenes history and precedent, upending settled sovereign expectations and producing chaos alike.

1. A government entity's corporate status has never been dispositive.

The Founding Generation did not view corporate status that way. Plaintiffs' argument rests principally not on primary sources, but on two single-judge concurrences. See *Springboards to Educ. v. McAllen Indep. Sch. Dist.*, 62 F.4th 174, 187-199 (CA5 2023) (Oldham, J., concurring); *PRPA*, 531 F.3d, at 881-884 (Williams, J., concurring). The Founding-Era sources, by contrast, recognized that although corporations were *often* inferior to the sovereign, special public corporations—essentially, corporations created "by special law, for the furtherance of governmental objectives," *Lebron v. Nat'l R.R. Passenger Corp.*, 513 U.S. 374, 399 (1995)—could be sovereign.

To start, pre-modern sources described the sovereign *itself* as a special corporation. NJT.Br.44 n.14. Sovereign-affiliated trading corporations like the British East India Company enjoyed some measure of sovereign immunity in England and, more saliently, abroad. See *Sec'y of State v. Sahaba*, [1859] 15 Eng. Rep. 9, 29 (PC) (citing, *e.g.*, *Nabob of Arcot v. E. India Co.* [1793] 29 Eng. Rep. 841 (Ch.)). As for the Founding-Era debate about States' corporate status,

the key distinction was not between corporations and non-corporations, but between special, sovereign entities and "*mere* Corporations," "corporations *for local purposes*," or "corporations *dependent on the Genl. Legislature*," with "*only* corporate rights." See 1 *Records of the Federal Convention of 1787*, at 263, 287, 357, 474 (M. Farrand ed., 1911) (emphases added); see also *Chisholm v. Georgia*, 2 U.S. (2 Dall.) 419, 447-448 (1793) (Iredell, J., dissenting) (distinguishing States from "subordinate corporations" with more "limited" powers). So while all agree that a "mere corporation[]" is less than sovereign, see *Springboards*, 62 F.4th, at 191-193 (Oldham, J., concurring) (citing examples), it does not follow that the bare term "corporation" does identical work.

This Court's early cases thus rejected a rule that corporate status created categorical separation from a sovereign. While not on sovereign immunity, *Dartmouth College v. Woodward* observed corporate status "neither gives nor prevents" governmental status. 17 U.S. (4 Wheat.) 518, 638 (1819) (Marshall, C.J.). Justice Story's concurrence acknowledged the existence of truly "public" corporations, in which "the government have the sole right … to regulate, control, and direct the corporation," and where "its whole interests and franchises are the exclusive property and domain of the government itself"—presaging the factors this Court assesses today. *Id.*, at 671-672 (Story, J., concurring). And *Osborn v. Bank of the United States* held the Bank partook of U.S. sovereignty despite its corporate form for intergovernmental-tax-immunity purposes, 22 U.S. (9 Wheat.) 738, 862-863 (1824) (Marshall, C.J.)—a holding relevant here, since tax immunity asks if the entity is "so closely connected to the Government that

the two cannot realistically be viewed as separate," *United States v. New Mexico*, 455 U.S. 720, 735 (1982).

This Court's eighteenth-century rulings regarding state-connected banks are not to the contrary. There was an obvious reason why States were not imbuing banks with their sovereignty: States are not allowed to issue bills of credit, U.S. Const. art. I, §10, and courts assume legislative bodies intend to follow the Constitution. *E.g.*, *Briscoe v. Bank of Ky.*, 36 U.S. (11 Pet.) 257, 326-327 (1837); *Bank of Ky. v. Wister*, 27 U.S. (2 Pet.) 318, 324 (1829). And the case Plaintiffs invoke most, *Bank of the United States v. Planters' Bank of Georgia*, involved a state-chartered bank for which the State's role was "merely as a corporator," with private trading "partner[s]" and "no other power in the management of the affairs of the corporation." 22 U.S. (9 Wheat.) 904, 907-908 (1824). But "corporator" just meant a "member of a corporation." *Corporator*, Noah Webster, Am. Dictionary of the English Language (1828)—having an "interest" by holding "shares" alongside other shareholders. 22 U.S., at 907-908. That fails any arm-of-the-State test.

History and tradition remained contrary to Plaintiffs' theory as the years passed. In 1901, this Court held that Illinois was a proper defendant for original-jurisdiction purposes in a suit against "the Sanitary District of Chicago," even as the District was a "public corporation": it was "an agency of the state … whose existence and operations are wholly within the control of the State." *Missouri v. Illinois*, 180 U.S. 208, 242 (1901); see also *New York v. New Jersey*, 256 U.S. 296, 302 (1921) (state-created sewerage district was "such a statutory, corporate agency of the state that [commissioners'] action … must be treated as that of the state itself"); 1903 N.J. Laws p.780, 787 (corporate

status, "separate account" and "indebtedness" for sewerage district); cf. Baude.Br.24 (tying sovereign immunity to original jurisdiction). Nor did *Lincoln County v. Luning*, 133 U.S. 529 (1890), suggest that corporate status was dispositive, see Colt.Br.20-21; it simply recognized that localities cannot partake of States' immunity, because they are "part of the state only in that remote sense in which any city, town, or other municipal corporation may be said to be." 133 U.S., at 530; see NJT.Br.44-46 (explaining why localities' ineligibility turns not on corporate status but distinct territorial and political characteristics).

So too for sue-and-be-sued clauses. See Colt.Br.26-27; Galette.Br.27-29. *Porto Rico v. Rosaly y Castillo* confirmed Puerto Rico enjoyed sovereign immunity despite such a clause, finding the "grant of corporate existence, private or public" could not resolve the sovereign-immunity question, and instead considering "the nature and character of the government" and drafter's "inten[t]." 227 U.S. 270, 274-275, 277 (1913). *State Highway Commission v. Utah Construction Co.* followed, assessing a sue-and-be-sued entity and finding a suit against it "in effect" "against the state" and thus barred. 278 U.S. 194, 199-200 (1929); see also NJT.Br.42-43, 46-47. Plaintiffs offer no answer.

Substance, rather than formal corporate status, remained the rule as efficiency-minded governments began experimenting more with the corporate form in the 1900s. NJT.Br.41-42; *e.g.*, *Sloan Shipyards Corp. v. U.S. Shipping Bd. Emergency Fleet Corp.*, 258 U.S. 549, 564, 567 (1922) ("it cannot matter that the agent is a corporation" when determining whether it "embodie[d] the United States"); *Fed. Land Bank of St. Louis v. Priddy*, 295 U.S. 229, 231 (1935) (whether U.S. instrumentalities enjoy sovereign immunity is

"a question of []congressional intent"); *Keifer & Keifer v. Reconstruction Fin. Corp.*, 306 U.S. 381, 389 (1939) (similar); *Cherry Cotton Mills v. United States*, 327 U.S. 536, 539 (1946). *Compare* Colt.Br.21-22 & n.4. That remains the approach, in contexts beyond immunity too. *Biden v. Nebraska*, 600 U.S. 477, 491 (2023); *Dep't of Transp. v. Ass'n of Am. R.R.s*, 575 U.S. 43, 54-55 (2015) (*AAR*); *Lebron*, 513 U.S., at 397. So *Mt. Healthy* followed from a long tradition of assessing sovereign entities' substance rather than corporate form, and that tradition has continued unbroken.

2. Plaintiffs have not offered history nearly strong enough to upend precedent and produce disruption across the States. Despite expressly seeking to overrule precedent, Plaintiffs never establish that *Mount Healthy, State Highway Commission,* or their predecessors are "egregiously wrong" or unworkable. *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 268 (2022). Instead, stare decisis is particularly powerful because these cases were the backdrop against which sovereigns were "especially likely to rely" in "ordering their affairs," cf. *Kimble v. Marvel Entm't*, 576 U.S. 446, 455-457 (2015)—with States experimenting with corporate status without thinking they were sacrificing sovereignty. Myriad agencies were thus enacted as government corporations—from state Departments of Corrections and Departments of Transportation to the Louisiana Cabinet—despite the obvious intent that they be sovereign. NJT.Br.42; see Baude.Br.11 (recognizing their rule "might no longer" reflect real-world practice).

Nor has Colt identified a solution to this profound problem. Colt invents a rule to deprive of immunity any corporation with its own bank account. Br.16-17,

23-24. But that rule—gerrymandered to capture NJ Transit but to exclude some (though not all[1]) agencies like the Louisiana Cabinet—is groundless. It does not come from historical evidence, which even on Colt's telling is about corporate status. Br.18-23. Nor does it make sense; even leaving aside that States could draft around this rule, it authorizes damages claims against even an entity financially dependent on its creator like NJ Transit, and whose creator owns its property and controls its actions.

There is a bigger problem still: to support this test, Plaintiffs rely on a distinct real-party-in-interest doctrine about *judgments*, not *entities*. *E.g.*, *Hopkins v. Clemson Agric. Coll. of S.C.*, 221 U.S. 636, 646-649 (1911). Sovereign immunity doctrine establishes that even actions against non-State entities (such as *Ex parte Young* defendants) are still barred if, *inter alia*, a damages order is "enforceable against the State." Colt.Br.23-24; *VOPA v. Stewart*, 563 U.S. 247, 255 (2011). But that guards against only particular judgments—it does not make an entity immune generally, which is why it works in *Ex parte Young* suits. *VOPA*, 563 U.S., at 255. So on Colt's approach, federal and sister state courts remain free to issue *injunctions* against the Louisiana Cabinet and myriad other agencies, NJT.Br.42—because the entities have "corporate status" and the judgments do not run to the

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[1] Colt never grapples with entities that still fail its rule, like the Illinois Housing Development Authority, 20 Ill. Comp. Stat. Ann. 3805/20; Minnesota Housing Finance Agency, Minn. Stat. Ann. §462A.14; or Texas Department of Housing and Community Affairs, Tex. Gov't Code §2306.071(c), which operate under statutes separating their debts, or even the federal TVA or FDIC, see *Thacker v. Tenn. Valley Auth.*, 587 U.S. 218, 220-225 (2019) (absent sue-and-be-sued clause, TVA "would have enjoyed sovereign immunity from suit").

state treasury. Forget about having to fit *Ex parte Young*—even a "*Doe v. Florida Department of Transportation*" would be fine. So, too, for state-law claims: federal judges in now-allowed diversity suits against distinct-legal-person agencies,[2] *Moor v. Cnty. of Alameda*, 411 U.S. 693, 698 (1973)—not to mention sister-state court judges—could award prospective relief for state-law violations, *contra Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 104-106 (1984), because these would no longer (in their telling) be suits against States at all.

Although Plaintiffs contend this Court must accept that chaos because States sought the benefits of corporate status, that is wrong, and they do not really mean it. Plaintiffs and amici argue that by using the corporate form, States circumvent their own state constitutional limitations, civil-service requirements, and preclusion doctrines, thereby requiring them to take "the bitter with the sweet" and forfeit sovereign immunity too. Baude.Br.26; Colt.Br.4-5, 13. But States can use different formalities (such as "Division of NJ Transit") while still exempting these entities from whatever state law they wish—they control their own law.[3] So (in Plaintiffs' telling) an agency exempt

[2] Amici note NJ Transit once invoked diversity jurisdiction in a single matter twenty years ago. See Baude.Br.24. Assuming this Court confirms NJ Transit is an arm of New Jersey, NJ Transit agrees it could not do so—and it does not now.

[3] Preclusion is a perfect example, *contra* Baude.Br.17-21; States regularly allow agencies to avoid precluding each other without divesting them of sovereignty—as frequently occurs with New Jersey's Public Defender and its Attorney General, or when the Department of Corrections appeals the Civil Service Commission's determination in a personnel matter. *In re Ambroise*, 318 A.3d 75 (N.J. 2024). The sole state-court decision amici cite confirms New Jersey agencies can *all* avoid preclusion

from civil-service requirements has immunity, but one created as a corporation and thus exempt from the same does not. That is no bitter-with-the-sweet regime; it just converts federal arm-of-the-State jurisprudence into a penalty for States that use the *mechanism* of corporate status to achieve these same goals. That is especially untenable where States were operating for (at least) decades under this Court's precedents permitting that choice.

II. The Arm-Of-The-State Test Applies Straightforwardly To NJ Transit.

The traditional arm-of-the-State backdrop against which States have long operated amply encompasses NJ Transit, such that these suits offend New Jersey's "equal dignity and sovereignty," *Franchise Tax Bd. of Cal. v. Hyatt*, 587 U.S. 230, 245 (2019) (*Hyatt III*), by haling its entities into court, whether for monetary or injunctive relief, absent consent. So while no party disputes Plaintiffs could have sued NJ Transit in New Jersey, NJ Transit remains free from coercive process in New York and Pennsylvania.[4]

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in one context—not some special carveout for "corporate" entities. See Baude.Br.17-18 (overlooking NJDOT's presence in consolidated case); see also *id.*, at 20-21 (citing two complaints involving pro-forma notices to agencies with unpaid-tax interests). The State Constitution's debt-limitation regime, which *includes* public corporations like NJ Transit (but not municipalities), N.J. Const. art. VIII, §2, ¶3(a)-(b), is an equally good example of how the State treats NJ Transit as an arm rather than a private company or municipality, and of a fundamentally *internal* choice, not a freestanding marker of sovereignty.

[4] Colt's complaint that NJ Transit must "answer to New York's citizens in New York's courts" given the latter's dignity, Br.2, simply relitigates *Hyatt III*. That result is inherent in the nature

A. Textual And Structural Intent.

While the arm-of-the-State inquiry is a question of federal law, state-law evidence drives this analysis of what the State created under its own law. Overwhelming support exists here. NJ Transit sits in the State's Executive Branch; runs a public-transit system to serve "an essential public purpose"; issues rules with force of law, under administrative-law provisions applicable exclusively to state agencies; adjudicates disputes in fora reserved for state agencies; is suable in contract under a state-law regime that covers only state agencies; enjoys statewide law-enforcement and eminent-domain powers; possesses only state property, and on and on. NJT.Br.7-10. That plainly looks nothing like Greyhound.

Plaintiffs are thus primarily forced to argue that all this renders NJ Transit akin to a municipality, *e.g.*, Galette.Br.25-36; Colt.Br.33-34; but cf. Colt.Br.16-46 (analogizing NJ Transit to private or municipal entities but never settling on either), but to no avail. Initially, that some of NJ Transit's statewide powers overlap with municipalities' makes no difference; what matters is their *scope*. NJ Transit (like the State Police) operates a law-enforcement agency statewide; Newark's police force operates only "within [its] territorial limits." N.J. Stat. Ann. §40A:14-152; see *Lake Country*, 440 U.S., at 401 (assessing whether entity exercises only "slice of state power"). Besides, much of the state-law evidence does not apply to localities; Newark fits nowhere in the Executive Branch, or within the administrative and adjudicative regimes for state agencies. Not only does NJ Transit

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of interstate immunity—the contract States agreed to in forming the Union. See 587 U.S., at 239-247.

walk, talk, and squawk like a state agency rather than a municipality, but the Legislature made plain its intent: it declared NJ Transit "an instrumentality of the State," N.J. Stat. Ann. §27:25-4(a),[5] and delineated federal claims for which it could *not* assert immunity, *id.* §27:25-24.2—showing it believed it gave NJ Transit federal immunity to waive (something municipalities obviously lack).

Plaintiffs' smorgasbord of responses falters. Plaintiffs cannot seriously challenge the state-law evidence of New Jersey's intent, NJT.Br.21-23; Galette instead attacks the notion that express characterizations ever matter, Br.13, 29-32; but see Colt.Br.35 (recognizing this "Court has looked to state-law characterizations," citing *Hess*). But Galette misunderstands the test: no one claims that say-so is sufficient, or that New Jersey could make Prudential its arm simply by affixing a label. Instead, text matters, not only because it can weed out "impostors," NJT.Br.20, but because it helps contextualize these state-law authorities and structures—especially given Galette's argument that a state agency and locality sometimes exercise similar functions. Put otherwise, when a New York court assesses "the nature of the entity created by [New Jersey] law," *Mt. Healthy*, 429 U.S., at 280, it must

[5] Colt's lone counterexample, Br.36-37, does not use this phrase, but instead reflects that political subdivisions can also have their own "instrumentalit[ies]," see N.J. Stat. Ann. §40:14B-20 (municipal water/sewer authorities). Compare, *e.g.*, N.J. Const. art. V, §4, ¶1 (requiring "[a]ll executive and administrative offices, departments, and instrumentalities of the State government" to sit within 20 or fewer "principal departments"); N.J. Stat. Ann. §52:13D-13(a) ("State agency" includes "instrumentalit[ies]," and a "county or municipality shall not be deemed an agency or instrumentality of the State."); *id.* §52:32-40 (same).

interpret those choices with sensitivity to how New Jersey law works, NJT.Br.18-20; *Marshall v. Klebanov*, 902 A.2d 873, 881 (N.J. 2006). Only then can a court assess what federal answer follows from those choices—causing no small indignity if it gets that answer wrong.

Plaintiffs' other responses fail too. Galette cites NJ Transit's independence from the State's Department of Transportation, Br.26-27, but independence from another specific agency is not independence from the sovereign, *e.g.*, N.J. Stat. Ann. §2A:158A-3 (Public Defender); *id.* §11A:2-1 (Civil Service Commission); *id.* §39:2A-4(a) (Motor Vehicle Commission); *id.* §48:2-1(a) (Board of Public Utilities); NJT.Br.32 (discussing state constitutional limit on number of executive departments). Plaintiffs note NJ Transit can choose to hire outside counsel, but see *infra* at 14 (discussing gubernatorial control), disregarding the Legislature's decision that NJ Transit can demand Attorney General representation, N.J. Stat. Ann. §27:25-5(z), which no non-State agency can. It also matters little that NJ Transit is free of some civil-service mandates; the Legislature can exempt agencies from such rules to experiment with efficiency, see *id.* §27:25-2(a)-(b), and NJ Transit remains subject to personnel mandates no private company faces, see *id.* §27:25-15 (reporting); *id.* §52:14-7(a) (in-state-residency). And finally, Colt is just wrong to deny the State could "raid [NJ Transit's] coffers," Br.32: NJ Transit's property is state property, N.J. Stat. Ann. §27:25-16, and the Legislature has plenary power to claw back its appropriations, *e.g.*, 2013 N.J. Laws ch.76, at 3 (de-appropriating $5 million), and sweep NJ Transit's revenues into its General Fund, cf. N.J. Stat. Ann. §39:2A-36(a) (Motor Vehicle Commission); *id.* §55:14K-5.3 (Housing & Mortgage Finance Agency).

B. State Control.

Control also supplies especially powerful evidence. See *AAR*, 575 U.S., at 54-55 (treating control as significant); *Lebron*, 513 U.S., at 397-398; *Nebraska*, 600 U.S., at 490-493; *Auer v. Robbins*, 519 U.S. 452, 456 n.1 (1997); *Arkansas v. Texas*, 346 U.S. 368, 370 (1953); *Missouri*, 180 U.S., at 242. For good reason: if a State controls an entity, it remains democratically accountable for (and thus bound to) that entity, unlike with a locality or private enterprise. *E.g.*, NJT.Br.29; *United States v. Arthrex, Inc.*, 594 U.S. 1, 11-12 (2021). And evidence of control here is overwhelming—more than the Federal Government enjoys over Amtrak, or Missouri over MOHELA. As Plaintiffs cannot refute, the Governor appoints every voting NJ Transit Board member and can remove them for cause—and *ex officio* members at will. *Nebraska*, 600 U.S., at 490 (appointment plus for-cause removal, no discussion of veto); *Lebron*, 513 U.S., at 399 (appointment of majority). Most notably, the Governor can veto *any* actions the NJ Transit Board proposes. NJT.Br.7-9. So it is easy to see why New Jerseyans would hold the Governor to account for NJ Transit's performance, but not the Paramus Mayor's.

Neither of Plaintiffs' responses—that the Governor has insufficient control, or that control matters little—succeeds. Plaintiffs downplay the impact of this appointment-plus-removal-plus-veto regime, but cannot cite a single private or municipal entity subject to such exhaustive gubernatorial controls. Galette cites outlier cases in which a Governor could appoint some outside monitor or exercise removal in extreme cases, or an "episodic" veto for narrow, situation-specific actions in other States. Br.13, 35-36. But Plaintiffs cite nothing subjecting local or private entities to a plenary

appointment, removal, or veto power, let alone all taken together. Bostonians would find it unimaginable if their city's actions took no effect for 10 days to enable the Massachusetts Governor to veto whichever she saw fit—and New Jersey certainly does not treat its localities that way. See *Fraternal Order of Police v. City of Newark*, 236 A.3d 965, 974-975 (N.J. 2020).

Plaintiffs' remaining responses collapse. The claim that the Governor lacks statutory ability to "affirmatively direct NJ Transit … to take any particular action," Colt.Br.38, is misguided: the ability to veto all Board actions, especially combined with his appointment and removal powers, is wholly sufficient. *Kennedy v. Braidwood Mgmt., Inc.*, 606 U.S. 748, 773-774 (2025); see also *First Iowa Hydro-Elec. v. Fed. Power Comm'n*, 328 U.S. 152, 164 (1946) (state veto over federal project would allow State to affirmatively control federal planning). Colt's passing citation (Br.39-40) to *Arthrex* does not help; the problem there was that no Senate-confirmed official *could* reverse PTAB decisions, 594 U.S., at 14-15.[6]

Nor does it matter that the Board members "exercise independent judgment." Colt.Br.38. This Court held this very phrase consistent with political control, in a recent case Plaintiffs do not even mention. *Braidwood*, 606 U.S., at 773-774. Plus, the law actually says Board members must "apply independent judgment in the best interest of the corporation, its mission, and the public," N.J. Stat. Ann. §27:25-4.1(b)(1). That simply confirms NJ Transit must serve

[6] And while this Court is currently assessing whether and when for-cause removal is *permissible* for federal agencies, no one disputes that agencies like the FTC still fall within the Federal Government's *sovereign scope* regardless.

statewide public goals—*i.e.*, to provide effective, efficient public-transit services statewide, see *id.* §27:25-2—rather than private or parochial ones.

Plaintiffs thus have to challenge the importance of control, but their positions (again contrary to precedent) are unavailing. *Hess* does not say control gets the "least weight." Colt.Br.37. *Hess* dealt with the Port Authority, a bistate entity created by "three discrete sovereigns." 513 U.S., at 40. In such a "tri-governmental arrangement," *id.*, at 42, no one State controls the entity, so "[g]auging actual control" can be "uncertain and unreliable," *id.*, at 47. That hardly vitiates more recent precedent dealing with single-State entities, especially given this Court's repeated recognition of the tie between executive control, democratic accountability, and sovereign power.

That this Court's statements about control arose in "other areas of law," Colt.Br.30, does not diminish their relevance. Understanding how government control works is trans-substantive. *E.g.*, *AAR*, 575 U.S., at 54-55 (treating *Lebron* as "necessary instruction" in that nondelegation case despite *Lebron* involving free-speech constraints); *Nebraska*, 600 U.S., at 492-493 (looking to *AAR* and *Lebron* despite neither being about standing); cf. *Hyatt III*, 587 U.S., at 237-240, 243-248 (citing other immunities). *Nebraska* does not "caution[] against this mixing of doctrine," Colt.Br.30; it instead sensibly observed that entities "can count as part of the State for some but not other purposes," 600 U.S., at 493 n.3 (cleaned up); accord NJT.Br.24 (explaining why Legislature calling NJ Transit a "public entity" under NJTCA is not probative for sovereign-immunity purposes). Nor was *Nebraska* about "*parens patriae* standing," Colt.Br.30, which was *unavailable* in that lawsuit against the Federal

Government, *Haaland v. Brackeen*, 599 U.S. 255, 294-295 (2023). It instead reflected a recognition that injury to MOHELA's pocketbook was injury to Missouri's pocketbook, even as Missouri gave MOHELA corporate status and disclaimed its debts, *Nebraska*, 600 U.S., at 489-491; *id.*, at 526-527 (Kagan, J., dissenting), focusing on other evidence of their relationship—like control.

C. Financial Integration.

Financial considerations also support NJ Transit. Recall that the basic goal is to evaluate "the relationship between the State and its creation," *Regents*, 519 U.S., at 431, which includes assessing their financial relationship "legally and practically," *Hess*, 513 U.S., at 51—with extensive entanglement indicating the kind of close relationship a State has with sovereign arms, not private entities. That fits NJ Transit arm-in-sleeve: NJ Transit is financially dependent on New Jersey, having always operated at a sizable deficit, and its statute presupposes that financial dependence. See NJT.Br.34-36. Galette responds that NJ Transit has *some* revenue-raising authority, Br.20, but it faces major state-imposed limits—unlike standard localities or private entities—for issuing debt or negotiating financing, and must rely almost completely on the Legislature or other state entities for financing and to meet inevitable shortfalls. NJ Transit cannot even raise fares or cut services absent serious hurdles, including gubernatorial assent. NJT.Br.34-36.

Plaintiffs' responses are confused. Plaintiffs primarily claim the financial factor asks only whether a sovereign has *formal* financial liability for the entity's judgments and debts. Galette.Br.20-24; Colt.Br.41-46. But they conflate two immunity doctrines. If a private

party sues a putative non-State entity, immunity might attach (1) if the *entity* itself is a sovereign arm, or (2) if a *judgment* against a non-State entity, such as an *Ex parte Young* defendant, nevertheless injures the sovereign. See *supra* at 8-9. Because the latter category necessarily involves no sovereign entity, the primary concern in such cases is the state fisc, and courts ask whether the judgment against this *non-State* entity formally "expend[s] itself on the public treasury." *VOPA*, 563 U.S., at 255; see *Edelman v. Jordan*, 415 U.S. 651, 665 (1974) (equitable, *Ex parte Young* relief unavailable where funds demanded must "inevitably come from" state fisc).

The arm-of-the-State analysis is different. This inquiry asks if an entity *is* sufficiently tied to the sovereign such that litigation would impact the "primary function of sovereign immunity": not the treasury, but "the dignity and respect due sovereign entities." *Fed. Mar. Comm'n v. S.C. State Ports Auth.*, 535 U.S. 743, 769 (2002) (*FMC*).[7] That test—trying to determine the overall sovereign-entity relationship, *Regents*, 519 U.S., at 431—turns on a substantive assessment of the entity, not just a formal financial firewall. Indeed, arm-of-the-State status "does not change from one case to the next," *PRPA*, 531 F.3d, at 873, and cannot depend on whether a plaintiff seeks monetary or equitable relief, *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 58 (1996). So just as an entity's susceptibility to an *injunction* cannot sensibly turn on/off based only on formal financial liability, formal

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[7] Plaintiffs criticize NJ Transit's focus on dignity, *e.g.*, Colt.Br.1, but that reflects this Court's emphasis in cases like *FMC* and *Hyatt III*, which build on ample originalist evidence. Because "the Framers worried about the indignity of haling a State into court," Colt.Br.2, precedent does too.

liability can be a "sufficient condition" for immunity (when a judgment impacts the treasury) but not a "necessary" one (because it cannot dictate an entity's overall arm-of-the-State status). *PRPA*, 531 F.3d, at 879

That makes quick work of Plaintiffs' precedents, which each turn on assessing the impact of judgments in suits against non-State actors. *United States v. Peters* held a suit enforcing a judgment as to private property for which Pennsylvania's interest had already been "extinguished" was not against Pennsylvania. 9 U.S. (5 Cranch) 115, 140-141 (1809). *Governor v. Madrazo* found a lawsuit against the (non-sovereign-arm) Governor impermissible where it directed equitable relief at the treasury, 26 U.S. (1 Pet.) 110, 123-124 (1828)—the same judgment-related concerns in *Edelman*. And *Lewis v. Clarke* involved employees sued individually, and made clear indemnification cannot transform judgments against those employees into involuntary judgments against the sovereign. 581 U.S. 155, 165-166 & n.4 (2017) (distinguishing from separate question whether entity "was a state agency").

Arm-of-the-state precedents, by contrast, consider the overall sovereign-entity relationship both "legally and practically." *Hess*, 513 U.S., at 51. *Hess* itself emphasized its ruling was "compatible" with arm-of-the-State status for separately-incorporated transit entities "that place heavy fiscal tolls on their founding States." 513 U.S., at 49-50 & n.20. *Hess* cited as examples "a thinly capitalized railroad that depends for its existence on a state-provided 'financial safety net,'" *id.*, at 49, or WMATA—with shortfalls "anticipated from the start" and "constantly dependent" on state funds "to meet its sizable operating deficits," *id.*,

at 49-50; *Morris v. WMATA*, 781 F.2d 218, 225 (CADC 1986) (Bork, J., joined by Skelly Wright and Scalia, JJ.) (the "practical result of a judgment against WMATA here would be payment from the treasuries of Maryland and Virginia"). That simply did not apply to Port Authority, which was flush for decades. 513 U.S., at 45.

Plaintiffs also err in resisting this real-world analysis on the grounds that NJ Transit's annual funding may fluctuate. Galette.Br.23; Colt.Br.45. First, this conflicts with the contrast *Hess* draws between "heavy fiscal toll" agencies and the deep-pocketed Port Authority. 513 U.S., at 49; see also *AAR*, 575 U.S., at 53 (discussing Amtrak's dependence on federal dollars). Second, no one claims the margins here are too close, and Plaintiffs' logic would require ignoring even 90% subsidies for decades. Third, Plaintiffs misunderstand the point, which turns not just on bare amounts of funding, but on the structural choices the Legislature made to leave NJ Transit financially dependent—a mark of a close relationship, not an arms-length private company. And here, statutory limits on NJ Transit's fiscal powers reflect the Legislature's understanding that NJ Transit serves "an essential public purpose," N.J. Stat. Ann. §27:25-2(a), on the Legislature's dime—as it always has, NJT.Br.9-10, 34-36.[8] Practically and legally, NJ Transit is an arm of New Jersey.

D. "Traditional" Function.

Galette closes with an untenable position: that this Court resolve "lingering doubt" based on whether NJ

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[8] Galette also observes the State could alter this funding situation, Br.23-24, but the State could change *any* of NJ Transit's state-law features. So that cannot be probative.

Transit's functions are "traditional" enough. Br.36-40; Colt.Br.32-33. No doubt does linger, but this proposed fourth criterion would be inappropriate regardless, because it lacks historical evidence and runs squarely into precedent, which long-ago "abandoned" a "traditional governmental function" test as "unsound in principle and unworkable in practice." *Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528, 542, 546 (1985). For good reason: "States cannot serve as laboratories … if they must pay an added price when they meet the changing needs of their citizenry by taking up functions that an earlier day and a different society left in private hands," *id.*, at 546-548, and it beckons endless confusion about what function(s) were public for long enough, and what level of granularity to ask. See Galette.Br.39 (trying to distinguish facilitating transportation by building transportation infrastructure from facilitating transportation by moving passengers on that infrastructure).[9]

Regardless, this test does not assist Plaintiffs here: facilitating public transportation is neither new nor intrinsically private. See NJT.Br.25-26 (collecting examples); *e.g.*, *Ex parte New York*, 256 U.S. 490, 500-501 (1921) (immunity extended to admiralty action against state-chartered tugboat). Though Galette claims stagecoaches and ferries were originally private, he concedes colonial Rhode Island had a ferry for passengers for two years. Br.36-38 & n.3. And while Colt says private companies "engage in the business of transit," Br.33, none takes on the capital-intensive,

[9] That does not mean function is always irrelevant: as explained above and illustrated by the state-bank cases, that an entity engages in work constitutionally forbidden to States is strong evidence its Legislature did not mean to create an unconstitutional sovereign body. See *supra* at 5.

unprofitable work of ensuring broad public access to transit (try getting to Trenton via Greyhound), see Commuter.Br.23-26. Indeed, that Galette baldly compares NJ Transit "fare-paying" to "ride-shar[ing]" on Uber makes the difference evident. Br.38-39; compare NJT.Br.36 (explaining NJ Transit must offer reduced fares to some riders).

That leaves Galette's misguided argument that NJ Transit's immunity frustrates Pennsylvania's ability to regulate transportation within its borders. Br.40-42. But this is simply untrue: transit agencies (including NJ Transit)—not to mention other entities operating across state lines—have been sovereign arms for years under circuit precedents with no such result. *E.g.*, *Morris*, 781 F.2d, at 226-228. Regardless, this argument is mismatched to Plaintiffs' actual theory: Pennsylvania's regulatory interests would remain unchanged whether NJ Transit stayed as is or was renamed the "Division of NJ Transit" and formally backed by the general treasury. So notwithstanding Galette's concern for Pennsylvania's dignity, it is unsurprising that Pennsylvania instead supports New Jersey. See Texas.Br.1.[10]

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[10] Assuming this Court agrees NJ Transit is immune, it need not tarry on Colt's last-ditch, heads-I-win-tails-you-lose argument—that this Court has jurisdiction under the Eleventh Amendment to hold NJ Transit is *not* a sovereign arm, but no jurisdiction to say it *is*. Br.46-49. Colt rightly did not press this in opposing certiorari, as this Court has long rejected it. See *McKesson v. Div. of Alcoholic Beverages & Tobacco*, 496 U.S. 18, 28-31 (1990) (finding it "inherent in the constitutional plan" that this Court can review such decisions from state high courts). Were the rule otherwise, the majority and dissent in *Hyatt III* would have both been wrong, as this Court would have lacked jurisdiction over that case too—as one of Plaintiffs' amici urged. Baude & Sachs Br., *Hyatt III*, 2018 WL 4583702, at *27-34 (Sept.

CONCLUSION

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

Respectfully submitted,

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18, 2018). Indeed, under Colt's view, the New York courts could permit "*Smith v. New Jersey*" to proceed, and this Court would be powerless to intervene—a perverse result for an Amendment confirming States' protection from involuntary suits.