NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

HESS ET AL. *v.* PORT AUTHORITY TRANS-HUDSON CORPORATION

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

No. 93–1197. Argued October 3, 1994—Decided November 14, 1994

Petitioners, two railroad workers, were injured in unrelated incidents while employed by respondent bistate railway, the Port Authority Trans-Hudson Corporation (PATH). PATH is a wholly owned subsidiary of the Port Authority of New York and New Jersey, an entity created when Congress, pursuant to the Constitution's Interstate Compact Clause, consented to a compact between the Authority's parent States. Petitioners filed separate personal injury actions under the Federal Employers' Liability Act (FELA). The District Court dismissed the suits under Third Circuit precedent, *Port Authority Police Benevolent Assn., Inc.* v. *Port Authority of New York and New Jersey,* 819 F. 2d 413 (CA3) *(Port Authority PBA),* which declared PATH a state agency entitled to Eleventh Amendment immunity from suit in federal court. The Third Circuit consolidated the cases and summarily affirmed. That court's assessment of PATH's immunity conflicts with the Second Circuit's decision in *Feeney* v. *Port Authority Trans-Hudson Corporation,* 873 F. 2d 628.

Held: PATH is not entitled to Eleventh Amendment immunity from suit in federal court. Pp. 8–23.

(a) The Court presumes that an entity created pursuant to the Compact Clause does not qualify for Eleventh Amendment immunity unless there is good reason to believe that the States structured the entity to arm it with the States' own immunity, and that Congress concurred in that purpose. *Lake County Estates, Inc.* v. *Tahoe Regional Planning Agency,* 440 U. S. 391, 401. The Port Authority emphasizes that certain indicators of immunity are present in this case, particularly, provisions in the interstate compact and its implementing legislation establishing

state control over Authority commissioners, acts, powers, and responsibilities, and state-court decisions typing the Authority as an agency of its parent States. Other indicators, however, point away from immunity, particularly the States' lack of financial responsibility for the Authority. Pp. 8–16.

(b) When indicators of immunity point in different directions, the Court is guided primarily by the Eleventh Amendment's twin reasons for being: the States' dignity and their financial solvency. Neither is implicated here. First, there is no genuine threat to the dignity of New York or New Jersey in allowing petitioners to pursue FELA claims against PATH in federal court. The Port Authority is a discrete entity created by compact among three sovereigns, the two States and the federal government. Federal courts are not alien to such an entity, for they are ordained by one of its founders. Nor is it disrespectful to one State to call upon the entity to answer complaints in federal court, for the States agreed to the power sharing, coordination, and unified action that typify Compact Clause creations. Second, most federal Courts of Appeals have identified the ``state treasury'' criterion—whether a judgment against the entity must be satisfied out of a State's treasury—as the most important consideration in determining whether a state-created entity qualifies for Eleventh Amendment immunity. The Port Authority, however, is financially self-sufficient: it generates its own revenues and pays its own debts. Where, as here, the States are neither legally nor practically obligated to pay the entity's debts, the Eleventh Amendment's core concern is not implicated. Pp. 16–21.

(c) The conflict between the Second and Third Circuits no longer concerns the correct legal theory, for the Third Circuit, as shown in two post-*Port Authority PBA* decisions, now accepts the prevailing ``state treasury'' view. A narrow intercircuit split persists only because the Circuits differ on whether the Port Authority's debts are those of its parent States. In resolving that issue, the *Port Authority PBA* court relied primarily on a compact provision calling for modest state contributions, capped at $100,000 annually from each State, unless Port Authority revenues were ``adequate to meet all expenditures,'' but the court drew from that provision far more than its text warrants. Pp. 21–22.

8 F. 3d 811, reversed and remanded.

GINSBURG, J., delivered the opinion of the Court, in which STEVENS, KENNEDY, SOUTER, and BREYER, JJ., joined. STEVENS, J., filed a concurring opinion. O'CONNOR, J., filed a dissenting opinion, in which REHNQUIST, C. J., and SCALIA and THOMAS, JJ., joined.