SUPREME COURT OF THE UNITED STATES

No. 93–1197

ALBERT HESS AND CHARLES F. WALSH, PETITIONERS *v.* PORT AUTHORITY TRANS-HUDSON CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

[November 14, 1994]

JUSTICE GINSBURG delivered the opinion of the Court.

These paired cases arise out of work-related accidents in which a locomotive engineer and a train conductor, employees of a bistate railway authorized by interstate compact, sustained personal injuries. The courts below—the United States District Court for the District of New Jersey, and the United States Court of Appeals for the Third Circuit—rejected both complaints on the ground that the Eleventh Amendment sheltered the respondent railway from suit in federal court. We granted certiorari to resolve an intercircuit conflict on this issue. 510 U. S. ___ (1994). Concluding that the respondent bistate railway, the Port Authority Trans-Hudson Corporation (PATH), is not cloaked with the Eleventh Amendment immunity that a State enjoys, we reverse the judgment of the Third Circuit.

Petitioners Albert Hess and Charles F. Walsh, both railroad workers, were injured in unrelated incidents in the course of their employment by PATH. PATH, a wholly owned subsidiary of the Port Authority of New York and New Jersey, operates a commuter railroad

connecting New York City to northern New Jersey. In separate personal injury actions commenced in the United States District Court for the District of New Jersey, petitioners sought to recover damages for PATH's alleged negligence; both claimed a right to compensation under the federal law governing injuries to railroad workers, the Federal Employers' Liability Act (FELA), 35 Stat. 65, as amended, 45 U. S. C. §51 *et seq.*[1] Hess and Walsh filed their complaints within the 3-year time limit set by the FELA, see 35 Stat. 66, as amended, 45 U. S. C. §56, but neither petitioner met the 1-year limit specified in the States' statutory consent to sue the Port Authority. See N. J. Stat. Ann. §§32:1–157, 32:1–163 (West 1990); N. Y. Unconsol. Laws §§7101, 7107 (McKinney 1979).

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[1]Hess additionally invoked the Boiler Inspection Act, ch. 103, 36 Stat. 913, as amended, 45 U. S. C. §22 *et seq.,* as a basis for his claim for damages.

PATH moved to dismiss each action, asserting (1) PATH's qualification as a state agency entitled to the Eleventh Amendment immunity from suit in federal court enjoyed by New York and New Jersey,[2] and (2) petitioners' failure to commence court proceedings within the 1-year limit prescribed by New York and New Jersey. Third Circuit precedent concerning the Port Authority supported PATH's plea. In *Port Authority Police Benevolent Assn., Inc.* v. *Port Authority of New York and New Jersey*, 819 F. 2d 413 (CA3) *(Port Authority PBA),* cert. denied, 484 U. S. 953 (1987), the Court of Appeals for the Third Circuit held that the Port Authority is "an agency of the state and is thus entitled to Eleventh Amendment immunity." 819 F. 2d, at 418. In reaching this decision, the Court of Appeals acknowledged that "[g]iven the solvency and size of the [Port Authority's] General Reserve Fund, it is unlikely that the Authority would have to go to the state to get payment for any liabilities issued against it." *Id.,* at 416.[3] But the Third Circuit considered "crystal clear" the intentions of New York and New Jersey: "if the Authority is ever in need of financial support, the states will be there to provide it." *Ibid.*

In line with *Port Authority PBA,* the District Court held in the *Hess* and *Walsh* actions that PATH enjoys Eleventh Amendment immunity, and could be sued in

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[2]The Eleventh Amendment provides:

"The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State."

[3]The court referred to the Port Authority of New York and New Jersey Comprehensive Annual Financial Report 42–44 (1985), which shows that the Authority's General Reserve Fund had a balance of over $271 million at the end of 1985.

federal court only within the 1-year time frame New York and New Jersey allowed. See *Walsh,* 813 F. Supp. 1095, 1096–1097 (NJ 1993); *Hess,* 809 F. Supp. 1172, 1178–1182 (NJ 1992). Accordingly, both actions were dismissed.

The District Court in *Hess* noted an anomaly: Had Hess sued in a New Jersey or New York *state* court the FELA's 3-year limitation period, not the States' 1-year prescription, would have applied. See *id.,* at 1183–1185, and n. 16. This followed from our reaffirmation in *Hilton* v. *South Carolina Public Railways Comm'n,* 502 U. S. 197 (1991), that the *entire* federal scheme of railroad regulation—including all FELA terms—applies to all railroads, even those wholly owned by one State. Time-bar rejection by a federal court of a federal statutory claim that federal prescription would have rendered timely, had the case been brought in state court, becomes comprehensible, the District Court explained, once it is recognized that "`the Eleventh Amendment does not apply in state courts.'" *Hess,* 809 F. Supp., at 1183–1184 (quoting *Hilton, supra,* at 205; see 809 F. Supp., at 1185, n. 16.

Consolidating *Hess* and *Walsh* on appeal, the Third Circuit summarily affirmed the District Court's judgments. 8 F. 3d 811 (1993) (table).

The Port Authority, whose Eleventh Amendment immunity is at issue in these cases, was created in 1921, when Congress, pursuant to the Constitution's Interstate Compact Clause,[4] consented to a compact

[4]Article I, §10, cl. 3, of the Constitution provides:

"No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay."

between the Authority's parent States. 42 Stat. 174. Through the bistate compact, New York and New Jersey sought to achieve "a better co-ordination of the terminal, transportation and other facilities of commerce in, about and through the port of New York." N. J. Stat. Ann. §32:1–1 (West 1990); N. Y. Unconsol. Laws §6401 (McKinney 1979). The compact grants the Port Authority power to

> "purchase, construct, lease and/or operate any terminal or transportation facility within [the Port of New York D]istrict; and to make charges for the use thereof; and for any of such purposes to own, hold, lease and/or operate real or personal property, to borrow money and secure the same by bonds or by mortgages upon any property held or to be held by it." N. J. Stat. Ann. §32:1–7 (West 1990); accord, N. Y. Unconsol. Laws §6407 (McKinney 1979).

The Port Authority's domain, the Port of New York District, is a defined geographic area that embraces New York Harbor, including parts of New York and New Jersey. See N. J. Stat. Ann. §32:1–3 (West 1990); N. Y. Unconsol. Laws §6403 (McKinney 1979).[5]

"The Port Authority was conceived as a financially independent entity, with funds primarily derived from private investors." *United States Trust Co. of N. Y.* v. *New Jersey,* 431 U. S. 1, 4 (1977). Tolls, fees, and investment income account for the Authority's secure financial position. See App. to Pet. for Cert. 60a–61a.[6]

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[5]See also N. J. Stat. Ann. §32:2–23.28(j) (West 1990) (defining larger area in which Port Authority has obligation to supply commuter buses to authorized operators); N. Y. Unconsol. Laws §7202(10) (McKinney Supp. 1994) (same).

[6]At the end of 1993, the Port Authority had over $2.8 billion in net assets and $534 million in its General Reserve Fund. See Port Authority of New York and New Jersey, Comprehensive Annual Financial Report 49, 64 (1993) (hereinafter 1993 Annual Financial Report).

Twelve commissioners, six selected by each State, govern the Port Authority. See N. J. Stat. Ann. §§32:1–5, 32:12–3 (West 1990); N. Y. Unconsol. Laws §6405 (McKinney 1979); 1930 N. Y. Laws, ch. 422, §6. Each State may remove, for cause, the commissioners it appoints. See N. J. Stat. Ann. §§32:1–5, 32:12–5 (West 1990); N. Y. Unconsol. Laws §6405 (McKinney 1979); 1930 N. Y. Laws, ch. 422, §4. Consonant with the Authority's geographic domain, four of New York's six commissioners must be resident voters of New York City, and four of New Jersey's must be resident voters of the New Jersey portion of the Port of New York District. See N. J. Stat. Ann. §32:1–5 (West 1990); N. Y. Unconsol. Laws §6405 (McKinney 1979). The Port Authority's commissioners also serve as PATH's directors. See N. J. Stat. Ann. §32:1–35.61 (West 1990); N. Y. Unconsol. Laws §6612 (McKinney 1979).

The governor of each State may veto actions of the Port Authority commissioners from that State, including actions taken as PATH directors. See N. J. Stat. Ann. §§32:1–17, 32:1–35.61, 32:2–6 to 32:2–9 (West 1990); N. Y. Unconsol. Laws §§6417, 6612, 7151–7154 (McKinney 1979). Acting jointly, the state legislatures may augment the powers and responsibilities of the Port Authority, see N. J. Stat. Ann. §32:1–8 (West 1990); N. Y. Unconsol. Laws §6408 (McKinney 1979), and specify the purposes for which the Port Authority's surplus revenues are used. See N. J. Stat. Ann. §32:1–35.142 (West 1990); N. Y. Unconsol. Laws §7002 (McKinney 1979).

Debts and other obligations of the Port Authority are not liabilities of the two founding States, and the States do not appropriate funds to the Authority. The compact and its implementing legislation bar the Port Authority from drawing on state tax revenue, pledging the credit of either State, or otherwise imposing any charge on either State. See N. J. Stat. Ann. §§32:1–8, 32:1–33 (West 1990); N. Y. Unconsol.

Laws §§6408, 6459 (McKinney 1979).

The States did agree to appropriate sums to cover the Authority's "salaries, office and other administrative expenses," N. J. Stat. Ann. §32:1–16 (West 1990); N. Y. Unconsol. Laws §6416 (McKinney 1979), but this undertaking is notably modest.[7] By its terms, it applies only "until the revenues from operations conducted by the [P]ort [A]uthority are adequate to meet all expenditures." The promise of support has a low ceiling: $100,000 annually from each State. Thus, the States in no way undertake to cover the bulk of the Authority's operating and capital expenses. Further, even the limited administrative expense payments for which the States provided are contingent on the advance approval of both governors, see *ibid.,* and the States' treasuries may not be tapped until both legislatures have appropriated the necessary funds. See N. J. Stat. Ann. §32:1–18 (West 1990); N. Y. Unconsol. Laws §6418 (McKinney 1979). A judgment against PATH, it is thus apparent, would not be enforceable against either New York or New Jersey.

The Third Circuit's assessment of PATH's

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[7]Compact article XV, the provision for expense coverage, reads in full:

"Unless and until the revenues from operations conducted by the [P]ort [A]uthority are adequate to meet all expenditures, the legislatures of the two states shall appropriate, in equal amounts, annually, for the salaries, office and other administrative expenses, such sum or sums as shall be recommended by the [P]ort [A]uthority and approved by the governors of the two states, but each state obligates itself hereunder only to the extent of one hundred thousand dollars in any one year." N. J. Stat. Ann. §32:1–16 (West 1990); N. Y. Unconsol. Laws §6416 (McKinney 1979).

qualification for Eleventh Amendment immunity conflicts with the judgment of the Court of Appeals for the Second Circuit on the same matter. See *Feeney* v. *Port Authority Trans-Hudson Corporation,* 873 F. 2d 628, 631 (1989), aff'd on other grounds, 495 U. S. 299 (1990). The Second Circuit concluded:

> "No provision [of the compact or of state legislation pursuant to the compact] commits the treasuries of the two states to satisfy judgments against the Port Authority . . . . We believe that this insulation of state treasuries from the liabilities of the Port Authority outweighs both the methods of appointment and gubernatorial veto so far as the Eleventh Amendment immunity is concerned." 873 F. 2d, at 631.

We affirmed the Second Circuit's judgment in *Feeney,* but we bypassed the question whether PATH enjoyed the States' Eleventh Amendment immunity. See *Port Authority Trans-Hudson Corporation* v. *Feeney,* 495 U. S. 299 (1990). Assuming, *arguendo,* that the suit in *Feeney* was tantamount to a claim against the States,[8] we ruled that New York and New Jersey had effectively consented to the litigation. See *id.,* at 306–309 (relying on N. J. Stat. Ann. §§32:1–157, 32:1–162 (West 1963); N. Y. Unconsol. Laws §§7101, 7106 (McKinney 1979)). Consent is not arguable here, because Hess and Walsh commenced suit too late to meet the 1-year prescription specified by the States. See *supra,* at 2. Accordingly, we confront directly the sole question petitioners Hess and Walsh present, and we hold that PATH is not

[8]Our assumption was in accord with prior state and federal decisions typing the Port Authority a state arm or agency. See, *e.g.*, *Howell* v. *Port of New York Authority*, 34 F. Supp. 797, 801 (NJ 1940); *Trippe* v. *Port of New York Authority*, 14 N. Y. 2d 119, 123, 198 N. E. 2d 585, 586 (1964); *Miller* v. *Port of New York Authority*, 18 N. J. Misc. 601, 606, 15 A. 2d 262, 266 (Sup. Ct. 1939).

entitled to Eleventh Amendment immunity from suit in federal court.

The Eleventh Amendment largely shields States from suit in federal court without their consent, leaving parties with claims against a State to present them, if the State permits, in the State's own tribunals. Adoption of the Amendment responded most immediately to the States' fears that "federal courts would force them to pay their Revolutionary War debts, leading to their financial ruin." *Pennhurst State School and Hospital* v. *Halderman,* 465 U. S. 89, 151 (1984) (STEVENS, J., dissenting); see also *Petty* v. *Tennessee-Missouri Bridge Comm'n,* 359 U. S. 275, 276, n. 1 (1959); *Missouri* v. *Fiske,* 290 U. S. 18, 27 (1933).[9] More pervasively, current Eleventh Amendment jurisprudence emphasizes the integrity retained by each State in our federal system:

> "The Amendment is rooted in a recognition that the States, although a union, maintain certain attributes of sovereignty, including sovereign immunity. See *Hans* v. *Louisiana,* 134 U. S. 1, 13 (1890). It thus accords the States the respect owed them as members of the federation." *Puerto Rico Aqueduct and Sewer Authority* v. *Metcalf & Eddy, Inc.,* 506 U. S. ___ (1993) (slip op., at 7).

Bistate entities occupy a significantly different position in our federal system than do the States themselves. The States, as separate sovereigns, are

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[9]As Chief Justice John Marshall recounted: "[A]t the adoption of the [C]onstitution, all the States were greatly indebted; and the apprehension that these debts might be prosecuted in the federal Courts" prompted swift passage of the Eleventh Amendment. *Cohens* v. *Virginia*, 6 Wheat. 264, 406 (1821). See generally 1 C. Warren, The Supreme Court in United States History 96–102 (1922).

the constituent elements of the Union. Bistate entities, in contrast, typically are creations of three discrete sovereigns: two States and the federal government.[10] Their mission is to address "`interests and problems that do not coincide nicely either with the national boundaries or with State lines'"—interests that "`may be badly served or not served at all by the ordinary channels of National or State political action.'" V. Thursby, Interstate Cooperation: A Study of the Interstate Compact 5 (1953) (quoting National Resources Committee, Regional Factors in National Planning and Development 34 (1935)); see Grad, Federal-State Compact: A New Experiment in Co-operative Federalism, 63 Colum. L. Rev. 825, 854–855 (1963) (Compact Clause entities formed to deal with "broad, region-wide problems" should not be regarded as "an affirmation of a narrow concept of state sovereignty," but as "independently functioning parts of a regional polity and of a national union.").

A compact accorded congressional consent "is more than a supple device for dealing with interests confined within a region. . . . [I]t is also a means of safeguarding the national interest . . . ." *West Virginia ex rel. Dyer* v. *Sims,* 341 U. S. 22, 27 (1951). The Port Authority of New York and New Jersey exemplifies both the need for, and the utility of, Compact Clause entities:

> "From the point of view of geography, commerce, and engineering, the Port of New York is an organic whole. Politically, the port is split between the law-making of two States, independent but futile in their respective spheres. The scarcity of land and mounting commerce have concentrated on the New York side of the

[10]If the creation of a bistate entity does not implicate federal concerns, however, federal consent is not required. See *Virginia* v. *Tennessee*, 148 U. S. 503, 517–520 (1893).

> Hudson River the bulk of the terminal facilities for foreign commerce, while it has made the Jersey side, to a substantial extent, the terminal and breaking-up yards for the east- and west-bound traffic. In addition, both sides of the Hudson are dotted with municipalities, who have sought to satisfy their interest in the general problem through a confusion of local regulations. In addition, the United States has been asserting its guardianship over interstate and foreign commerce. What in fact was one, in law was many. Plainly the situation could not be adequately dealt with except through the coördinated efforts of New York, New Jersey, and the United States. The facts presented a problem for the unified action of the law-making of these three governments, and law heeded facts." Frankfurter & Landis, The Compact Clause of the Constitution—A Study in Interstate Adjustments, 34 Yale L. J. 685, 697 (1925) (footnote omitted).

Suit in federal court is not an affront to the dignity of a Compact Clause entity, for the federal court, in relation to such an enterprise, is hardly the instrument of a distant, disconnected sovereign; rather, the federal court is ordained by one of the entity's founders. Nor is the integrity of the compacting States compromised when the Compact Clause entity is sued in federal court. As part of the federal plan prescribed by the Constitution, the States agreed to the power sharing, coordi-nation, and unified action that typify Compact Clause cre-ations.[11] Again, the federal tribunal cannot be

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[11]See *Port Authority Trans-Hudson Corporation* v. *Feeney,* 495 U. S. 299, 314–316 (1990) (Brennan, J., concurring in part and concurring in judgment) (observing that no single State has dominion over an entity created by interstate compact and that state/ federal shared power is the essential attribute of such an entity); M. Ridgeway,

regarded as alien in this cooperative, trigovernmental arrangement. This is all the more apparent here, where the very claims in suit—the FELA claims of Hess and Walsh—arise under federal law. See *supra,* at 3–4.

Because Compact Clause entities owe their existence to state and federal sovereigns acting cooperatively, and not to any "one of the United States," see *supra,* at 2, n. 2, their political accountability is diffuse; they lack the tight tie to the people of one State that an instrument of a single State has:

> "An interstate compact, by its very nature, shifts a part of a state's authority to another state or states, or to the agency the several states jointly create to run the compact. Such an agency under the control of special interests or gubernatorially appointed representatives is two or more steps removed from popular control, or even of control by a local government." M. Ridgeway, Interstate Compacts: A Question of Federalism 300 (1971).

In sum, within any single State in our representative democracy, voters may exercise their political will to direct state policy; bistate entities created by compact, however, are not subject to the unilateral control of any one of the States that compose the federal system.

Accordingly, there is good reason not to amalgamate Compact Clause entities with agencies of "one of the United States" for Eleventh Amendment purposes. This Court so recognized in *Lake Country Estates, Inc.* v. *Tahoe Regional Planning Agency,* 440 U. S. 391 (1979), the only case, prior to this one, in which we decided whether a bistate entity

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Interstate Compacts: A Question of Federalism 297–300 (1971) (emphasizing limits of individual State's authority over interstate compact entities).

qualified for Eleventh Amendment immunity.[12]

Lake Country rejected a plea that the Tahoe Regional Planning Agency (TRPA), an agency created by compact to which California and Nevada were parties, acquired the immunity which the Eleventh Amendment accords to each one of TRPA's parent States. TRPA had argued that if the Amendment shields each State, then surely it must shield an entity "so important that it could not be created by [two] States without a special Act of Congress." *Id.,* at 400. That "expansive reading," we said, was not warranted, for the Amendment specifies "the State" as the entity protected:

> "By its terms, the protection afforded by [the Eleventh] Amendment is only available to `one of the United States.' It is true, of course, that some agencies exercising state power have been permitted to invoke the Amendment in order to protect the state treasury from liability that would have had essentially the same practical consequences as a judgment against the State itself. But the Court has consistently refused to construe the Amendment to afford protection to political subdivisions such as counties and municipalities, even though such entities exercise a `slice of state power.'" *Id.,* at 400–401 (footnotes omitted).

We then set out a general approach: we would presume the Compact Clause agency does not qualify for Eleventh Amendment immunity "[u]nless there is good reason to believe that the States structured the new agency to enable it to enjoy the special

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[12]*Petty* v. *Tennessee-Missouri Bridge Comm'n*, 359 U. S. 275, 279, 281–282 (1959), and *Feeney, supra,* at 308–309, also involved Eleventh Amendment pleas by bistate agencies; we upheld the exercise of federal court jurisdiction in both cases on the ground that the asserted immunity from suit had been waived.

constitutional protection of the States themselves, and that Congress concurred in that purpose." *Id.,* at 401.

The Court in *Lake Country* found "no justification for reading additional meaning into the limited language of the Amendment." Indeed, all relevant considerations in that case weighed against TRPA's plea. The compact called TRPA a "political subdivision," and required that the majority of the governing members be county and city appointees. *Ibid.* Obligations of TRPA, the compact directed, "shall *not* be binding on either State." TRPA's prime function, we noted, was regulation of land use, a function traditionally performed by local governments. Further, the agency's performance of that function gave rise to the litigation. Moreover, rules made by TRPA were "not subject to veto at the state level." *Id.,* at 402.

This case is more complex. Indicators of immunity or the absence thereof do not, as they did in *Lake Country,* all point the same way. While 8 of the Port Authority's 12 commissioners must be resident voters of either New York City or other parts of the Port of New York District,[13] this indicator of local governance is surely offset by the States' controls. All commissioners are state appointees. Acting alone, each State through its governor may block Port Authority measures; and acting together, both States, through their legislatures, may enlarge the Port Authority's powers and add to its responsibilities.

The compact and its implementing legislation do not type the Authority as a state agency; instead they

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[13]Cf. *Farias* v. *Bexar Cty. Bd. of Trustees for Mental Health Mental Retardation Servs.*, 925 F. 2d 866, 875 (CA5) (entity held autonomous, and thus not shielded by Eleventh Amendment, where board members had to be "qualified voters of the region"), cert. denied, 502 U. S. 866 (1991).

use various terms: "joint or common agency";[14] "body corporate and politic";[15] "municipal corporate instrumentality of the two states for the purpose of developing the port and effectuating the pledge of the states in the . . . compact."[16] State courts, however, repeatedly have typed the Port Authority an agency of the States rather than a municipal unit or local district. See, *e.g., Whalen* v. *Wagner,* 4 N. Y. 2d 575, 581–583, 152 N. E. 2d 54, 56–57 (1958) (legislation authorizing specific Port Authority projects does not pertain to the "property, affairs or government" of a city because "the matters over which the Port Authority has jurisdiction are of State concern").

Port Authority functions are not readily classified as typically state or unquestionably local. States and municipalities alike own and operate bridges, tunnels, ferries, marine terminals, airports, bus terminals, industrial parks, also commuter railroads.[17] This consideration, therefore, does not advance our Eleventh Amendment inquiry.

Pointing away from Eleventh Amendment immunity, the States lack financial responsibility for the Port Authority. Conceived as a fiscally independent entity financed predominantly by private funds, see *United*

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[14]N. J. Stat. Ann. §32:1–1 (West 1990); N. Y. Unconsol. Laws §6401 (McKinney 1979).

[15]N. J. Stat. Ann. §32:1–4 (West 1990); N. Y. Unconsol. Laws §6404 (McKinney 1979); accord, N. J. Stat. Ann. §32:1–7 (West 1990); N. Y. Unconsol. Laws §6407 (McKinney 1979).

[16]N. J. Stat. Ann. §32:1–33 (West 1990); N. Y. Unconsol. Laws §6459 (McKinney 1979).

[17]Other Authority facilities, such as the World Trade Center, an office complex housing numerous private tenants, see 1993 Annual Financial Report 33–35, and the Teleport, a satellite communications center, see *id.*, at 30, are not typically operated by either States or municipalities.

States Trust Co. v. *New Jersey,* 431 U. S. 1, 4 (1977), the Authority generates its own revenues, and for decades has received no money from the States. See *Commissioner* v. *Shamberg's Estate,* 144 F. 2d 998, 1002 (CA2 1944), ("In the compact . . . the states agreed to make annual appropriations (not in excess of $100,000 for each state) for expenses of the Authority until [r]evenues from its operations were sufficient to meet its expenses. These annual appropriations were discontinued in 1934 because the revenues from the bridges, the Holland Tunnel and Inland Terminal had become sufficient."), cert. denied, 323 U. S. 792 (1945).

The States, as earlier observed, bear no legal liability for Port Authority debts; they are not responsible for the payment of judgments against the Port Authority or PATH. The Third Circuit, in *Port Authority PBA,* assumed that, "if the Authority is ever in need," the States would pay. 819 F. 2d, at 416. But nothing in the compact or the laws of either State supports that assumption. See *supra,* at 6–7. As the Second Circuit concisely stated:

> "The Port Authority is explicitly barred from pledging the credit of either state or from borrowing money in any name but its own. Even the provision for the appropriation of moneys for administrative expenses up to $100,000 per year requires prior approval by the governor of each state and an actual appropriation before obligations for such expenses may be incurred. Moreover, the phrase `salaries, office and other administrative expenses' clearly limits this essentially optional obligation of the two states to a very narrow category of expenses and thus also evidences an intent to insulate the states' treasuries from the vast bulk of the Port Authority's operating and capital expenses, including personal injury judgments." *Feeney,*

873 F. 2d, at 631.[18]

When indicators of immunity point in different directions, the Eleventh Amendment's twin reasons for being remain our prime guide. See *supra,* at 8–9. We have already pointed out that federal courts are not alien to a bistate entity Congress participated in creating. Nor is it disrespectful to one State to call upon the Compact Clause entity to answer complaints in federal court. See *supra,* at 11. Seeing no genuine threat to the dignity of New York or New Jersey in allowing Hess and Walsh to pursue FELA claims against PATH in federal court, we ask, as *Lake Country* instructed, whether there is here "good reason to believe" the States and Congress designed the Port Authority to enjoy Eleventh Amendment immunity. 440 U. S., at 401.

PATH urges that we find good reason to classify the Port Authority as a state agency for Eleventh Amendment purposes based on the control New York and New Jersey wield over the Authority. The States appoint and can remove the commissioners, the governors can veto Port Authority actions, and the States' legislatures can determine the projects the Port Authority undertakes. See *supra,* at 5–6. But

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[18]Concerning the Third Circuit's decision in *Port Authority PBA*, the Second Circuit said:

"That decision . . . was based on the Third Circuit's understanding that, in the event that `a judgment were entered against the Authority that was serious enough to deplete its resources, the Authority would be able to go to the state legislatures in order to recoup the amount needed for its operating expenses.' To the extent that this statement implies that the states *must* make such an appropriation, it appears to be in error." *Feeney*, 873 F. 2d, at 632 (quoting *Port Authority PBA*, 819 F. 2d, at 416).

ultimate control of every state-created entity resides with the State, for the State may destroy or reshape any unit it creates. "[P]olitical subdivisions exist solely at the whim and behest of their State," *Feeney,* 495 U. S., at 313 (Brennan, J., concurring in part and concurring in judgment), yet cities and counties do not enjoy Eleventh Amendment immunity. See, *e.g., Mt. Healthy City School Dist. Bd. of Ed.* v. *Doyle,* 429 U. S. 274, 280 (1977); *Lincoln County* v. *Luning,* 133 U. S. 529, 530 (1890). Moreover, no one State alone can control the course of a Compact Clause entity. See *supra,* at 11–12, and n. 11. Gauging actual control, particularly when an entity has multiple creator-controllers, can be a "perilous inquiry," "an uncertain and unreliable exercise." See Note, 92 Colum. L. Rev. 1243, 1284 (1992); see also *id.,* at 1302, and n. 264 (describing "degree to which the state controls the entity" as a criterion neither "[i]ntelligible" nor "judicially manageable").

Moreover, rendering control dispositive does not home in on the impetus for the Eleventh Amendment: the prevention of federal court judgments that must be paid out of a State's treasury. See Fletcher, A Historical Interpretation of the Eleventh Amendment, 35 Stan. L. Rev. 1033, 1129 (1983) (identifying "the award of money judgments against the states" as "the traditional core of eleventh amendment protection").[19] Accordingly, Courts of Appeals have recognized the vulnerability of the State's purse as the most salient factor in Eleventh Amendment determinations. See, *e.g., Baxter* v. *Vigo Cty. School*

[19]The dissent questions whether the driving concern of the Eleventh Amendment is the protection of state treasuries, emphasizing that the Amendment covers "any suit in law *or equity*." *Post*, at 6. The suggestion that suits in equity do not drain money as frightfully as actions at law, however, is belied by the paradigm case. See *Jarndyce and Jarndyce* (Charles Dickens, Bleak House (1853)).

Corp., 26 F. 3d 728, 732–733 (CA7 1994) (most significant factor is whether entity has power to raise its own funds); *Hutsell* v. *Sayre,* 5 F. 3d 996, 999 (CA6 1993) ("The most important factor . . . is whether any monetary judgment would be paid out of the state treasury."), cert. denied, 510 U. S. ___ (1994); *Metcalf & Eddy, Inc.* v. *Puerto Rico Aqueduct and Sewer Authority,* 991 F. 2d 935, 942–943 (CA1 1993) ("First, and most fundamentally, [the entity's] inability to tap the Commonwealth treasury or pledge the Commonwealth's credit leaves it unable to exercise the power of the purse. On this basis, [the entity] is ill-deserving of Eleventh Amendment protection."); *Bolden* v. *South-eastern Pa. Transp. Authority,* 953 F. 2d 807, 818 (CA3 1991) (in banc) ("[T]he `most important' factor is `whether any judgment would be paid from the state treasury.'") (quoting *Fitchik* v. *New Jersey Transit Rail Operations, Inc.*, 873 F. 2d 655, 659 (CA3) (in banc), cert. denied, 493 U. S. 850 (1989)), cert. denied, 504 U. S. ___ (1992); *Barket, Levy & Fine, Inc.* v. *St. Louis Thermal Energy Corp.,* 948 F. 2d 1084, 1087 (CA8 1991) ("Because Missouri and Illinois are not liable for judgments against Bi-State, there is no policy reason for extending the states' sovereign immunity to Bi-State."); *Feeney* v. *Port Authority Trans-Hudson Corporation,* 873 F. 2d, at 631 ("In cases where doubt has existed as to the availability of Eleventh Amendment immunity, the Supreme Court has emphasized the exposure of the state treasury as a critical factor."), aff'd on other grounds, 495 U. S. 299 (1990); *Jacintoport Corp.* v. *Greater Baton Rouge Port Comm'n,* 762 F. 2d 435, 440 (CA5 1985) ("One of the most important goals of the immunity of the Eleventh Amendment is to shield states' treasuries. . . . The purpose of the immunity therefore largely disappears when a judgment against the entity does not entail a judgment against the state."), cert. denied, 474 U. S. 1057 (1986). In sum, as New York and New Jersey concede, the "vast

majority of Circuits . . . have concluded that the state treasury factor is the most important factor to be considered . . . and, in practice, have generally accorded this factor dispositive weight." Brief for States of New Jersey, New York et al. as *Amici Curiae* 18–19.

The Port Authority's anticipated and actual financial independence—its long history of paying its own way, see *supra,* at 6–7, and n. 7, 15–16—contrasts with the situation of transit facilities that place heavy fiscal tolls on their founding States. In *Alaska Cargo Transport, Inc.* v. *Alaska R. Corp.*, 5 F. 3d 378 (CA9 1993), for example, Eleventh Amendment immunity was accorded a thinly capitalized railroad that depends for its existence on a state-provided "financial safety net of broad dimension." *Id.,* at 381. And in *Morris* v. *Washington Metropolitan Area Transit Authority,* 781 F. 2d 218 (CADC 1986), Eleventh Amendment immunity was accorded an interstate transit system whose revenue shortfall Congress and the cooperating States anticipated from the start, an enterprise constantly dependent on funds from the participating governments to meet its sizable operating deficits. See *id.,* at 225–227. As the *Morris* court concluded: "[W]here an agency is so structured that, as a practical matter, if the agency is to survive, a judgment must expend itself against state treasuries, common sense and the rationale of the eleventh amendment require that sovereign immunity attach to the agency." *Id.,* at 227.[20] There is no such requirement where the agency is structured, as the Port Authority is, to be self-sustaining. Cf. *Royal Caribbean Corp*. v. *Puerto Rico Ports Authority,* 973 F. 2d 8, 10–11 (CA1 1992)

[20]The decision in *Morris* is compatible with our approach. See *supra*, at 13. Thus, we establish no "*per se* rule that the Eleventh Amendment never applies when States act in concert." *Post*, at 2 (O'CONNOR, J., dissenting).

(Breyer, C. J.) (rejecting Eleventh Amendment immunity plea, despite Commonwealth's control over agency's executives, planning, and administration, where agency did not depend on Commonwealth financing for its income and covered its own expenses, including judgments against it).

PATH maintains that the Port Authority's private funding and financial independence should be assessed differently. Operating profitably, the Port Authority dedicates at least some of its surplus to public projects which the States themselves might otherwise finance. As an example, PATH notes a program under which the Port Authority purchases buses and then leases or transfers them without charge to public and private transportation entities in both States. See N. J. Stat. Ann. §§32:2–23.27 to 32:2–23.42 (West 1990); N. Y. Unconsol. Laws §§7201–7217 (McKinney Supp. 1994); 1993 Annual Financial Report 66. A judgment against the Port Authority, PATH contends, by reducing the Authority's surplus available to fund such projects, produces an effect equivalent to the impact of a judgment directly against the State. It follows, PATH suggests, that distinguishing the fiscal resources of the Port Authority from the fiscal resources of the States is unrealistic and artificial.

This reasoning misses the mark. A charitable organization may undertake rescue or other good work which, in its absence, we would expect the State to shoulder. But none would conclude, for example, that in times of flood or famine the American Red Cross, to the extent it works for the public, acquires the States' Eleventh Amendment immunity.[21] The

[21]It would indeed heighten a "myster[y] of legal evolution" were we to spread an Eleventh Amendment cover over an agency that consumes no state revenues but contributes to the State's wealth. See Borchard, Government Liability in Tort, 34 Yale L. J. 1, 4 (1924); see also *Muskopf* v.

proper focus is not on the use of profits or surplus, but rather is on losses and debts. If the expenditures of the enterprise exceed receipts, is the State in fact obligated to bear and pay the resulting indebtedness of the enterprise? When the answer is "No"—both legally and practically—then the Eleventh Amendment's core concern is not implicated.

The conflict between the Second and Third Circuits, it bears emphasis, is no longer over the correct legal theory. Both Circuits, in accord with the prevailing view, see *supra,* at 18–19, identify "the `state treasury' criterion—whether any judgment must be satisfied out of the state treasury—as the most important consideration" in resolving an Eleventh Amendment immunity issue. Brief for States of New Jersey, New York et al. as *Amici Curiae* 2 (acknowledging, but opposing, this widely held view). The intercircuit division thus persists only because the Second and Third Circuits diverge in answering the question: Are the Port Authority's debts those of its parent States? See *ibid.*

Two Third Circuit decisions issued after *Port Authority PBA,* both rejecting Eleventh Amendment pleas by public transit authorities, indicate the narrow compass of the current Circuit split. In *Bolden* v. *Southeastern Pa. Transp. Authority,* 953 F. 2d 807 (CA3 1991) (in banc), cert. denied, 504 U. S. ___ (1992), the Third Circuit held a regional transit authority not entitled to Eleventh Amendment immunity from suit, under 42 U. S. C. §1983, in federal court. The "most important question," according to Circuit precedent, the Court of Appeals confirmed, was "whether any judgment would be paid from the state treasury." 953 F. 2d, at 816 (internal

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Corning Hospital Dist., 55 Cal. 2d 211, 213–216, and n. 1, 359 P. 2d 457, 458–460, and n. 1 (1961) (Traynor, J.).

quotation marks omitted). Earlier, in *Fitchik* v. *New Jersey Transit Rail Operations, Inc.,* 873 F. 2d 655 (CA3 1989) (in banc), cert. denied, 493 U. S. 850 (1989), an FELA suit, the Third Circuit concluded that the New Jersey Transit Corporation did not share the State's Eleventh Amendment immunity. As in *Bolden,* the court in *Fitchik* called "most important" the question "whether any judgment would be paid from the state treasury." 873 F. 2d, at 659.

Accounting for *Port Authority PBA* in its later *Bolden* decision, the Third Circuit acknowledged that it had relied primarily on the interstate compact provision calling for state contributions unless Port Authority revenues were "`adequate to meet all expenditures.'" See *Bolden, supra,* at 815 (quoting compact article XV, set out *supra,* at 6–7, n. 7). As earlier indicated, however, see *supra,* at 6–7 and 15–16, the Third Circuit drew from the compact expense coverage provision far more than the text of that provision warrants.

* * *

A discrete entity created by constitutional compact among three sovereigns, the Port Authority is financially self-sufficient; it generates its own revenues, and it pays its own debts. Requiring the Port Authority to answer in federal court to injured railroad workers who assert a federal statutory right, under the FELA, to recover damages does not touch the concerns—the States' solvency and dignity—that underpin the Eleventh Amendment. The judgment of the Court of Appeals is accordingly reversed, and the *Hess* and *Walsh* cases are remanded for further proceedings consistent with this opinion.

It is so ordered.