

In the Supreme Court of the United States

NEW JERSEY TRANSIT CORPORATION, ET AL., PETITIONERS

v.

JEFFREY COLT AND BETSY TSAI, RESPONDENTS

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

**REPLY IN SUPPORT OF APPLICATION TO STAY TRIAL DATE SET BY
THE SUPREME COURT OF NEW YORK, NEW YORK COUNTY**

MATTHEW J. PLATKIN

Attorney General

JEREMY M. FEIGENBAUM*

Solicitor General

OFFICE OF THE ATTORNEY

GENERAL OF NEW JERSEY

25 Market Street, Box 080

Trenton, NJ 08625

(862) 350-5800

jeremy.feigenbaum@njoag.gov

Counsel for Petitioners

** Counsel of Record*

DISCLOSURE STATEMENT

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

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INTRODUCTION

The Colt Plaintiffs' stay opposition does not, and cannot, justify the New York trial court's choice to subject NJ Transit to a nonconsensual weeklong trial even after this Court has granted certiorari to consider NJ Transit's immunity from that precise suit. The Colt Plaintiffs do not deny that sovereign immunity is a privilege from suit, not merely a defense to monetary liability at that lawsuit's end. The Colt Plaintiffs do not deny this Court's repeated admonition that the sovereign-immunity privilege thus "is effectively lost if a case is erroneously permitted to go to trial," *P.R. Aqueduct & Sewer Auth. v. Metcalf & Eddy*, 506 U.S. 139, 144 (1993) (*PRASA*) (quoting *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985)), which is why denials of sovereign immunity are appealable in the first place. They do not deny that the New York trial court has set a trial for Monday, September 15, and that if the trial proceeds, this Court would lose its ability to craft full relief for NJ Transit at this end of this appeal, notwithstanding that this Court already granted certiorari to decide whether NJ Transit retains New Jersey's immunity. That is reason enough to grant a stay and to maintain the status quo until this Court resolves NJ Transit's sovereign immunity this Term.

The four reasons the Colt Plaintiffs provide in their opposition fall short. The Colt Plaintiffs claim that NJ Transit waited too long and incurred too many litigation expenses in the New York state court to justify a stay now, even though NJ Transit has been seeking this relief for months, including months before and every day since this Court granted certiorari. The Colt Plaintiffs claim that background principles prevent this Court from protecting its own authority to craft full relief if it finds that NJ Transit is immune. The Colt Plaintiffs also argue that NJ Transit is insufficiently

likely to succeed on the merits. And they contend that a trial involving Ms. Hernandez is permissible. None of these arguments justifies denying this stay.

ARGUMENT

1. Although the Colt Plaintiffs focus much of their opposition on alleged delays by NJ Transit and the costs it already incurred, that provides no basis to reject this stay. Far from pursuing relief from this Court “in a ‘dilatory’ fashion,” *Bucklew v. Precythe*, 587 U.S. 119, 151 (2019), or trying a “last-minute attempt[] to manipulate the judicial process,” *Gomez v. U.S. Dist. Court*, 503 U.S. 653, 654 (1992), NJ Transit has sought diligently to assert its immunity from trial. When the Colt Plaintiffs filed their suit in 2017, New York’s courts were still bound by *Nevada v. Hall*, 440 U.S. 410 (1979), so NJ Transit could not prevail on a sovereign immunity defense in the New York courts. Thankfully, this Court restored the States’ immunity in the courts of their sister States in *Franchise Tax Board of California v. Hyatt*, 587 U.S. 230 (2019) (*Hyatt III*), and although it took NJ Transit months to assess and appreciate the applicability *Hyatt III* to this preexisting suit, it has consistently been asserting its sovereign immunity in this case *since 2020*. Unfortunately, in the years since, the New York trial court, appellate court, and Court of Appeals each rejected NJ Transit’s claims to New Jersey’s sovereign immunity. See Opening.Br.11-12. The result is that NJ Transit has not been able to rely on sovereign immunity to avoid the unfortunate and unconstitutional litigation burdens that the Colt Plaintiffs cite.

But all that changed this summer, when this Court agreed to consider whether NJ Transit is immune from this lawsuit. Indeed, with the prospect of certiorari from this Court and a trial date from the New York courts on the horizon, NJ Transit filed

its motion for a stay in the trial court just a few weeks after it petitioned for certiorari. It filed that motion to the state trial court over three-and-a-half months before trial would begin. That left plenty of time for the trial court to adjudicate the stay motion. Nonetheless, the trial court delayed a ruling, waiting until September 3 to issue a 10-page order denying the stay, App.1-10, despite having been alerted in July that this Court granted certiorari. NJ Transit moved with all possible haste thereafter to have the stay denial reviewed by New York's appellate courts and sought emergency relief with this Court just hours after the Court of Appeals denied a stay. See Stay.Mot.11-12 (citing App.12; App.25; App.56-67; App.60).

NJ Transit thus promptly and vigorously asserted its claims to immunity. NJ Transit pressed its immunity defense throughout the New York court system during the earlier stages of this proceeding. And it sought a stay when a trial date had been set and—even before this Court granted certiorari—it had reason to believe that the New York court rulings denying it sovereign immunity might be overturned. Far from belying its claim of urgency, NJ Transit's conduct recognizes the distinct harmfulness that a wrongful trial—and, as the trial court hopes to impose, judgment, see App.7—pose to its sovereign interests. *PRASA*, 506 U.S., at 144. That NJ Transit has been forced to unconstitutionally face this nonconsensual private lawsuit in the New York courts for years is therefore a reason certiorari was warranted, not a reason to deny relief pending this Court's forthcoming immunity decision. In short, that NJ Transit had to incur private litigation burdens in the years *before* this Court grant certiorari

is no reason to force NJ Transit to continue bearing burdens after certiorari has been granted and this Court has agreed to consider the immunity issue for itself.

2. The background equitable principles the Colt Plaintiffs cite fare no better. First, citing *Younger v. Harris*, 401 U.S. 37 (1971), and the Anti-Injunction Act, the Colt Plaintiffs seem to question whether this Court can or should stay this state court trial to preserve its own authority to find that NJ Transit is immune from this lawsuit and thus to protect it from a further trial in this case. See Stay.Opp.8. This Court has long made clear that neither *Younger* nor the Anti-Injunction Act prevent *this Court* from exercising its “appellate jurisdiction over federal questions raised in state court proceedings, and that broader jurisdiction allows this Court correspondingly broader authority to issue injunctions ‘necessary in aid of its jurisdiction.’” *Atl. Coast Line R.R. Co. v. Bhd. of Locomotive Eng’rs*, 398 U.S. 281, 296 (1970). This Court already granted review in this case to evaluate whether NJ Transit is immune from this suit. This Court now has authority to prevent a state trial that would mean central parts that immunity are “effectively lost” before it rules. *PRASA*, 506 U.S., at 144.

Nor does the procedural posture in the New York state courts militate against review. See Stay.Opp.8-9. After first complaining that NJ Transit took too long to apply for emergency relief, the Colt Plaintiffs complain that NJ Transit prematurely came to this Court, arguing that the New York appellate and high courts only denied interim relief but allowed the appellate proceedings to continue. But that ignores the fundamental problem: the New York Appellate Division and the Court of Appeals set further briefing and any possibility of relief for, at the earliest, September 22—*after*

the trial is to begin. See Stay.Mot.11-12; App.12; App.56-57. And both refused to make relief available sooner, even though NJ Transit raised this precise problem to them. See App.60. The Colt Plaintiffs do not deny these facts, but they fatally undermine their claim that a stay from this Court is unnecessary. Nor is deference warranted to the state trial court’s decision to proceed with a trial; that court failed to address that NJ Transit would lose the benefits of its immunity from suit, and this Court must protect its own authority to grant full relief in a case that it has already granted.¹

3. Nor can the Colt Plaintiffs justify opposing a stay based on their likelihood of success. See Stay.Opp.11-12. The Colt Plaintiffs make no real effort, nor can they, to deny NJ Transit has at least a “fair prospect” of prevailing in this already-granted case, or that multiple courts already found NJ Transit to be an “arm” of New Jersey. They instead urge this Court to defer the merits to “their forthcoming merits brief and at argument,” Stay.Opp.11-12, but that is exactly NJ Transit’s point: this Court should preserve the status quo and avoid irreparable harm to NJ Transit and its own ability to craft full relief before it can decide this immunity question.

In any event, the short merits arguments the Colt Plaintiffs make have already been amply addressed in NJ Transit’s opening merits brief. The Colt Plaintiffs briefly

¹ The Colt Plaintiffs also briefly suggest that this Court lacks the authority under the Eleventh Amendment to exercise jurisdiction over this case. See Stay.Opp.12 n.3. Not only is this inconsistent (as the Colt Plaintiffs admit) with *PennEast Pipeline Co. v. New Jersey*, 594 U.S. 482 (2021), but it is flatly inconsistent with *Hyatt III*, which—as here—reviewed a certiorari petition from a state agency involving a lawsuit filed by the private resident of another State in a foreign state’s courts. See 587 U.S., at 230, 235. The Colt Plaintiffs’ position would mean that this Court could never review an improper denial of interstate sovereign immunity in state court.

suggest that this Court will scrap its longstanding precedent and instead declare that an entity—like NJ Transit—established as a body corporate and politic that can sue and be sued in its name automatically lacks sovereign immunity. See Stay.Opp.12. That position is simply wrong. Compare Opening.Br.40-47. States have established a range of sovereign executive departments using this language, including many other state Departments of Corrections, Departments of Transportation, and nearly the full Louisiana cabinet—and adopting the Colt Plaintiffs’ view would leave each without immunity, no matter that it serves as a core cabinet agency with the state executive branch. See Opening.Br.42 (collecting examples). Instead, a wall of precedent and the Founding-era understanding alike confirm that a state agency’s mere corporate form itself “neither gives nor prevents” governmental status, and therefore cannot dispose of the immunity inquiry. *Trs. of Dartmouth Coll. v. Woodward*, 17 U.S. (4 Wheat.) 518, 638 (1819) (Marshall, C.J.). See Opening.Br.42-46. Sue-and-be-sued clauses instead largely go to the question of waiver—not whether the entity shares its creator State’s sovereignty in the first place. See Opening.Br.46-47. The traditional inquiry—which considers the State’s understanding of the entity’s sovereign status, the control the State exercises over the entity, and the State’s broad financial relationship with the entity—compels an ultimate holding that NJ Transit is immune.²

² The Colt Plaintiffs also suggest this Court can ignore the merits given the balance of equities, see Stay.Opp.13, but the balance of equities does not aid them. As detailed above, a trial would irreparably injure both NJ Transit’s immunity from suit and this Court’s ability to grant full relief if NJ Transit has immunity. The Colt Plaintiffs do not identify harms on the other side of the ledger; they complain generally of delays, but have no answer to the fact that if they prevail before this Court, their trial can simply happen in 2026. There is no reason to rush the Colt Plaintiffs’ presentation of

4. The Colt Plaintiffs get no further in claiming that a state trial involving NJ Transit employee Ana Hernandez should proceed. The Colt Plaintiffs ignore the most fundamental problem with this argument: this is not the trial the state court actually set for September 15. Instead, the New York state trial court set a damages trial for September 15 that includes all defendants, including NJ Transit. That trial—the only trial the New York courts set, and so the only trial before this Court—should thus be stayed. Indeed, it is entirely unclear whether the New York trial court would have ordered a damages trial involving Ms. Hernandez alone given the significant concerns regarding wastefulness and duplication NJ Transit has already laid out. And it is just as unclear whether, if the New York trial court understood it had to treat NJ Transit as immune from suit until this Court resolves the question, it would view such a trial as appropriate given the extensive New York case law indicating that Ms. Hernandez would benefit from that immunity. See Opening.Br.27 n.3; *Colt v. N.J. Transit Corp.*, 169 N.Y.S.3d 585, 588 (N.Y. App. Div. 1st Dep’t 2022); *Trepel v. Hodgins*, 121 N.Y.S.3d 605, 606 (N.Y. App. Div. 1st Dep’t 2020); *Nizomov v. Jones*, 198 N.Y.S.3d 184, 185-186 (N.Y. App. Div. 2d Dep’t 2023). This Court therefore need not slice and dice the September 15 trial in the way the Colt Plaintiffs suggest, and in a way that no New York court has actually done below. Instead, the Court should grant a stay of this trial to preserve the status quo until it can rule on the immunity issue presented in *Colt* and *Galette*—as it is already scheduled to do this Term.

their damages case to a New York jury before this Court can resolve the threshold dispute over whether NJ Transit is actually immune.

CONCLUSION

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

Respectfully submitted,

/s/ Jeremy M. Feigenbaum

MATTHEW J. PLATKIN

Attorney General

JEREMY M. FEIGENBAUM*

Solicitor General

OFFICE OF THE ATTORNEY

GENERAL OF NEW JERSEY

25 Market Street, Box 080

Trenton, NJ 08625

(862) 350-5800

jeremy.feigenbaum@njoag.gov

*Counsel of Record

Counsel for Petitioners

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