

Court of Appeals
of the
State of New York

JEFFREY COLT and BETSY TSAI,

Plaintiffs-Respondents,

– against –

NEW JERSEY TRANSIT CORPORATION, NJ TRANSIT
BUS OPERATIONS, INC. and ANA HERNANDEZ,

Defendants-Appellants.

**DEFENDANTS-APPELLANTS' BRIEF IN OPPOSITION TO
THE NEW YORK STATE TRIAL LAWYERS
ASSOCIATION'S BRIEF *AMICUS CURIAE***

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PRELIMINARY STATEMENT

Defendants-Appellants, New Jersey Transit Corporation, NJ Transit Bus Operations, Inc. (collectively, “NJ Transit”) and Anna Hernandez (“Operator Hernandez”) submit this Brief in opposition to the Brief *Amicus Curiae* submitted by the New York State Trial Lawyers Association (the “NYSTLA”).

The NYSTLA’s arguments, like Plaintiffs-Respondents’ arguments, are based on a misinterpretation of interstate sovereign immunity as enunciated by the United States Supreme Court in *Franchise Tax Bd. of Cal. v. Hyatt*, 587 U.S. ___, 139 S. Ct. 1485, 1493 (2019) (“*Hyatt III*”). The NYSTLA largely reiterates the arguments raised by Plaintiffs-Respondents. Those argument fail for the same reasons as Plaintiffs-Respondents’ arguments. And, to the extent the NYSTLA’s arguments differ from Plaintiffs-Respondents’ arguments, they include hypotheticals and legal arguments related to these hypotheticals that are not before this Court. Since such arguments do nothing to assist this Court in determining the matters before it, they are inappropriate for an amicus and should be disregarded by this Court.

Accordingly, for the reasons set forth herein and in their briefing before this Court, Defendants-Respondents respectfully request that this Court enter an Order reversing the Appellate Division Order dated May 24, 2022, and dismissing Plaintiffs-Respondents’ Complaint as against Defendants-Appellants.

STATEMENT OF FACTS

The Underlying Accident

On February 9, 2017, Plaintiff-Respondent, Jeffrey Colt, was involved in a motor vehicle accident in Manhattan involving a NJ Transit bus operated by Defendant-Appellant, Ana Hernandez. (R. 6).

The Underlying Action

On September 18, 2017, Plaintiff-Respondent, Jeffrey Colt, commenced suit in the Supreme Court, New York County, seeking recovery for injuries allegedly sustained in the accident. (R. 11). Defendants-Appellants immediately pled sovereign immunity and lack of jurisdiction in their Answer—defenses 2, 14, and 18. (R. 34, 37-38).

On July 15, 2020, Defendants-Appellants moved to dismiss the Complaint based on interstate sovereign immunity, as enunciated in the United States Supreme Court's decision in *Hyatt III*. (R. 42-80). The motion was filed before discovery concluded, before the Note of Issue was filed, and before trial. The trial court denied the motion on the mistaken grounds that, *inter alia*, *Hyatt III* permitted suit against a foreign state so long as New York's assertion of jurisdiction was consistent with the Full Faith and Credit Clause. (R. 6-9).

Defendants-Appellants' Appeal to the Appellate Division

On July 6, 2021, upon appeal to the Appellate Division, Defendants-Appellants requested reversal of the trial court's Order. The Appellate Division

denied Defendants-Appellants' request in *Colt v. N.J. Transit Corp.*, 206 A.D.3d 126 (1st Dep't 2022).

The Appellate Division determined: (i) it had “previously held that NJ [Transit] is an arm of the State of New Jersey ... entitled to invoke the doctrine of sovereign immunity” *Colt*, 206 A.D.3d at 128; (ii) the New Jersey Tort Claims Act is not “an express consent to suit in New York or any other sister State” *Id.*; (iii) NJ Transit “did not expressly and unambiguously waive the sovereign immunity defense” *Id.*; and (iv) NJ Transit “employees sued in their official capacity are entitled to avail themselves of the doctrine.” *Id.* Despite these determinations, which mandate dismissal under *Hyatt III*, the Appellate Division incorrectly concluded that, *inter alia*, jurisdiction in New York was proper based on its misconception that Plaintiffs-Respondents could not have filed suit in New Jersey.

Defendants-Appellants' Appeal to this Court

By Notice of Appeal dated June 21, 2022, Defendants-Appellants appealed to this Court, which subsequently granted Defendants-Appellants' motion for leave to appeal the Appellate Division's interlocutory Order. On August 28, 2023, Defendants-Appellants filed their Opening Brief, arguing, *inter alia*, that: (i) the United State Supreme Court's decision in *Hyatt III* makes clear that states—and arms of the state—cannot be sued in a sister state's courts except in very limited circumstances; and (ii) NJ Transit is an arm of the state of New Jersey.

Plaintiffs-Respondents' Opposition Brief and Defendants-Appellants' Reply

On October 12, 2023, Plaintiffs-Respondents, pursuant to Section 500.13[c][4] of this Court's rules, applied for permission to file an oversized brief. On December 4, 2023, this Court granted Plaintiffs-Respondents' application. On October 23, 2023, Plaintiffs-Respondents' filed a *seventy-five (75)-paged* Opposition, arguing, *inter alia*, that NJ Transit is not an arm of the State of New Jersey. On January 4, 2024, Defendants-Appellants filed their Reply Brief, responding to various arguments, including that NJ Transit is not an arm of the State of New Jersey.

NYSTLA'S Motion For Leave to File Brief *Amicus Curiae*

On January 16, 2024, the NYSTLA filed a Motion for Leave to file a Brief *Amicus Curiae*. On February 13, 2024, Defendants-Appellants submitted their opposition. This Court granted the NYSTLA's Motion on February 15, 2024. Defendants-Appellants now respond even though many of the arguments raised by the NYSTLA have already been addressed by Plaintiffs-Respondents in their briefing before this Court.

ARGUMENT

POINT I

THE NYSTLA’S ARGUMENTS THAT NJ TRANSIT IS NOT ARM OF THE STATE OF NEW JERSEY FAIL

A. The NYSTLA’s Merely Reiterates Plaintiffs-Respondents’ Arguments

The NYSTLA - for the most part - reiterates Plaintiffs-Respondents’ arguments that NJ Transit is not an arm of the State of New Jersey, including: (i) common carriers generally are not considered arms of the state; (ii) immunity is only available to protect a state treasury; (iii) New Jersey’s Tort Claim Act excludes NJ Transit from the definition of “State;” (iv) this Court should follow the recent Pennsylvania appellate decision in *Galette v. NJ Transit*, 293 A.3d 649 (Pa. Super. 2023); and (v) NJ Transit employees are not entitled to such immunity. (*Amicus Br.* at 5-10).¹ As noted above, since Defendants-Appellants have already detailed why these arguments are without merit, Defendants-Appellants respectfully submit that this Court should adhere to the Appellate Division’s holding that NJ Transit is an arm of the State of New Jersey.

B. States Determine Which Entities Are Arms of the State

In *Hyatt III*, the United States Supreme Court ruled that states are prohibited from “adopt[ing] any policy of hostility to the public Acts” because of, and to protect and preserve, “[e]ach State’s equal dignity and sovereignty under the Constitution.”

¹ Defendants-Appellants cite to the NYSTLA’s Brief *Amicus Curiae* as (*Amicus Br.* at ____).

Hyatt III at 1497. A state’s “public acts” include the determination of what entities are arms of the state which may assert interstate immunity from suit in a sister state’s courts. *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991) (“Through the structure of its government, and the character of those who exercise government authority, a State defines itself as a sovereign.”).

This is an essential component of constitutional design that was relied upon by the United States Supreme Court in *Hyatt III*. 139 S. Ct. at 1493 (“States’ ‘inviolable sovereignty’ was well established ... at the founding” and the Constitution “curtails [state’s] ability, as sovereigns, to decline to recognize each other’s immunity,” making “interstate immunity” an “essential component of federalism”). The notion that a forum state can simply ignore a state’s determination regarding which entity is an arm of the state violates the basic structure of the United States Constitution as enunciated in *Hyatt III*.

Accordingly, because a determination that NJ Transit is not an arm of the State would contravene, *inter alia*, NJ Transit’s own enabling statute, such a finding would violate New Jersey’s sovereignty and therefore supports adherence of the Appellate Division holding that NJ Transit is an arm of the State of New Jersey.

C. The NYSTLA’s Reliance On Eleventh Amendment Cases Is Flawed

The NYSTLA, like Plaintiffs-Respondents, relies on Eleventh Amendment cases in support of the argument that common carriers generally are not considered

arms of the State and that sovereign immunity is designed simply to protect a state treasury. (*Amicus Br.* at 5-6). Although arm-of-state cases decided under the Eleventh Amendment may be instructive, the cases are not controlling in this Appeal. Indeed, the United States Supreme Court has explained, interstate sovereign immunity “neither derives from, nor is limited by, the terms of the Eleventh Amendment.” *Hyatt III*, 139 S. Ct. at 1496-97. (*Reply Br.* at 8).² Eleventh Amendment immunity protects states from claims brought by private entities in federal courts, thereby limiting the federal judiciary’s Article III powers to adjudicate cases. *See Seminole Tribe of Fla. v. Fla.*, 517 U.S. 44, 54 (1996); *Woods v. Rondout Valley Cent. Sch. Dist. Bd. of Educ.*, 466 F.3d 232, 240 (2d Cir. 2006). Interstate sovereign immunity differs because it grants immunity to states in all private suits, whether in state or federal court. *Hyatt III*, 139 S. Ct. at 1492.

And, even if this Court were to look for instruction in Eleventh Amendment cases, Defendants-Appellants respectfully submit that, as detailed in pages 9-11 of their Reply Brief, this Court should find NJ Transit is an arm of the State for purposes of interstate sovereign immunity based on the Third Circuit’s decision in *Karns v. Shanahan*, 879 F.3d 504 (3d Cir. 2018) (the Third Circuit considered various factors, including payment—or lack thereof—by a state treasury, in finding NJ Transit to be an arm of the State of New Jersey) (*Reply Br.* at 9-11). The NYSTLA’s reliance on

² Defendants-Appellants cite to their Reply Brief as (*Reply Br.* at ____).

Fitchick v. New Jersey Transit Rail Operations, 873 F. 2d 655 (3d Cir. 1989), *cert. denied*, 493 U.S. 850 (1989), is improper given that the Third Circuit specifically ruled in *Karns* that the Third Circuit no longer “adhere[s] to the balancing analysis conducted in *Fitchick*.” 879 F.3d at 519.

D. The NYSTLA’s Argument Concerning The Tort Claims Act Fails

The United States Supreme Court has ruled that sovereign immunity from being “su[ed] in the courts of another sovereign” is a different concept from immunity from being “su[ed] in the sovereign’s own courts.” *Alden v. Maine*, 527 U.S. 706, 737 (1999) (cited with approval in *Hyatt III*). Accordingly, as set forth on pages 16-17 of Defendants-Appellants’ Reply Brief, New York and New Jersey courts—including the Appellate Division in this case—have ruled the New Jersey’s consent to be sued under the Torts Claims Act is not a consent to be sued in a sister State’s court. (Reply Br at 16-17) (*Nizomov v. Jones*, 220 A.D.3d 879, 881 (2d Dep’t 2023)); *Colt*, 206 A.D.3d at 128 (NJ Transit did not consent to suit in New York); *Belfand v. Petosa*, 196 A.D.3d 60, 69 (1st Dep’t 2021) (no consent); *Luchejko v. City of Hoboken*, 998 A.2d 506, 514 (N.J. Super. Ct. App. Div. 2010) (“the Supreme Court has recognized that the ... intent of the [Tort Claims Act] was to re-establish the immunity of all governmental bodies in New Jersey except in the circumstances enumerated,” which do not include nor waive immunity from suit in another state).

The definition of “State” in New Jersey’s Tort Claims Act should be read in the context in which it is defined, which is whether a New Jersey governmental entity could be held liable for its torts, *not* in which Court that entity could be sued. N.J. Stat. Ann. § 59:1-2. *See J. J. Nugent Co. v. Sagner*, 376 A.2d 945, 950 (N.J. Super. Ct. App. Div. 1977) (“[W]e do not believe that the distinction between ‘the State’ and ‘public agencies’ drawn in the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. ... means that those terms are always to be construed as mutually exclusive. ... The mere fact that the Legislature sought to make the statute a bit more clear by providing a precise definition of ‘State’ should not be construed as evidencing an intention to distinguish ‘the State’ from ‘public agencies’ for all purposes.”).

E. Operator Hernandez Is Entitled to Immunity

The NYSTLA’s claim that Operator Hernandez is not entitled to immunity because “she has no ‘official capacity, in which she could be sued’” and will not necessarily be directly indemnified by the State (*Amicus Br.* at 7-8) is incorrect.

First, New York courts and others court have held—in accordance with the United States Supreme Court decision in *Hyatt III*—state employees, and employees of arms of the state, are entitled to immunity. *See Trepel v. Hodgins*, 183 A.D.3d 429 (1st Dep’t 2020) (individual employee defendant entitled to immunity under *Hyatt III*); *Reale v. State*, 218 A.3d 723, 726-27 and n.6 (Conn. App. 2019) (employees of Rhode Island state entities entitled to state immunity under *Hyatt III*).

See also Nizomov, 220 A.D.3d at 881 (dismissing case against NJ Transit employee after *Hyatt III*); *Belfand*, 196 A.D.3d at 69 n.2 (bus driver entitled to immunity under *Hyatt III* as NJ Transit's concession of liability as to defendant bus driver amounts to an admission that his acts were perpetrated in his "official capacity").

The Section 1983 cases on which Plaintiffs-Respondents rely are inapposite. Under Section 1983, whether an individual defendant is operating in his/her official capacity is relevant because a state government may not be vicariously liable for violations of federal law. *See, e.g., Wright v. Smith*, 21 F.3d 496, 501 (2d Cir. 1994). But that distinction is irrelevant here. Since Plaintiffs-Respondents' claims are based on alleged violations of state tort law, which may impose liability against a state entity for the employee's acts based on the doctrine of respondeat superior, NJ Transit could be held liable for the conduct of Hernandez. *See Tice v. Cramer*, 627 A.2d 1090, 1095 (N.J. 1993) ("when the public employee is liable for acts within the scope of ... employment, so too is the entity."); N.J. Stat. Ann. § 59:2-2 ("A public entity is liable for the injury proximately caused by an act or omission of a public employee within the scope of his employment . . ."). *see also Stanley v. Gallegos*, 2012 WL 12953737, *3 (D.N.M. 2012) ("[g]enerally, a plaintiff cannot sue a sovereign due to the sovereign's immunity from suit and this extends to individual public employees acting within the scope of their duties.").

The NYSTLA incorrectly conflates issues unique to federal law with interstate sovereign immunity for alleged violations of state tort law—which does not differentiate between official and individual capacity—and therefore should be disregarded by this Court. *See Stanley*, 2012 WL 12953737, at *3 (“Plaintiff has conflated the doctrines of qualified immunity for alleged federal constitutional violations, which differentiates between official and individual capacity, and the doctrines in tort law regarding respondeat superior, vicarious liability and an employee acting within the scope of their duties, which do not differentiate between official and individual capacity.”).

F. The NYSTLA’s Argument Concerning New Jersey Venue Rules Fails

The NYSTLA—like Plaintiffs-Respondents—misconstrue New Jersey’s venue rules to support their erroneous theory that a plaintiff cannot sue NJ Transit in New Jersey if the accident did not occur there—thus, in this instance, necessitating suit in New York. (*Amicus Br.* at 8-9). This claim is wrong. Indeed, citizens of sister states have filed suit against NJ Transit in New Jersey, even when the suit occurred elsewhere. *See, e.g., Johnson v. N.J. Transit Corp.*, CAM-L-003139-22. And, as detailed at pages 26-27 of Defendants-Appellants’ Reply, this is because New Jersey courts venue rules are not jurisdictional because the New Jersey Superior Court “maintains statewide jurisdiction.” (Reply Br. at 26-27) (citing *N.J. Thoroughbred Horseman’s Assoc. v. N.J.*, 791 A.2d 320, 326 (N.J. Super. Ct. Ch. Div. 2001)).

Thus, “while the proper location of venue remains an important aspect of the administration of justice, it does not rise to the level of jurisdictional debate,” and, therefore, the requirement that a lawsuit be venued in the county where the cause of action arose “applies only if . . . the cause of action *arises* in the county where the governmental body is located.” *Id.* (emphasis added).

POINT II

THE NYSTLA’S HYPOTHETICALS AND “LEGAL ARGUMENTS”

A. This Court Should Disregard The Hypotheticals - “Legal Arguments”

After reiterating Plaintiffs-Respondents’ arguments, the NYSTLA requests this Court to consider hypotheticals involving identical twin employees of NJ Transit and various “legal arguments” based on these hypotheticals. (*Amicus Br.* at 9-15). Because an appeal and/or an *Amicus Curiae* is not an opportunity to offer hypotheticals and request a court to consider “legal arguments” based on these hypotheticals, this Court should disregard the NYSTLA’s request. But even if this Court were to consider these hypotheticals and “legal arguments,” Defendants-Appellants respectfully submit that they are improper and offer no assistance to this Court in connection with this appeal.

B. The NYSTLA’s “Legal Arguments” Are Red Herrings

First, the NYSTLA opinion that—based on the aforementioned hypothetical—New York residents “may be precluded from suit” and citation to

various cases for the proposition that “interstate travel is fundamental” is improper. (*Amicus Br.* at 9-10). Defendants-Appellants have already demonstrated that Plaintiffs-Respondents’ argument that if Defendants-Appellants are permitted to assert a sovereign immunity defense as delineated by the United States Supreme Court in *Hyatt III*, New York residents “are without a judicial forum” is wrong. (*Reply Br.* at 14-18). Indeed, as noted above, New York residents may not be precluded from suit as residents of other states have filed suit against NJ Transit in New Jersey, including when accidents occurred outside the State of New Jersey. Moreover, since an individuals’ right to interstate travel is not at issue in this appeal, the NYSTLA’s argument regarding this issue is improper and offers no assistance to this Court.

Second, the NYSTLA claims that it is “perverse to argue that NJT does not ... consent to abide by New York’s Vehicle & Traffic Law” given, *inter alia*, the area of service, number of buses, trains and light rail vehicles, and number of trips its operators make into New York. (*Amicus Br.* at 10-11). The NYSTLA’s provision of this information as well as its claim about NJ Transit’s alleged failure to consent to New York Traffic Laws—which is not true—is irrelevant and does not to assist this Court with respect to the legal issues in this appeal.³

³ Likewise, the NYSTLA’s reference—in a footnote—to: (i) the Second Cares Act; (ii) Defendant-Appellant NJ Transit’ Operating Budget; and (iii) the Federal Motor Carrier Safety Administration (*Amicus Br.* at 11) is irrelevant and offers no to assistance with the issues before this Court in connection with this appeal and therefore should be disregarded.

Third, the NYSTLA asserts that because the United States Supreme Court has recognized that “vehicles are dangerous machines;” and “police power ... can be applied to foreign corporations and entities,” and it would be unfair if Defendants-Appellants are permitted to assert a defense of interstate sovereign immunity thereby requiring New York residents to bring tort claims against NJ Transit in New Jersey. (*Amicus Br.* at 11-13). Defendants-Appellants have already detailed why Plaintiffs-Respondents’ argument—which they make in the first sentence of their Preliminary Statement when they argue Defendant-Appellant, NJ Transit, claims it can “come into New York ... destroy New York property ... and then insist that its victims travel to New Jersey if the wish to seek redress or hold NJT accountable”—is wrong. (*Reply Br.* at 14-18). This is the precise type of repetitive argument that is disallowed under this Court’s rules as it does not provide this Court with any assistance in connection with this appeal and therefore should be disregarded.

Fourth, the NYSTLA’s implication that an entity consents to jurisdiction in New York by driving in the state pursuant to the New York’s Motor Vehicle & Traffic Law is misguided. (*Amicus Br.* at 11). That is not an express waiver of interstate sovereign immunity. *See Edelman v. Jordan*, 415 U.S. 651 (1974) (the United States Constitution forbids constructive or implied waivers of sovereign immunity); *College Sav. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 682 (1999) (For waiver to be effective, a state must intentionally

relinquish or abandon a known right or privilege, and courts must indulge every reasonable presumption against the waiver of fundamental constitutional rights and cannot presume that a state acquiesced in the loss of fundamental rights because waiver of sovereign immunity “cannot be implied but must be unequivocally expressed” citing *Aetna Ins. Co. v. Kennedy ex rel. Bogash*, 301 U.S. 389, 393 (1937) and *Ohio Bell Telephone Co. v. Public Util. Comm’n of Ohio*, 301 U.S. 292, 307 (1937)). Acceptance of service is not consent to jurisdiction. *Nevada v. Hall*, 440 U.S. 410, 412 n. 1 and 425, 99 S.Ct. 1182, 1184 n. 1 and 1190, 59 L.Ed.2d 416 (1979) (recognizing States’ sovereign interstate immunity based on comity, in a an automobile accident claim by California residents against an employee of an instrumentality of different State Defendants served “pursuant to the provisions of the California Vehicle Code authorizing service of process on nonresident motorists,” quoting Cal.Veh.Code Ann. § 17451 (West 1971)); *Hyatt III*, 139 S.Ct. at 1490 and 1492 (holding that sovereign interstate immunity is a State’s Constitutional right not based on comity, but not holding that serving States’ entities per motor vehicle impairs interstate immunity). And it is well established that a State’s engagement in interstate commerce does not waive that State’s interstate sovereign immunity and/or consent to jurisdiction. See *College Sav. Bank*, 527 U.S. at 680; *Nizomov*, 220 A.D.3d at 881 (NJ Transit did not consent to suit in New York

by virtue of extensive operations within New York); *Colt*, 206 A.D.3d at 128 (NJ Transit did not consent to suit in New York).

Finally, the NYSTLA’s wonderment about the “dislocation that would occur if NJ Transit and its bus drivers claim immunity for traffic citations” (*Amicus Br.* at 14) and citation to a law review article—published in 2017, approximately two (2) years before *Hyatt III*—which it argues supports a finding it would be unfair if Defendants-Appellants are entitled to interstate sovereign immunity as set forth in *Hyatt III* also offers no assistance this Court in connection with this appeal. (*Id.* at 14-15).

The purpose of an *amicus* brief is to provide a court with legal arguments that would otherwise escape its attention, this does not include a non-party’s wonderment about unrealistic possibilities, including bus drivers seeking immunity from traffic citations. Moreover, since the law review article was published approximately two (2) years before *Hyatt III*, it has no bearing on the issues before this Court, including whether the Appellate Division’s decision is contrary to the United States Supreme Court’s precedent in *Hyatt III*. Finally, because the parties have cited numerous cases in support of their respective arguments regarding interstate sovereign immunity under *Hyatt III*, Defendants-Appellants respectfully submit that this Court has sufficient information to render a decision in this appeal without the need to consider a law review article.

CONCLUSION

Based upon the reasons set forth herein and in their other briefing before this Court, Defendants-Respondents respectfully request that this Court enter an Order reversing the Appellate Division Order dated May 24, 2022, and dismissing Plaintiffs-Respondents' Complaint as against Defendants-Appellants.

Dated: March 15, 2024

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DISCLOSURE STATEMENT

Pursuant to 22 NYCRR § 500.1(f), Defendants-Appellants, New Jersey Transit Corporation (“NJ Transit”) and Ana Hernandez, respectfully submit this Disclosure Statement. NJ Transit was established pursuant to the Public Transportation Act of 1979, N.J. Stat. Ann. §§ 27:25-1 through 27:25-24, to “acquire, operate and contract for transportation service in the public interest.” NJ Transit has four subsidiary corporations, NJ TRANSIT Bus Operations, Inc., NJ TRANSIT Mercer, Inc., NJ TRANSIT Rail Operations, Inc., and NJ TRANSIT Morris, Inc.

STATE OF NEW YORK)
)
COUNTY OF NEW YORK)

ss.:

**AFFIDAVIT OF SERVICE
BY OVERNIGHT FEDERAL
EXPRESS NEXT DAY AIR**

I, Tyrone Heath, 2179 Washington Avenue, Apt. 19, Bronx, New York 10457, being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at the address shown above or at

On March 15, 2024

deponent served the within: **DEFENDANTS-APPELLANTS' BRIEF IN
OPPOSITION TO THE NEW YORK STATE TRIAL LAWYERS
ASSOCIATION'S BRIEF *AMICUS CURIAE***

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the address(es) designated by said attorney(s) for that purpose by depositing **3** true copies of same, enclosed in a properly addressed wrapper in an Overnight Next Day Air Federal Express Official Depository, under the exclusive custody and care of Federal Express, within the State of New York.

Sworn to before me on March 15, 2024



MARIANA BRAYLOVSKIY
Notary Public State of New York
No. 01BR6004935
Qualified in Richmond County
Commission Expires March 30, 2026



Job# 328363