No. 24-

IN THE

Supreme Court of the United States

THE HIGHER EDUCATION LOAN AUTHORITY OF THE STATE OF MISSOURI,

Petitioner,

v.

JEFFREY GOOD, AND THE UNITED STATES DEPARTMENT OF EDUCATION,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Under Missouri law, the Higher Education Loan Authority of the State of Missouri (MOHELA) is a "public instrumentality of the State" serving the "essential public function" of expanding access to higher education for Missouri residents. MOHELA does so by financing, purchasing, and servicing student loans and using its revenues to fund scholarships, grants, and capital projects at Missouri colleges and universities. MOHELA is governed by a board comprising state officials and individuals appointed by the Governor and confirmed by the Missouri Senate, all of whom the Governor may remove for cause; must comply with state laws "respecting the conduct of public business by a public agency"; and must submit financial reports to the State's higher education agency. The decision below nevertheless held that MOHELA is not an arm of Missouri immune from suit under the Eleventh Amendment because the State is not liable for MOHELA's judgments and has given MOHELA "a fair degree of operational autonomy" through attributes incident to MOHELA's status as a public corporation. The questions presented are:

1. Whether a state treasury's liability for an entity's judgments is the most important factor in determining whether that entity is an arm of the state.

2. Whether incidents of corporate status, such as the capacity to sue and be sued, own property, and contract, are relevant to determining whether a public corporation established by a State for a state-wide public purpose and governed by a Board comprising state officials and individuals appointed by the governor and confirmed by the legislature is an arm of the state.

PARTIES TO THE PROCEEDING

The petitioner is the Higher Education Loan Authority of the State of Missouri (MOHELA), and the respondents are Jeffrey Good and the U.S. Department of Education.

RELATED PROCEEDINGS

There are no related proceedings in state or federal courts.

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PETITION FOR A WRIT OF CERTIORARI

MOHELA respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit.

OPINIONS BELOW

The Tenth Circuit's opinion is reported at 121 F.4th 772 and reproduced at Pet. App. 1a–81a. The district court's unpublished opinion is reported at 2022 WL 2191758 and reproduced at Pet. App. 82a–109a.

JURISDICTION

The court of appeals entered judgment on November 12, 2024. On February 4, 2025, Justice Gorsuch extended the time for filing a writ of certiorari to and including March 12, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(a).

STATUTES INVOLVED

MOHELA is established and governed by the Missouri Higher Education Loan Authority Act, Mo. Rev. Stat. § 173.350, et seq., which is reproduced at Pet. App. 110a–130a.

INTRODUCTION

The Eleventh Amendment applies not only to suits against a State as a named party but also to suits against an arm of the state. Yet "[t]here is no standard test for determining whether an entity is an arm of the state for purposes of sovereign immunity." *Kohn* v. *State Bar of Cal.*, 87 F.4th 1021, 1026 (CA9 2023) (en banc). This case presents an opportunity for this Court to resolve two issues concerning the arm-of-the-state test that divide the lower courts.

Respondent Jeffrey Good alleges that Petitioner Higher Education Loan Authority of the State of Missouri (MOHELA) violated the Fair Credit Reporting Act. As this Court knows, MOHELA is "[b]y law and function" an "instrumentality of Missouri" established by the state legislature to perform "the 'essential public function' of helping Missourians access student loans needed to pay for college." *Biden* v. *Nebraska*, 143 S. Ct. 2355, 2366 (2023) (quoting Mo. Rev. Stat. § 173.360). MOHELA "is governed by state officials and state appointees, reports to the State, and may be dissolved by the State." *Id.* It is authorized to finance and service student loans, and uses the money it earns to fund higher education in Missouri: MOHELA "has provided $230 million for development projects at Missouri colleges and universities and almost $300 million in grants and scholarships for Missouri students." *Id.* Thus, actions that cause financial loss to MOHELA impair "its efforts to aid Missouri college students," harming its "performance of its public function" and "necessarily [causing] a direct injury to Missouri itself." *Id.*

Nevertheless, the Court of Appeals for the Tenth Circuit held that MOHELA is not an arm of Missouri and thus does not share the State's immunity from suit. It did so primarily because the State "is not directly responsible in the first instance for a judgment against MOHELA," based on its view that the "foremost reason for sovereign immunity" is protecting the state treasury. Pet. App. 74a–75a. The court then compounded its error by holding that because the State is not liable for MOHELA's judgments, and because incidents of MOHELA's corporate status give MOHELA some "operational autonomy," private lawsuits against MOHELA would not offend Missouri's dignity. *Id.* at 76a. Those rulings are wrong and im-

plicate two circuit splits warranting this Court's review.

First, the circuits disagree over whether a state treasury's liability for judgments against the entity is the most important factor in determining whether the entity is an arm of the state. Several circuits—including the Tenth Circuit below—"describe the impact on the treasury as the most important factor in the arm-of-the-state analysis." Pet. App. 20a n.11 (citing cases). In contrast, the Third, Ninth and D.C. Circuits "have jettisoned arm of-the-state-tests that give any special weight" to the impact on the state treasury of a judgment against the entity. *Id.* They have done so in recognition of the fact that protecting States from money judgments is not the "driving concern of the Eleventh Amendment." *Hess* v. *Port Auth. Trans-Hudson Corp.*, 513 U.S. 30, 60 (1994) (O'Connor, J., dissenting). Rather, "[t]he preeminent purpose of state sovereign immunity is to accord States the dignity that is consistent with their status as sovereign entities." *Fed. Mar. Comm'n* v. *S.C. State Ports Auth.*, 535 U.S. 743, 760 (2002). "The founding generation thought it 'neither becoming nor convenient that the several States of the Union, invested with that large residuum of sovereignty which had not been delegated to the United States, should be summoned as defendants to answer the complaints of private persons.'" *Alden* v. *Maine*, 527 U.S. 706, 748 (1999). The Tenth Circuit's approach is wrong and warrants this Court's review. See *infra* § I.A.

Second, the circuits also disagree over whether incidents of corporate status, such as capacity to sue and be sued, own property, and contract, bear on arm-of-the-state status. The Tenth and Fifth Circuits give these factors substantial weight, tipping the

scales against immunity for instrumentalities established as public corporations (as many are). But the Ninth and D.C. Circuits accord these factors no weight in their tests, respecting States' prerogatives to structure their governments as they see fit. See *infra* § I.B.

This Court's review is needed to make clear that a proper arm-of-the-state analysis must, in accordance with this Court's Eleventh Amendment jurisprudence, treat protecting States' dignity as at least equal in importance to protecting their treasuries, and respect States' sovereign rights to determine the appropriate structure of their governments. Where, as here, a State uses a state-controlled instrumentality to perform public functions, the entity is an arm of the state that shares in the State's sovereign immunity. And where, as here, private lawsuits against the entity could interfere with its ability to perform the public function for which the State created it, State sovereignty and dignity are implicated. See *infra* § II. The petition for writ of certiorari should be granted.

STATEMENT OF THE CASE

1. The Missouri General Assembly established MOHELA in 1981 as "a separate public instrumentality of the state" to perform the "essential public function" of assuring that all eligible postsecondary education students have access to student loans. Mo. Rev. Stat. §§ 173.360, 173.415. The enabling statute gave MOHELA the authority to issue bonds to obtain funds to purchase student loan notes or finance student loans; to purchase, finance, and sell student loan notes; to service student loans; and to invest excess funds in certain government-backed or government-insured instruments. *Id.* § 173.385.1(6)–(8), (18); see

also *id.* §§ 173.390, 173.395, 173.405 (describing MOHELA's authority to issue bonds).

To carry out these functions, MOHELA may enter contracts, buy and sell personal property, maintain an office in Missouri, use a corporate seal, and sue and be sued. *Id.* § 173.385.1(3)–(5), (11), (14). MOHELA may also, in connection with its student loan operations, collect "reasonable fees and charges," which "shall be used to pay" MOHELA's costs. *Id.* § 173.385.1(12). Any bonds or other forms of indebtedness issued by MOHELA "shall be deemed to be securities issued by a separate public instrumentality of the state of Missouri." *Id.* § 173.415. But nothing in MOHELA's enabling act "shall be construed to deprive the state … of [its] powers" over MOHELA's assets or to impair the power of any state agency or official that "otherwise may be provided by law." *Id.* § 173.420. And given MOHELA's "public function," MOHELA's income and property is exempt from taxation. *Id.* § 173.415.

In 2007, the Missouri legislature expanded MOHELA's purpose and gave it new authority. See S. Bill No. 389, 94th Gen. Assemb., 1st Reg. Sess. at 17–23 (Mo. 2007). MOHELA was authorized (1) to "support the efforts of public colleges and universities to create and fund capital projects"; (2) to "support the Missouri technology corporation's ability to work with colleges and universities" in commercializing technologies; and (3) to "create, acquire, contribute to or invest in any type of financial aid program that provides grants and scholarships to students." *Id.* at 17, 20 (codified at Mo. Rev. Stat. §§ 173.360, 173.385(19)). MOHELA was also required to "distribute three hundred fifty million dollars of assets" to "the Lewis and Clark discovery fund"—a new fund created in the state treasury to provide funds for cap-

ital projects at public colleges and universities and for the Missouri technology corporation's work with colleges and universities. *Id.* at 20 (codified at Mo. Rev. Stat. §§ 173.385.2, 173.392).

Since its inception, MOHELA has been assigned to the Missouri Department of Higher Education and Workforce Development ("Department of Higher Education"). MOHELA must provide the Department of Higher Education with annual reports of its income, expenditures, and indebtedness, and the Department of Higher Education must approve certain student loan note sales by MOHELA. Mo. Rev. Stat. §§ 173.445, 173.385(8). MOHELA is run by a board composed of Missouri's Commissioner of Higher Education (who heads the Department of Higher Education), a member of Missouri's Coordinating Board for Higher Education, and five members appointed by the Governor and confirmed by the Missouri Senate. *Id.* § 173.360. All board members are removable by the Governor for cause, *id.*, and receive no compensation for their services, *id.* § 173.365. MOHELA's board may appoint an executive director, who is removable at will. *Id.* § 173.370. MOHELA's board meetings "shall be open to the public," and MOHELA's "proceedings and actions" must "comply with all statutory requirements respecting the conduct of public business by a public agency." *Id.* § 173.365.

2. Disputing the accuracy of his credit report, respondent Jeffrey Good sued the U.S. Department of Education (which originated his student loan), TransUnion LLC (the credit-reporting agency), and MOHELA (his loan servicer) for violations of the Fair Credit Reporting Act. MOHELA sought judgment on the pleadings on the ground that MOHELA "is an arm of the State of Missouri" and so "is immune from suit under the Eleventh Amendment." The district

court granted the motion and dismissed Good's claims.

The district court based its holding on four arm-of-the-state factors in Tenth Circuit case law. The court concluded first that MOHELA is characterized as an arm of the state under Missouri law since it "is specifically 'declared to be performing a public function and to be a separate public instrumentality *of* the state.'" Pet. App. 87a. Second, although MOHELA is "given some autonomy" to hire employees, enter contracts, and sue, the court held that "[o]n balance, the control that the State exercises over MOHELA through appointment of the board, limitations on financial expenditures and requirements for spending and filing reports weighs slightly in favor of finding that MOHELA is an arm of the state." *Id.* at 89a. Third, the court thought MOHELA's finances, and particularly the fact that Missouri is not responsible for a judgment against MOHELA, "weigh[] against a finding of Eleventh Amendment immunity." *Id.* at 90a. Fourth, the court found that MOHELA's concern with statewide matters, not local ones, favors immunity. *Id.* at 89a–90a. Balancing these factors, the court concluded that overall, they "weigh in favor of finding MOHELA an arm of the State of Missouri." *Id.* at 92a.

3. Good appealed. While the case was pending at the Tenth Circuit, this Court held in *Biden* that Missouri had standing to challenge a federal plan to cancel student loans that would cause MOHELA to lose loan-servicing fees because "harm to MOHELA is also a harm to Missouri." 143 S. Ct. at 2366. This Court determined that "[b]y law and function, MOHELA is an instrumentality of Missouri," is "subject to the State's supervision and control," was created by Missouri "to perform the 'essential public function' of

helping Missourians access student loans needed to pay for college," and has contributed hundreds of millions of dollars towards Missouri higher education. *Id.* (quoting Mo. Rev. Stat. § 173.360). Accordingly, the loan forgiveness plan that cuts MOHELA's revenues and "impair[s] its efforts to aid Missouri college students" is an "acknowledged harm to MOHELA in the performance of its public function" and "necessarily a direct injury to Missouri itself." *Id.*

4. Thereafter, the Tenth Circuit issued its decision reversing the district court's judgment and holding that MOHELA is not an arm of Missouri. The Tenth Circuit began by acknowledging that *Biden* "illuminates highly relevant aspects of MOHELA's relationship with the State of Missouri." Pet. App. 30a. *Biden* found that MOHELA is an "instrumentality of Missouri," and "the general rule is that state instrumentalities are arms of the state." *Id.* at 31a (quoting *Biden*, 143 S. Ct. at 2366). But the Tenth Circuit did not find that dispositive under the two-step multifactor arm-of-the-state test it distilled from its circuit precedents.

At the first step, the Tenth Circuit's test considers four "*Steadfast* factors": "(1) the character ascribed to the entity under state law; (2) the autonomy accorded the entity under state law; (3) the entity's finances; and (4) whether the entity in question is concerned primarily with local or state affairs." Pet. App. 16a. If those factors "are in conflict or point in different directions," the court proceeds to a second step and "considers the 'twin reasons' underlying the Eleventh Amendment—avoiding an affront to the dignity of the State and the impact of a judgment on the state treasury." *Id.* at 20a. The Tenth Circuit treats the latter interest as most important because, in its view, "avoiding state liability for any judgment against the

entity" is "the 'foremost'" of the twin reasons. *Id.* Thus, according to the Tenth Circuit, "where it is clear that the state treasury is not at risk, then the control exercised by the State over the entity does not entitle the entity to Eleventh Amendment immunity." *Id.* at 22a–23a (cleaned up). The Tenth Circuit acknowledged, however, that several circuits have "jettisoned" this approach. *Id.* at 20a–21a & n.11.

Applying its test, the Tenth Circuit first concluded that the four "*Steadfast* factors" pointed in different directions. The court found that "MOHELA was structured as a state agency"—a conclusion "in line" with this Court's decision in *Biden* that points in favor of treating MOHELA as an arm of Missouri. Pet. App. 35a–36a. In addition, "MOHELA was established to address statewide concerns" and "to perform the 'essential public function' of helping Missourians access student loans needed to pay for college," which also suggests MOHELA is an arm of the state. *Id.* at 71a (quoting *Biden*, 143 S. Ct. at 2366).

The Tenth Circuit found that the other two *Steadfast* factors—MOHELA's autonomy and financing—point against arm-of-the-state status. The court acknowledged *Biden*'s finding that MOHELA is under the State's "supervision and control" because its board consists of state officials and individuals appointed by the Governor and approved by the Senate, and because it "must provide annual financial reports to the Missouri Department of Education." *Biden*, 143 S. Ct. at 2366; see Pet. App. 42a–43a. But it found that control outweighed by other factors, including that the Governor cannot directly veto MOHELA's actions, that MOHELA's board can hire employees outside state civil service laws, and that MOHELA can enter contracts, own property, sue and be sued, and manage day-to-day operations, subject to statu-

tory restrictions that the court dismissed (without explanation) as "relatively minor" limitations that "do not carry much weight in the analysis." *Id.* at 42a–52a.

The court also found that MOHELA has financial independence from Missouri. It emphasized that "the State bears no legal liability for MOHELA's debts—including judgments against MOHELA." Pet. App. 54a, 64a–70a. And, disregarding the various statutory limits on MOHELA's uses of its funds, *supra* at 4–6 & *infra* at 29–30, the court took the view that MOHELA "has the ability to generate its own revenue without meaningful State interference" and "retains the exclusive power to manage its own funds." Pet. App. 54a–64a.

With the structural factors pointing in different directions, the Tenth Circuit moved to step two, where it found the "foremost" factor—effect on the treasury—was not met because Missouri is not liable for a judgment against MOHELA. Pet. App. 73a–74a. The court did not dispute that judgments against MOHELA could have "indirect impacts" on the State's treasury by impairing "MOHELA's ability to make payments to the Lewis and Clark Development Fund or to provide scholarship funding" to Missouri students, or that disregarding such risk may "ignore economic reality." *Id.* at 22a, 74a (cleaned up). But it deemed that irrelevant, holding that where "the state treasury is not at risk, then the control exercised by the State over the entity does not entitle the entity to Eleventh Amendment immunity." *Id.* at 74a. And because MOHELA is "a financially independent entity" with "a fair degree of operational autonomy—particularly in its ability to make contracts, own property, manage its day-to-day affairs, and select its leadership"—the court further found that a suit

against MOHELA would not offend Missouri's dignity. *Id.* at 76a.

REASONS FOR GRANTING THE WRIT

I. THE CIRCUITS ARE DIVIDED OVER THE TEST FOR DETERMINING WHETHER AN ENTITY IS AN ARM OF THE STATE ENTITLED TO SHARE THE STATE'S SOVEREIGN IMMUNITY.

The Eleventh Amendment states that the "Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of Another State, or by Citizens or Subjects of any Foreign State." U.S. Const. amend. XI. "It has long been settled" that sovereign immunity extends to both "actions in which a State is actually named as the defendant" and actions against instrumentalities that "should be treated as an arm of the state." *Regents of the Univ. of Cal.* v. *Doe*, 519 U.S. 425, 429–30 (1997) (cleaned up). But this Court has not provided a clear test for determining when an instrumentality is an "arm of the state."

The provisions of state law that establish the instrumentality and define its character are clearly important to the determination of whether it is an arm of the state. *Id.* at 429 n.5. And the inquiry should be informed by the "Eleventh Amendment's twin reasons for being"—protecting States from the indignity of being hauled into court without their consent and from suits that could drain state treasuries. *Hess*, 513 U.S. at 47–48.

The lower courts, however, are divided over how to implement these principles. "The jurisprudence over how to apply the arm-of-the-state doctrine is, at best,

confused," *Mancuso* v. *N.Y. State Thruway Auth.*, 86 F.3d 289, 293 (CA2 1996), with the circuits disagreeing over what factors should be considered and over how those factors should be weighed.

The decision below implicates two such disagreements. *First*, the Tenth Circuit held that the so-called "treasury factor"—whether judgments against the entity will impact the state treasury—is the most important factor in determining whether an entity is an arm of the state, and on that basis held that MOHELA is not an arm of Missouri because the State of Missouri is not liable for MOHELA's debts or judgments. That decision is consistent with decisions from the First and Fifth Circuits that similarly treat state liability for an entity's debts and judgments as the most important factor in determining whether the entity is an arm of the state. But, as the Tenth Circuit acknowledged, that decision conflicts with decisions from the D.C. and Ninth Circuits, which do not give predominant weight to the impact of a judgment on the treasury.

Second, the Tenth Circuit found that MOHELA's incidents of corporate status—*e.g.*, its ability to make contracts, sue and be sued, own property, and manage its day-to-day affairs—give it "operational autonomy," such that allowing lawsuits against MOHELA would not offend Missouri's dignity. That approach is consistent with that of the Fifth Circuit, but again conflicts with decisions from the D.C. and Ninth Circuits, which give such attributes no weight and look primarily at indicia of control by the governor and legislature, such as how members of the entity's governing body are appointed and removed.

A. The Circuits Disagree Over Whether the State's Liability for Judgments Against the Entity Is the Most Important Arm-of-the-State Factor.

1. Three Circuits Treat the State's Potential Liability for the Judgment as the Most Important Factor.

a. The First Circuit employs a two-step arm-of-the-state test. First, the court considers four "structural indicators" to determine whether a State "clearly structured the entity to share its sovereignty." *Grajales* v. *P.R. Ports Auth.*, 831 F.3d 11, 17–19 (CA1 2016). The four indicators are (a) how state law characterizes the entity; (b) the nature of the functions performed by the entity; (c) the entity's overall fiscal relationship to the State; and (d) how much control the State exercises over the operations of the entity.

If those four indicators "point in different directions" or "there is an ambiguity about the direction in which the structural analysis points," the court proceeds to the second step, where "the '*dispositive* question concerns the risk that the damages will be paid from the public treasury.'" *Id.* at 18 (emphasis added) (citation omitted).

Applying that test, the First Circuit has held that the Puerto Rico Ports Authority (PRPA) is not an arm of Puerto Rico. The court recognized that PRPA "plainly" is "a government-created entity that is subject to gubernatorial control, exercises some governmental functions, and is charged with serving the Commonwealth's general welfare." *Id.* at 23. It nevertheless concluded that the four structural factors pointed in different directions. It thought the control factor pointed in favor of arm-of-the-state status because the governor "exercises a meaningful degree of

control and supervision over PRPA," *id.* at 28, and it deemed the nature of PRPA's functions to be neutral because PRPA performs both "governmental" and "proprietary" functions, *id.* at 23–24. But the court held that Puerto Rico law gave PRPA considerable autonomy and treated it as an entity that is "'separate and apart' from the 'Government.'" *Id.* at 23. And the court found there was fiscal separation between the Commonwealth and PRPA, since PRPA can raise its own revenue by charging fees and issuing bonds for which Puerto Rico is not liable. *Id.* at 24–27.

With the "structural factors" pointing in different directions, the First Circuit turned to the treasury factor, which was dispositive. PRPA was not an arm of the Commonwealth because it "failed to show that this action poses any risk to the Commonwealth's fisc," since the Commonwealth would not be liable for a judgment against PRPA as either a "legal" or "practical" matter. *Id.* at 29.

b. In the decision below, the Tenth Circuit applied a two-step test similar to the First Circuit's. Pet. App. 18a–25a. As noted above, the Tenth Circuit first considered four "*Steadfast* factors" that it thought pointed in different directions, in significant part because MOHELA can generate revenue to pay its expenses and "the State does not bear legal liability for any of MOHELA's debts or liabilities, including adverse judgments." *Id.* at 69a–70a; see also *id.* at 72a n.32 and *supra* at 8–10.

The Tenth Circuit then proceeded to a second step, where it purported to consider the "Eleventh Amendment's twin reasons for being: protecting a State's dignitary interests and protecting a state treasury." Pet. App. 73a. Deeming the treasury factor "foremost," the court found it pointed away from considering MOHELA to be an arm of Missouri because

"there is no risk to the State's treasury. *Id.* at 74a–75a. The court then found that a suit against MOHELA would not offend Missouri's dignity because "MOHELA is a financially independent entity" with "a fair degree of operational autonomy." *Id.* at 76a.

In short, the Tenth Circuit's assessment that a judgment against MOHELA would not impact the state treasury significantly influenced the result of every step of its arm-of-the-state analysis.

3. The Fifth Circuit's six factor arm-of-the-state test also gives the treasury factor the greatest weight. The Fifth Circuit considers: (1) whether state law views the entity as an arm of the state; (2) the source of the entity's funding; (3) the entity's degree of authority independent from the State; (4) whether the entity is concerned primarily with local as opposed to statewide problems; (5) whether the entity has the authority to sue and be sued in its own name; and (6) whether the entity has the right to hold and use property. *In re Entrust Energy, Inc.*, 101 F.4th 369, 383 (CA5 2024). The second factor asks whether the State is liable for the entity's judgments and obligations and whether there is "financial entanglement between the entity and the state treasury." *Id.* at 384. It is the test's "most important" factor and is dispositive when the factors are otherwise evenly split. *Id.* at 383 (cleaned up).

Applying this test, the Fifth Circuit held that the Electric Reliability Council of Texas (ERCOT) "is not an arm of Texas and not entitled to immunity in federal court." *Id.* at 387. ERCOT is the entity tasked with managing Texas's electrical grid. *Id.* at 378–79. "Texas caselaw says unequivocally that ERCOT 'is an organ of government' that performs a 'uniquely governmental function,'" and ERCOT is under the con-

trol of the state Public Utility Corporation. *Id.* at 383, 386. But the Fifth Circuit found that Texas would not be "directly liable for a judgment against ERCOT or for ERCOT's general debts," and since the six arm-of-the-state factors overall were evenly split, it treated that finding as dispositive. *Id.* at 384–87.

2. Three Circuits Use Tests that Do Not Give Special Weight to a Judgment's Impact on the State Treasury.

As the decision below acknowledges, the D.C., Third, and Ninth Circuits have "jettisoned arm-of-the-state tests that give any special weight to the question of impact on the state treasury." Pet. App. 20a n.11. These circuits' arm-of-the-state tests give factors that "advance the states' dignity interests" equal weight with the treasury factor. *Kohn*, 87 F.4th at 1030.

a. The D.C. Circuit led the way in a decision by then-Judge Kavanaugh involving the same entity, PRPA, that was the subject of the First Circuit's *Grajales* decision. See *supra* at 13–14. The D.C. Circuit's test examines three factors: (1) the State's intent regarding the entity's status; (2) the State's control over the entity; and (3) the entity's overall effects on the state treasury. *P.R. Ports Auth.* v. *Fed. Mar. Comm'n*, 531 F.3d 868, 873 (CADC 2008). Importantly, the court rejected the argument that the inquiry should focus "largely if not entirely on the entity's financial impact on the state treasury and whether the State must pay judgments against the entity," explaining that *Hess* "pays considerable deference to the dignity interest of the state" as well. *Id.* at 873 (cleaned up). Notably, the First Circuit in *Grajales* recognized this test's divergence from its own, asserting that the D.C. Circuit did not follow the "proper approach," under which "the question whether the pending action plac-

es the Commonwealth's fisc at risk is dispositive" at the second step. 831 F.3d at 19.

The D.C. Circuit's different test also yielded a different conclusion about PRPA: Unlike the First Circuit, the D.C. Circuit held that PRPA *is* an arm of the Commonwealth even though it is "not financed out of the Commonwealth's general revenues" and the Commonwealth would not be liable for the judgment in that case. *P.R. Ports Auth.*, 531 F.3d at 879. The court found that Puerto Rico intended PRPA to share in its immunity because PRPA's enabling statute described PRPA "as a 'governmental instrumentality of the Commonwealth of Puerto Rico' and 'government controlled corporation,'" charged it with performing state governmental functions, and subjected it to Puerto Rico laws that apply to governmental instrumentalities. *Id.* at 875–76. The court also held that the Commonwealth's control over PRPA supported arm-of-the-state status. *Id.* at 877. Looking "primarily at how the directors and officers of PRPA are appointed," the court emphasized that PRPA is governed by a board of directors composed of government officials appointed by the Governor and a private citizen who is appointed by the Governor with the consent of the Senate, all of whom the Governor could remove. *Id.* And although Puerto Rico generally structured PRPA to be financially self-sufficient and separate from its treasury, much as Missouri did with MOHELA here, there were situations in which the Commonwealth could be liable for certain torts committed by PRPA officers or employees. *Id.* at 880.

2. The Ninth Circuit, sitting en banc, has adopted the D.C. Circuit's three-factor test as "consistent with current Supreme Court precedent." *Kohn*, 87 F.4th at 1030. The Ninth Circuit agrees that the impact on the treasury, "though relevant, is not dispositive," be-

cause the "Eleventh Amendment is equally concerned with the 'dignity interests of the [S]tate.'" *Id.* "The intent and control factors advance the [S]tates' dignity interests, and the treasury factor protects the state's financial solvency"—thus addressing "the Eleventh Amendment's 'twin reasons for being.'" *Id.* (quoting *Hess*, 513 U.S. at 47).

Under its test, the Ninth Circuit has held that the State Bar of California is an arm of the state even though "California law[s] makes the State Bar responsible for its own debts and liabilities, so California would not be liable for a judgment against the State Bar." *Id.* at 1036. The Ninth Circuit reached that result because California law characterizes the State Bar as a "governmental instrumentality," subjects it to California's public-records and open-meeting laws, and tasks it with fulfilling the governmental functions of admission and discipline of attorneys. *Id.* at 1032–33. Also, California exercises control over the State Bar through the appointment of the board of trustees (who are appointed by the state supreme court, state legislature, and governor), the state supreme court's review of admissions rules and disciplinary decisions, and fee caps imposed by the legislature, which impose limits on the State Bar's ability to raise revenues. *Id.* at 1034.

3. The Third Circuit applies a similar three-part test. It asks: (1) whether the payment of the judgment will come from the state; (2) what status the entity has under state law; and (3) what degree of autonomy the entity has. *Karns* v. *Shanahan*, 879 F.3d 504, 513 (CA3 2018). As in the D.C. and Ninth Circuits, "each of the factors is considered co-equal"; none "is predominant." *Id.* Thus, the Third Circuit has also found entities to be arms of the state even though their funds were financially independent from

the State's funds and the State was not liable for a judgment against them.

In *Karns*, the Third Circuit held that the New Jersey Transit Corporation is an arm of New Jersey even though it is "financially independent from the state," and "the state is under no legal or other obligation to pay NJ Transit's debts or to reimburse NJ Transit for any judgment it pays." *Id.* at 515–16. The court did so because of the "considerable indication that New Jersey law considers NJ Transit an arm of the state." *Id.* at 517 (noting, among other things, that NJ Transit is "allocated within the Department of Transportation" and "constituted as an instrumentality of the State exercising public and essential governmental functions"). The court also noted that NJ Transit is "subject to several operational constraints" imposed by the legislature, and that its governing board is appointed by the Governor, who can veto the board's actions. *Id.* at 518.

The Third Circuit has also held that a New Jersey state university is an arm of the state even though the State does not have "ownership" over the university's funds and is not liable for judgments against the university. *Maliandi* v. *Montclair State Univ.*, 845 F.3d 77, 88–90 (CA3 2016). The court reasoned that the university's status under state law indicates it is an arm of the state. *Id.* at 96. And although the Governor cannot veto the university's decisions and the university is run by a board of trustees with "significant" management authority, the court held that the State exercises sufficient control through the appointment of board members (who are appointed by the Governor and confirmed by the state senate), and oversight by the Secretary of Higher Education (who has licensing authority and can review budget requests). *Id.* at 98–99.

B. The Circuits Are Divided Over Whether Normal Incidents of Corporate Status Bear on Whether a Public Corporation Is an Arm of the State.

1. The Tenth and Fifth Circuits Weigh Incidents of Corporate Status Against Immunity for Public Corporations.

a. The Tenth Circuit considers normal incidents of corporate status—*e.g.*, the capacity to sue and be sued, own property, contract, and make by-laws, see generally *Bank of Augusta* v. *Earle*, 38 U.S. (14 Pet.) 519, 541 (1839)—at both steps of its arm-of-the-state test. First, it considers them as part of assessing an entity's autonomy, one of the four "*Streadfast* factors" constituting the first step of its test. See Pet. App. 19a, 39a (considering "whether the entity has ownership or control of property," "whether the entity has the ability to form its own contracts," "whether the entity has the ability to set its own policies without state oversight," and "whether the entity has the ability to bring suit on its own behalf"). It then considers them again at the second step, when it assesses whether allowing suit against the entity would offend the State's dignity. *Id.* at 76a.

In the decision below, the Tenth Circuit concluded that the autonomy factor weighs against classifying MOHELA as an arm of Missouri largely because of these attributes. Although it acknowledged that *Biden* had found MOHELA to be subject to state "supervision and control" and "directly answerable" to the State by virtue of the governor's appointment and removal powers vis-à-vis MOHELA's board, Pet. App. 42a, the court held that MOHELA's ability "to enter into contracts, to hold and sell property, and to bring suit on its own behalf," as well as its ability to adopt

bylaws, select its executive director, and manage its own assets, weighed in favor of autonomy and against arm-of-the-state status, *id.* at 46a–53a.

The court also relied heavily on these attributes to conclude that allowing suit against MOHELA would not offend Missouri's dignity. The court acknowledged that MOHELA's enabling act "suggests that MOHELA was intended to have the character of a state agency." Pet. App. 76a. But it concluded that MOHELA's financial independence and "fair degree of operational autonomy—particularly in its ability to make contracts, own property, manage its day-to-day affairs, and select its leadership"—generates "'mixed signals' as to whether a suit against MOHELA would truly be a suit that implicates the State's dignity." *Id.* The court held that "[w]hem such 'mixed signals' are present … it does not offend the state's dignitary interests to permit an action against the entity to proceed." *Id.*

b. The Fifth Circuit's arm-of-the-state test similarly gives significant weight to incidents of corporate status: As noted above, two of the six factors in the Fifth Circuit's test are "[w]hether the entity has the authority to sue and be sued in its own name" and "[w]hether the entity has the right to hold and use property." *In re Entrust*, 101 F.4th at 383.

These factors were critical to the Fifth Circuit's determination, described *supra* at 15–16, that ERCOT is not an arm of Texas.[1] The court found that, "[a]s a Texas non-profit corporation," ERCOT may acquire

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[1] The Fifth Circuit also considers the entity's contracting authority, but it found that factor weighed in favor of immunity because the Public Utility Commission "has ultimate control over the price of electricity in every contract ERCOT enters." *In re Entrust*, 101 F.4th at 386.

property and "sue and be sued in its own name," and it gave these factors equal weight with its determinations that the state intent and state control factors supported arm-of-the-state status. Compare 101 F.4th at 386–87, with *id.* at 383 ("ERCOT is an organ of government that performs a uniquely governmental function." (cleaned up)); *id.* at 386 (ERCOT is under the Public Utility Commission's "ultimate control"). The court's findings on these factors ultimately caused the six factors to be "even[ly] split," resulting in the court's using the "most important" treasury factor to break the tie and deny ERCOT immunity. *Id.* at 387.

2. The Ninth and D.C. Circuits Do Not Give Weight to Incidents of Corporate Status.

Unlike the Tenth and Fifth Circuits, the Ninth and D.C. Circuits do not weigh standard attributes of corporate status in their arm-of-the-state tests.

In *Kohn*, the Ninth Circuit expressly repudiated its prior test that considered "whether the entity may sue or be sued," "whether the entity has the power to take property in its own name," and "the corporate status of the entity." 87 F.4th at 1027–28 (cleaned up). Noting this Court's holding "that a [S]tate does not 'consent to suit in federal court merely by stating its intent to "sue and be sued,"' the Ninth Circuit explained that an entity's capacity to sue and be sued "has little relevance for purposes of federal immunity." *Id.* at 1028 (quoting *Coll. Sav. Bank* v. *Fla. Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 676 (1999)). The court accordingly gave that factor no weight in assessing whether the State Bar is an arm of California. See *id.* at 1034.

The court similarly dismissed the property factor as carrying "little weight," because even when an entity can hold property in its own name, the State may "treat[] such property as state property." *Id.* at 1029 (cleaned up). The court found that to be the case for the State Bar, which used its funds "for essential public and governmental purposes." *Id.* at 1036 (cleaned up). Finally, the court gave no weight to the State Bar's status as a "public corporation." Because many types of entities can be public corporations, "labeling the State Bar as a 'public corporation' begs the question of whether it is an arm of the state." *Id.* at 1032–33.

The D.C. Circuit followed a similar approach in *Puerto Rico Ports*. The court noted the PRPA was a "government controlled corporation" that "owns and operates Puerto Rico's air and marine mass-transportation facilities" and "can 'sue and be sued' and enter contracts." 531 F.3d at 871, 879. Yet the court attached no weight to these attributes in its arm-of-the-state analysis. *Id.* at 874–80. That stands in stark contrast to this case, where the Tenth Circuit found, at both steps of its test, that these attributes show that "MOHELA has a substantial degree of autonomy" and weigh against arm-of-the-state status. Pet. App. 52a–53a.

II. THE DECISION BELOW VIOLATES THE CENTRAL PURPOSE OF THE ELEVENTH AMENDMENT BY FAILING TO PROTECT MISSOURI'S SOVEREIGN DIGNITY.

In addition to implicating two circuit splits, the Tenth Circuit's decision warrants review because it violates the "central purpose" of state sovereign immunity by failing to protect Missouri's sovereign dignity and afford it the respect it is owed as a separate sovereign. *Fed. Mar. Comm'n*, 535 U.S. at 766. The

court deemed it irrelevant that judgments against MOHELA could impact the state treasury by reducing the funds MOHELA provides for scholarships and development projects at Missouri colleges and universities. Pet. App. 74a. And the court held that a suit against MOHELA is not an affront to Missouri's dignity because Missouri is not liable for MOHELA's debts and MOHELA has "operational autonomy" over its day-to-day affairs, *id.* at 75a–76a. Both rulings are inconsistent with this Court's decisions.

A. The Tenth Circuit Erred in Deeming It Irrelevant that Judgments Against MOHELA Could Harm the State Fisc by Impairing MOHELA's Ability to Support Missouri Higher Education.

The Tenth Circuit adopted a misguided view of the Eleventh Amendment when it focused only on whether Missouri is directly liable for MOHELA's debts and deemed it irrelevant that judgments against MOHELA could impact the state treasury by impairing MOHELA's ability to provide scholarships and fund development projects at Missouri colleges and universities.

1. The Eleventh Amendment bars "any suit in law or equity" by a private party against a nonconsenting State. U.S. Const. amend. XI. It thus "does not exist solely in order to 'prevent federal-court judgments that must be paid out of a State's treasury.'" *Seminole Tribe of Fla.* v. *Florida*, 517 U.S. 44, 58 (1996) (quoting *Hess*, 513 U.S. at 48). The Eleventh Amendment "also serves to avoid 'the indignity of subjecting a State to the coercive process of judicial tribunals at the instance of private parties." *Id.*; see also, *e.g.*, *Franchise Tax Bd. of Cal.* v. *Hyatt*, 587 U.S. 230, 238 (2019) ("immunity from private suits" is an "integral component of the States' sovereignty") (cleaned up).

Consequently, the question of whether the State would be liable for a money judgment is important not as an end in itself, but because it is "an indicator of the relationship between the State and its creation." *Doe*, 519 U.S. at 431. This Court has never held that the State's liability is the only indicator of the relationship. And for good reason. A lawsuit against an entity that is created and controlled by a State to perform a public function can cause financial harm to the State and impair the exercise of the State's sovereign power, even if the State is not directly liable for the entity's debts. MOHELA provides a prime example.

2. As this Court recognized in *Biden*, an action that causes financial loss to MOHELA "is also a harm to Missouri." 143 S. Ct. at 2366. The reason is that Missouri created MOHELA as a "public instrumentality" to "perform the 'essential public function' of helping Missourians access student loans needed to pay for college." *Id.* (quoting Mo. Rev. Stat. § 173.360). To fulfill MOHELA's "public function" Missouri empowers it to issue bonds and to purchase, finance, and service student loans, activities for which MOHELA can charge fees and earn revenues. Mo. Rev. Stat. § 173.385.1(6)–(8), (12), (18). MOHELA's "profits help fund education in Missouri." *Biden*, 143 S. Ct. at 1366. MOHELA is required by statute to give $350 million to the Lewis and Clark Discovery Fund—a fund in the state treasury that the legislature uses to fund capital projects at public colleges and universities and to help colleges and universities identify opportunities to commercialize technologies. Mo. Rev. Stat. §§ 173.385.2, 173.392. MOHELA may use its other assets to create or contribute to any type of financial aid program that provides grants and scholarships to students. *Id.* § 173.385.1(19).

Thus, just as the federal loan forgiveness plan in *Biden* harmed Missouri by reducing the loan servicing fees MOHELA earned, so too, lawsuits against MOHELA harm Missouri by reducing MOHELA's assets. In both situations, the harm to MOHELA "in the performance of its public function" is a harm to Missouri "that created and controls MOHELA." *Biden*, 143 S. Ct. at 2368. It makes no difference that the funds MOHELA uses to perform its public function are kept separate from the general state treasury, or that MOHELA transfers money to the state treasury, and not the reverse. As the statutory requirement for MOHELA to transfer $350 million to the state treasury makes clear, Missouri treats MOHELA's assets as state assets available to support Missouri higher education. Ignoring this reality and opening MOHELA to suit, as the Tenth Circuit did, exposes Missouri to the very risk the Eleventh Amendment aims to guard against: It subjects "the course of [Missouri's] public policy and the administration of [its] public affairs" to "the mandates of judicial tribunals without [its] consent, and in favor of individual interests." *Alden*, 527 U.S. at 750 (cleaned up).

B. The Decision Below Failed to Respect Missouri's Sovereign Right to Determine How to Structure Its Government to Perform Its Sovereign Functions.

The Tenth Circuit also erred in concluding that because Missouri structured MOHELA to have some "operational autonomy," it would not offend Missouri's dignity to subject MOHELA to private lawsuits in federal court. Pet. App. 75a–76a. A "State defines itself as a sovereign" through "the structure of its government, and the character of those who exercise government authority." *Gregory* v. *Ashcroft*, 501 U.S. 452, 460 (1991). "How power shall be distributed

by a State among its governmental organs is commonly, if not always, a question for the [S]tate itself." *Highland Farms Dairy, Inc.* v. *Agnew*, 300 U.S. 608, 612 (1937). In failing to recognize MOHELA as an arm of Missouri, the court of appeals failed to accord Missouri due respect as a joint sovereign—violating the "central purpose" of sovereign immunity. *Fed. Mar. Comm'n*, 535 U.S. at 765. This Court's review is needed to make clear that a proper arm-of-the-state analysis must respect the States' sovereign prerogatives to allocate power among the branches and instrumentalities of the state government.

1. In *Biden*, this Court held that MOHELA is "subject to the State's supervision and control" and "'directly answerable' to the State" through MOHELA's board, reporting obligations to the Department of Higher Education, and state law setting the terms of its existence. *Biden*, 143 S. Ct. at 2366. The Tenth Circuit, in contrast, thought MOHELA was subject only to "*some* degree of gubernatorial and legislative control," which was "undercut" by the fact that the Governor "lacks veto power" over MOHELA's decisions, and that MOHELA's board can hire an executive director and employees who are paid from MOHELA's funds and are "not subject to the State's merits systems for hiring or the State's retirement plan." Pet. App. 44a–45a. (emphasis in original).

The Tenth Circuit did not explain why those factors suggest that MOHELA is not an arm of the state. Nor could it. Congress has given similar discretion to some independent federal agencies that share the United States' sovereign immunity from suit. See, *e.g.*, 12 U.S.C. §§ 244, 248(l) (Board of Governors of the Federal Reserve System may hire employees who are paid with the Board's funds and are not covered by the civil service laws); *Albrecht* v. *Comm. on Emp.*

Benefits, 357 F. 3d 62, 67 (CADC 2004) (Board of Governors "enjoys sovereign immunity" even though it is a "non-appropriated fund instrumentality that receives no funding through congressional appropriations"). Indeed, this Court found a far lesser degree of control sufficient to make Amtrak "part of the Government" for constitutional purposes. *Lebron* v. *Nat'l R.R. Passenger Corp.*, 513 U.S. 374, 397–98 (1995) (recognizing that Amtrak is "under the direction and control of federal governmental appointees" where Amtrak's directors are appointed by the President, notwithstanding that, "unlike commissioners of independent agencies," the directors "are not, by the explicit terms of [Amtrak's enabling] statute, removable by the President for cause, and are not impeachable by Congress").

The Tenth Circuit also emphasized that MOHELA "has a fair degree of operational autonomy—particularly in its ability to make contracts, own property, manage its day-to-day affairs, and select its leadership." Pet. App. 76a. Those attributes, however, are incident to MOHELA's status as a public corporation, a form States frequently use for instrumentalities established to perform specific governmental functions. See *P.R. Ports*, 531 F.3d at 872. They say nothing about whether an entity exists to pursue state governmental objectives under a State's ultimate control. As this Court has recognized, "[e]very government corporation has such a distinct personality; it is a corporation, after all, with the powers to hold and sell property and to sue and be sued. Yet "such an instrumentality—created and operated to fulfill a public function—[may] nonetheless remain[] '(for many purposes at least) part of the Government itself.'" *Biden*, 143 S. Ct. at 2367.

Furthermore, to find that MOHELA enjoyed "operational autonomy," the Tenth Circuit had to deem all the limitations in MOHELA's organic statute to be "relatively minor" restrictions that "do not carry much weight" in the arm-of-the-state analysis. Pet. App. 51a. The court did not explain that conclusion, and a review of restrictions shows that they impose significant limitations on MOHELA's activities.

As an initial matter, Missouri has authorized MOHELA to hold and sell property only "to carry out its purposes," Mo. Rev. Stat. § 173.385(14), which involve issuing and servicing student loans, providing grants scholarships to students, and giving money to the Lewis and Clark Discovery Fund. See *id.* § 173.385 (listing MOHELA's powers). MOHELA has no authority to acquire or use property for other purposes.

Missouri also restricts how MOHELA carries out its authorized student-loan activities. Among other things, Missouri law:

- restricts the type of assets in which MOHELA may invest its funds, *id.* § 173.385.1(13);
- requires Missouri's Department of Higher Education to approve MOHELA's sale of student loans guaranteed by the State, *id.* § 173.385.1(8);
- limits Stafford loan originations, *id.* § 173.387;
- limits the types, terms, and nature of MOHELA's bond issuances, *id.* § 173.390;
- requires MOHELA to file an annual financial report with the Department of Higher Education, *id.* § 173.445; and

- requires that MOHELA's board meetings be "open to the public" and that its proceedings and actions comply "with all statutory requirements respecting the conduct of public business by a public agency," *id.* § 173.365.

The Tenth Circuit might prefer that the Missouri Governor have the power to veto MOHELA's decisions or that MOHELA's board manage day-to-day operations rather than delegating that task to an executive director and staff. But our constitutional system leaves States, as separate sovereigns, broad latitude to structure their agencies and instrumentalities in the manner they believe best advances their interests. A proper arm-of-the-state test should respect, not punish, that sovereign choice.

III. HOW TO DETERMINE WHETHER AN ENTITY IS AN ARM OF THE STATE IS AN IMPORTANT AND RECURRING QUESTION AFFECTING MANY KINDS OF ENTITIES.

This Court's review is also warranted because the question of how to determine whether an entity is an arm of the state is an important and recurring question that affects many kinds of state entities and frequently arises in connection with special-purpose public corporations. See *P.R. Ports*, 531 U.S. at 872.

The question often arises for loan servicer entities like MOHELA. As the Tenth Circuit recognized, lower courts have reached different conclusions about whether MOHELA is an arm of Missouri. Pet. App. 8a–11a.[2] Court have similarly divided over whether

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[2] *Compare Gowens* v. *Capella Univ., Inc.*, No. 4:19-CV-362-CLM, 2020 WL 10180669, at *2–4 (N.D. Ala. June 1, 2020) (MOHELA is an arm of Missouri); *In re Stout*, 231 B.R. 313,

the Kentucky Higher Education Student Loan Corporation is an arm of the state.[3] The issue has arisen with respect to other loan guaranty agencies as well.[4]

The question also affects public universities[5] and public hospitals.[6] It affects entities ranging from

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315–17 (Bankr. W.D. Mo. 1999) (same), *with Pellegrino* v. *Equifax Info. Servs*., LLC, 709 F. Supp. 3d 206, 210 (E.D. Va. 2024) (MOHELA is not an arm of Missouri); *Dykes* v. *Mo. Higher Educ. Loan Auth*., No. 4:21-CV-00083-RWS, 2021 WL 3206691, at *2–4 (E.D. Mo. July 29, 2021) (same); *Perkins* v. *Equifax Info. Servs., LLC*, No. SA-19-CA-1281-FB (HJB), 2020 WL 13120600, at *2–5 (W.D. Tex. May 1, 2020) (recommended decision) (same).

[3] *Compare Skidmore* v. *Access Grp., Inc.*, 149 F. Supp. 3d 807 (E.D. Mich. 2015) (entity is an arm of the state), *with Gaffney* v. *Ky. Higher Educ. Student Loan Corp.*, No. 3:15-cv-01441, 2016 WL 3688934 (M.D. Tenn. July 12, 2016) (entity is not an arm of the state); *Berg* v. *Access Grp., Inc.*, No. 13-5980, 2014 WL 4812331 (E.D. Pa. Sept. 26, 2014) (same).

[4] *See, e.g.*, *U.S. ex rel. Oberg* v. *Pa. Higher Educ. Assistance Agency*, 804 F.3d 646 (CA4 2015), *cert. denied,* 580 U.S. 1047 (Jan. 9, 2017) (Pennsylvania Higher Education Assistance Agency is not an arm of the state); *Owens* v. *TransUnion, LLC*, No. 4:20-CV-665-SDJ, 2021 WL 4501595 (E.D. Tex. Sept. 30, 2021) (Michigan Guaranty Agency is an arm of the state).

[5] *See Maliandi,* 845 F.3d at 84; *see also*, *e.g.*, *Sturdevant* v. *Paulsen*, 218 F.3d 1160 (CA10 2000) (Colorado State Board for Community Colleges and Occupational Education is an arm of the state); *Irizarry-Mora* v. *Univ. of P.R.*, 647 F.3d 9 (CA1 2011) (University of Puerto Rico is an arm of the state:) *Kashani* v. *Purdue Univ.*, 813 F.2d 843 (CA7 1987) (Purdue University is an arm of the state).

[6] *Watson* v. *Univ. of Utah Med. Ctr.*, 75 F.3d 569 (CA10 1996) (University of Utah Medical Center is an arm of the state); *Fresenius Med. Care Cardiovascular Res., Inc.* v. *P.R. & Caribbean Cardiovascular Ctr. Corp.*, 322 F.3d 56 (CA1 2003) (Puerto Rico and the Caribbean Cardiovascular Center Corporation is not an arm of the state); *Hennessey* v. *Univ. of Kan. Hosp. Auth.*, 53 F.4th 516 (CA10 2022) (University of Kansas Hospital Authority is not an arm of the state); *Takle* v. *Univ. of Wis. Hosp. &*

transportation and ports authorities,[7] to water and sewer authorities,[8] energy authorities,[9] and even bar associations.[10] Though not exhaustive, this list is sufficiently broad to demonstrate the scope of the confusion generated by the circuit splits and the corresponding need for this Court's intervention.

Clinics Auth., 402 F.3d 768 (CA7 2005) (University of Wisconsin Hospital and Clinics is not an arm of the state).

[7] *See supra* at 13–14, 16–17 (discussing circuit split over the Puerto Rico Ports Authority); *see also, e.g., Mancuso,* 86 F.3d at 293 (CA2 1996) (New York State Thruway Authority is not an arm of the state); *Redondo Constr. Corp.* v. *P.R. Highway & Transp. Auth.*, 357 F.3d 124 (CA1 2004) (Puerto Rico Highway and Transportation Authority is not an arm of the Commonwealth of Puerto Rico); *Christy* v. *Pa. Turnpike Comm'n*, 54 F.3d 1140 (CA3 1995) (Pennsylvania Turnpike Commission is not an arm of the state).

[8] *See*, *e.g., U.S. ex rel. Lesinski* v. *S. Fla. Water Mgmt. Dist.*, 739 F.3d 598 (CA11 2014) (South Florida Water Management District is an arm of the state); *Steadfast Ins. Co.* v. *Agric. Ins. Co.*, 507 F.3d 1250 (10th Cir. 2007) (Grand River Dam Authority is an arm of the state); *Sw. Bell Tel. Co.* v. *City of El Paso*, 243 F.3d 936 (CA5 2001) (El Paso County Water Improvement District is not an arm of the state).

[9] *See supra* at 15–16, 21–22 (discussing ERCOT).

[10] *See supra* at 17–18, 22–23 (discussing State Bar of California).

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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