SOVEREIGN IMMUNITY AFTER *GALETTE V. NEW JERSEY TRANSIT CORPORATION*: A CHANCE TO PROTECT ALL HIGHER EDUCATION STUDENTS FROM FRAUDULENT, UNFAIR, AND DECEPTIVE PRACTICES

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In recent years, increasing financial pressures on colleges and universities have driven many institutions to focus heavily on strategies to increase institutional revenue. Although strategies vary, many institutions have undertaken partnerships with private companies. Some institutions have adopted recruitment and enrollment tactics traditionally associated with for-profit colleges, while others have simply acquired for-profit colleges.

The increased focus on revenue maximization by public and nonprofit institutions is not without risk to students. But in many places, the law creates a dichotomy: when students at public institutions fall victim to unfair or deceptive practices from those schools, they generally have fewer legal protections than their private school counterparts. The reason? Sovereign immunity. But the U.S. Supreme Court's recent decision in Galette v. New Jersey Transit Corp. *provides legislatures and advocates with an opportunity to address this public-private student-consumer inequality.*

*This Essay examines why state consumer protection laws often provide the only legal remedy for students harmed by intentional misconduct, provides an overview of the pre-*Galette *landscape for higher education and sovereign immunity, reviews* Galette *and its implications, and identifies the critical components for a comprehensive legislative solution. The Essay closes with model statutory language to address the consumer protection issue.*

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INTRODUCTION

Imagine that two students, Jack and Diane, enroll in undergraduate programs at institutions physically located within the same state. Jack attends a well-regarded private university. Diane attends a public institution overseen by the State Board of Regents. Both receive glossy marketing and recruitment materials enticing them to enroll. In addition to touting the benefits of the programs, the materials tell both students, in almost identical language, that the undergraduate program costs around $15,000 annually. Both discover, deep into their studies, that the respective true cost of the selected program is more than three times that figure. Both are shocked to

learn this additional price tag. But, in many states, only one of them has a meaningful legal remedy.

Jack sues the private university under the state consumer protection statute. His case proceeds. Diane tries to do the same thing against the public university, but the court dismisses her case without reaching the merits. The reason? Sovereign immunity, a centuries-old doctrine that, in most states, has barred student consumers from suing public colleges and universities for money damages for even the most egregiously unfair, fraudulent, or deceptive misconduct.[1]

That asymmetry is neither fair nor inevitable. Fortunately, the U.S. Supreme Court's recent decision in *Galette v. New Jersey Transit Corp.*[2] creates an opportunity for meaningful change. In *Galette*, the Supreme Court resolved a split over whether a state-created entity—the New Jersey Transit Corporation—was entitled to invoke New Jersey's sovereign immunity. The Court held unanimously that it was not. In doing so, the Court reaffirmed that the threshold question of whether a state-created entity qualifies as an "arm of the State" entitled to sovereign immunity is a question of federal law, governed by a uniform framework that turns primarily on two things: (1) how the state structured the entity, and (2) whether the state is formally liable for any judgment against the entity.[3] By contrast, operational control and practical financial relationships, like what percentage of the entity's budget comes from state funding or whether the state would voluntarily pay for a judgment against the entity, are largely beside the point.[4]

In other words, *Galette*'s framework upends the de facto default assumption that most state-created entities automatically share the immunity of the state itself. In a post-*Galette* world, state legislatures may critically reevaluate whether public entities—for example, hospitals, transit or utility authorities, and public colleges—qualify as arms of the state under the newly articulated federal standard.

This moment of potential legislative recalibration merits substantial attention by advocates for strong consumer protections across higher education. If states begin reviewing the structure of their public entities through *Galette*'s lens, advocates for strong consumer laws must confront an important question: should state laws shield public institutions of higher education from otherwise generally applicable state consumer protection laws?

This Essay argues that the answer is no. Students should have the benefit of strong consumer protection laws, regardless of whether the institution is

1. *Compare* Marks v. Ross Univ. Sch. of Veterinary Med., Inc., 272 N.E.3d 622, 629 (Mass. App. Ct. 2025) (affirming plaintiff's summary judgment win on a consumer protection claim against a private institution), *with* Max-Planck-Gesellschaft Zur Föerderung Der Wissenschaften E.V. v. Whitehead Inst. for Biomedical Rsch., 850 F. Supp. 2d 317, 327 (D. Mass. 2011) (holding that a state university is not subject to the state's Consumer Protection Act due to sovereign immunity).

2. 146 S. Ct. 854 (2026).

3. *Id.* at 868–70.

4. *Id.* at 873–74.

public, nonprofit, or for-profit. Particularly given the substantial changes to higher education in recent years—where public institutions increasingly use the same "Moneyball"[5]-like approach to recruitment and enrollment as private institutions—access to consumer protections is more important than ever.

This Essay articulates why state consumer protection laws often provide the only legal remedy for students harmed by intentional misconduct. Part I examines why state consumer protection laws often provide the only legal remedy for students harmed by intentional misconduct. Part II provides an overview of the pre-*Galette* landscape for higher education and sovereign immunity. Part III reviews *Galette* and its implications, and Part IV identifies the critical components for a comprehensive legislative solution. The Essay closes with model statutory language to address the consumer protection issue.

I. INSTITUTIONAL MISCONDUCT AND STATE CONSUMER PROTECTION LAWS

Postsecondary education is one of the largest financial purchases most students and their families will ever make. Students finance their education through savings, scholarships, grants, and (increasingly) debt. There is over $1.7 trillion in outstanding federal student loans,[6] plus an additional $139 billion in private loans.[7] The consequences of enrolling in a program that misrepresents things like cost, completion times, outcomes, or other key features can be financially catastrophic for students. Unlike many consumer transactions, the costs of higher education are essentially irreversible: students can never recoup lost time and opportunities.

State consumer protection laws are among the most important tools for students who have been harmed by predatory institutional practices. Beyond deterring misconduct in the first instance, these statutes typically provide for monetary damages—sometimes treble damages—to wronged consumers.[8] The laws also often provide for attorney's fees, which incentivize private

5. JEFFREY SELINGO, WHO GETS IN AND WHY: A YEAR INSIDE COLLEGE ADMISSIONS 122 (Scribner 2020) (discussing MICHAEL LEWIS, MONEYBALL: THE ART OF WINNING AN UNFAIR GAME (2003)). Michael Lewis's book uses the term Moneyball to describe "the phenomenon of baseball teams managing players by analyzing statistics to make decisions." *Id.* Jeff Selingo argues that this approach was occurring in admissions via "sophisticated models" that could "build each incoming class" based on a "sea of numbers" that would inform "admissions officers who was most interested in the school, who would enroll if accepted, and even how much financial aid it would take to attract them." *Id.*

6. FED. STUDENT AID, U.S. DEP'T OF EDUC., *Federal Student Loan Portfolio*, https://studentaid.gov/data-center/student/portfolio [https://perma.cc/377R-RRYW] (last visited Oct. 6, 2026) ($1.72 trillion in outstanding federal student loans are held by 42.6 million recipients as of March 31, 2026).

7. JENNIFER MA, MATEA PENDER & XIAOWEN HU, COLL. BD., TRENDS IN COLLEGE PRICING AND STUDENT AID 2025, at 32, Table SA-1 (2025), https://research.collegeboard.org/media/pdf/Trends-in-College-Pricing-and-Student-Aid-2025-final_2.pdf [https://perma.cc/U38T-476J].

8. *See infra* Appendix: Pre-*Galette* Availability of State Consumer Protection Remedies for Students at Public Institutions of Higher Education.

lawyers to represent students—who often cannot afford to pay an hourly rate—in complicated class actions.[9]

By contrast, federal law provides substantially less protection. The Higher Education Act[10] has no private right of action and thus students are unable to bring suits.[11] Borrower defense to repayment has been stymied by constant policy change and implementation failures.[12] Moreover, the current structure of borrower defense—which permits federal student loan borrowers to affirmatively seek relief from the U.S. Department of Education ("ED")—is being challenged by an industry seeking to force borrowers to wait until they are in default to assert the defense to repayment.[13] Although federal statutes governing credit discrimination, civil rights, and reporting create discrete remedies, they also leave most of the conduct at issue in the typical enrollment-fraud case subject only to state law, state enforcement discretion, or no meaningful remedy at all.[14]

When state consumer law is unavailable, accountability shifts entirely to actors whose capacity and incentives to pursue institutional misconduct are limited: state attorneys general who carry no specific higher education enforcement mandate,[15] federally dependent accreditors often with structural

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9. *See infra* Appendix: Pre-Galette Availability of State Consumer Protection Remedies for Students at Public Institutions of Higher Education.

10. Higher Education Act of 1965 (HEA), Pub. L. No. 89-329, 79 Stat. 1219 (codified as amended at 20 U.S.C. §§ 1001 to 1161aa-1).

11. *See* Labickas v. Ark. State Univ., 78 F.3d 333, 334 (8th Cir. 1996) (per curiam) (holding that no private right of action is implied under the HEA for student borrowers); *see also* Parks Sch. of Bus., Inc. v. Symington, 51 F.3d 1480, 1484–85 (9th Cir. 1995).

12. The One Big Beautiful Bill Act, Pub. L. No. 119-21, 139 Stat. 72, 355–56 (2025), effectively delays, for all student loans originated before July 1, 2035, the implementation of the former President Joseph R. administration's Borrower Defense to Repayment regulations under 34 C.F.R. Part 685, Subpart D, which eased the path to loan relief for federal loans taken out to attend schools that engaged in certain misconduct. *See* Letter from Jeffrey R. Andrade, Deputy Assistant Sec'y, Pol'y, Plan. & Innovation, to Colleague (July 18, 2025), https://fsapartners.ed.gov/fsa-print/publication/1006653 [https://perma.cc/2AJV-CZVB]. In addition, the ED has demonstrated significant difficulties in implementing loan discharges. *See, e.g.,* Sweet v. McMahon, No. 26-1136, 2026 WL 2075903, at *1 (9th Cir. July 17, 2026) (affirming denial of Rule 60(b) of the Federal Rules of Civil Procedure relief where ED had known the size of the post-class applicant group for three years before seeking to extend the settlement's adjudication deadlines); Joint Status Report at 2–5, Hemphill v. McMahon, No. 22-cv-01391 (D.D.C. Apr. 13, 2026), Dkt. No. 54 (reporting that roughly 13,400 borrowers still held undischarged loans more than three years after the ED announced relief for approximately 79,000 borrowers).

13. *See generally* First Amended Complaint, Career Colls. & Schs. of Tex. v. U.S. Dep't of Educ., No. 23-CV-00433 (W.D. Tex. Mar. 6, 2026).

14. *See, e.g.*, Equal Credit Opportunity Act, 15 U.S.C. § 1691 *et seq.* (prohibiting creditor discrimination based on protected characteristics); Title VI of The Civil Rights Act of 1964, tit. VI, Pub. L. No. 88-352, 78 Stat. 241, 252–53 (codified as amended at 42 U.S.C. § 2000d *et seq.*) (prohibiting discrimination based on race, color, or national origin in programs receiving federal financial assistance); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.* (prohibiting sex-based discrimination in any education program or activity receiving federal financial assistance); Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.* (prohibiting inaccurate, unfair, and intrusive credit reporting, including by institutions of higher education).

15. *See* Robyn Smith & Libby Webster, *Examining the States' Role in Protecting Online College Students from Predatory Practices, Part II: State Higher Education Consumer*

conflicts of interest,[16] and federal agencies whose enforcement priorities shift with each new administration.[17] Students are left without a remedy. Institutions that know damages suits are unavailable to their students face diminished incentives to comply with consumer protection norms. State consumer law claims, where not blocked by sovereign immunity, are often the only viable avenue for students harmed by institutional misconduct.

II. THE PRE-*GALETTE* LANDSCAPE

Public institutions enroll most of the nation's postsecondary students and do so in a way that largely mirrors the acts of their private counterparts. But sovereign immunity creates a distinction between remedies available when students are harmed. This part describes the assumptions underlying this distinction and the results it has produced.

A. The System Built on an Unexamined Assumption

Public institutions educated more than 72 percent of all postsecondary students enrolled in the United States in the fall of 2022, despite representing approximately 32 percent of institutions participating in federal student aid programs.[18] When it comes to online education, public institutions also overperform: of the approximately 5.8 million undergraduates enrolled exclusively in distance education in 2022 to 2023, roughly 4.1 million attended public institutions—nearly 2.5 times the number enrolled at private

Protection Laws and Interstate Reciprocity 11–12 STUDENT DEF., NAT'L CONSUMER L. CTR. & POSTSECONDARY EQUITY & ECON. RSCH. PROJ. (Feb. 2024), https://www.american.edu/spa/peer/upload/peer_protect-online_part-ii_updated_d.pdf [https://perma.cc/3GNF-HWGT] (noting that state attorneys general have no state statutory mandate to police higher education and typically act only after schools "have engaged in years of massive fraud").

16. Wesley Whistle, *Commonsense Bipartisan Accreditation Reform: Improving Quality and Accountability in Higher Education*, AM. ENTER. INST. (Sep. 4, 2025), https://www.aei.org/research-products/report/commonsense-bipartisan-accreditation-reform-improving-quality-and-accountability-in-higher-education/ (on file with the *Fordham Law Review*) (highlighting significant issues with accountability and oversight).

17. *See, e.g.*, Ben Unglesbee, *FTC Drops Lawsuit Against Grand Canyon Education*, HIGHER ED DIVE (Aug. 18, 2025), https://www.highereddive.com/news/ftc-drops-lawsuit-grand-canyon-education/757955/ (on file with the *Fordham Law Review*) (reporting that the Federal Trade Commission (FTC) under the President Donald J. Trump administration voted 3-0 to drop the President Biden-era lawsuit against Grand Canyon Education alleging deceptive doctoral cost disclosures, citing court setbacks and ED's earlier decision in the same administration to rescind the Biden administration's $37.7 million fine against Grand Canyon University over the same allegations).

18. NAT'L CTR. FOR EDUC. STAT., U.S. DEP'T OF EDUC., *Digest of Education Statistics* tbl. 303.10 (2023), https://nces.ed.gov/programs/digest/d23/tables/dt23_303.10.asp [https://perma.cc/B5CY-2DMQ] (13,494,337 of 18,580,026 students were enrolled at public institutions in the fall of 2022); *id.* tbl. 105.50 (2022), https://nces.ed.gov/programs/digest/d22/tables/dt22_105.50.asp [https://perma.cc/98GP-UXW9] (1,892 of 5,916 institutions participating in Title IV programs were public in 2020–2021).

schools.[19] Public systems throughout the country now deliver some of that instruction through dedicated online branches. Penn State World Campus,[20] Washington State University Global Campus,[21] and Oregon State University Ecampus,[22] for example, operate as online divisions of their parent universities. By contrast, the University of Maryland Global Campus,[23] Colorado State University Global,[24] State University of New York (SUNY) Empire State University,[25] and the University of Arizona Global Campus[26]—formerly the for-profit Ashford University—are separately accredited institutions within their public systems.

At the same time, public higher education's financial practices and operations have shifted markedly. State per-student funding for higher education fell on average 13 percent between 2008 and 2018 even as enrollment grew,[27] and the COVID-19 pandemic further strained state budgets.[28] Institutions responded by seeking alternative revenue,[29] and in doing so, some have adopted practices long associated with the for-profit

19. Press Release, Nat'l Ctr. for Educ. Stat., U.S. Dep't of Educ., The Total Number of Higher Education Institutions Decreases by 2 Percent (Aug. 21, 2024), https://ies.ed.gov/learn/press-release/total-number-higher-education-institutions-decreases-2-percent [https://perma.cc/7PAU-H5SR] (reporting that, of approximately 5.8 million undergraduates enrolled exclusively in distance education between July 1, 2022 and June 30, 2023, around 4.1 million attended public institutions, 935,000 attended private nonprofit institutions, and 755,000 attended private for-profit institutions).

20. *See* PENN STATE WORLD CAMPUS, https://www.worldcampus.psu.edu/ [https://perma.cc/S5MK-ELMZ] (last visited Sep. 14, 2026).

21. *See* WASH. STATE UNIV. GLOBAL CAMPUS, https://online.wsu.edu/ [https://perma.cc/472P-G8UJ] (last visited Sep. 14, 2026).

22. *See* OR. STATE UNIV. ECAMPUS, https://ecampus.oregonstate.edu/ [https://perma.cc/3PBR-9RBS] (last visited Sep. 14, 2026).

23. *Accreditation*, Univ. of Md. Glob. Campus, https://www.umgc.edu/experience/why-choose-umgc/accreditation [https://perma.cc/M54V-ZT43] (last visited Sep. 16, 2026).

24. *CSU Global's Institutional Accreditation*, Colo. State Univ. Glob., https://csuglobal.edu/about/accreditation [https://perma.cc/3Y3D-JKVV] (last updated Apr. 28, 2026).

25. *Accreditation*, SUNY Empire State Univ. Acad. Catalog 2026–2027, https://catalog.sunyempire.edu/about/accreditation/ [https://perma.cc/DX2D-JMHS] (last visited Sep. 16, 2026).

26. *University Arizona Affiliation & Accreditation*, Univ. of Ariz. Glob. Campus, https://www.uagc.edu/about/accreditation/university-arizona [https://perma.cc/G5Y9-BCPN] (last visited Sep. 16, 2026).

27. MICHAEL MITCHELL, MICHAEL LEACHMAN & MATT SAENZ, CTR. ON BUDGET & POL'Y PRIORITIES, STATE HIGHER EDUCATION FUNDING CUTS HAVE PUSHED COSTS TO STUDENTS, 2 (Oct. 24, 2019), https://www.cbpp.org/research/state-budget-and-tax/state-higher-education-funding-cuts-have-pushed-costs-to-students (on file with the *Fordham Law Review*).

28. *See* Denisa Gándara, Meredith S. Billings, Paul G. Rubin & Lindsey Hammond, *"One of the Weakest Budget Players in the State": State Funding of Higher Education at the Onset of the COVID-19 Pandemic*, 46 EDUC. EVALUATION AND POL'Y ANALYSIS 458, 458–59 (2023).

29. *See* Page Forrest, Riley Judd & Samuel Pittman, *Higher Education's Uncertain Fiscal Future*, PEW CHARITABLE TRS. (Nov. 12, 2025), https://www.pew.org/en/research-and-analysis/articles/2025/11/12/higher-educations-uncertain-fiscal-future (on file with the *Fordham Law Review*) (discussing state budget pressures on public higher education).

sector: an increased focus on enrollment growth, revenue maximization, and partnerships with private companies.[30]

Perhaps the most significant structural shift has been the rise of online program managers (OPMs)—private companies that design, market, and administer online degree programs on behalf of public universities, typically on revenue-sharing arrangements under which the OPM captures a substantial percentage of tuition.[31] Many public institutions rely on companies like 2U, Coursera, Fullstack, and Risepoint (formerly Academic Partnerships) to provide these services.[32] These arrangements import an additional profit motive—and its associated incentives toward aggressive enrollment and opaque cost structures—directly into institutions that operate as public nonprofit entities.[33]

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30. *See generally* GEOFF BAIRD & TEEGE METTILLE, THE SIGNAL SOLUTION: HOW SMART COLLEGES STOP CHASING APPLICATIONS AND START CONVERTING STUDENTS (Laurie Stone ed., 2025); Kevin Carey, *The Creeping Capitalist Takeover of Higher Education*, HUFFPOST (Apr. 1, 2019), https://www.huffpost.com/highline/article/capitalist-takeover-college/ [https://perma.cc/4ZXV-YYQF] ("[M]any colleges don't actually run online programs themselves. They outsource much of the work to an obscure species of for-profit company that has figured out how to gouge students in new and creative ways."); Selingo, *supra* note 5.

31. Amber Villalobos, *Colleges Should Still Tread Carefully When Outsourcing Their Online Programs*, THE CENTURY FOUND. (Mar. 5, 2025), https://tcf.org/content/report/colleges-should-still-tread-carefully-when-outsourcing-their-online-programs/ [https://perma.cc/3ZCG-GR8W].

32. Mellisa Soehono, *LSU and Fullstack Academy Launch Data Analytics Bootcamp To Fill Demand for Skilled Professionals*, BUSINESSWIRE (Nov. 30, 2023, at 10:00 ET), https://www.businesswire.com/news/home/20231130996377/en (on file with the *Fordham Law Review*) (announcing a bootcamp run by Louisiana State University (LSU) Online & Continuing Education and "powered by" Fullstack, with credit available toward LSU's online bachelor's degrees); *Coursera's University Partners Are Recognized Among Forbes Top 10 List of "New Ivies*," COURSERA BLOG (Apr. 15, 2025), https://blog.coursera.org/coursera-university-partners-are-recognized-among-forbes-top-10-list-of-new-ivies [https://perma.cc/5FAT-ATTG] (stating that Coursera hosts online degree programs for the University of Illinois Urbana-Champaign, the University of Michigan, and the University of Pittsburgh); Andrew Hermalyn, *5 Ways Revenue Sharing Drives Access, Innovation, and Quality Outcomes in Higher Ed*, 2U (Apr. 3, 2023), https://2u.com/newsroom/5-ways-revenue-sharing-drives-access-innovation-quality/ [https://perma.cc/RMQ9-QC65] (referencing University of California Berkeley).

33. *See* Villalobos, *supra* note 31; *see also* Laura Hamilton, Heather Daniels, Christian Michael Smith & Charlie Eaton, *The Private Side of Public Universities: Third-Party Providers and Platform Capitalism*, BERKELEY CTR. FOR STUD. IN HIGHER EDUC., June 2022, at 5–16; Kevin Carey, *The Creeping Capitalist Takeover of Higher Education*, HUFFPOST (Apr. 1, 2019), https://www.huffpost.com/highline/article/capitalist-takeover-college/ [https://perma.cc/B75R-GGYR]; Alan Blinder, *Students Paid Thousands for a Caltech Boot Camp. Caltech Didn't Teach It*, N.Y. TIMES (Sep. 29, 2024), https://www.nytimes.com/2024/09/29/us/caltech-simplilearn-class-students.html (on file with the *Fordham Law Review*); Amber Villalobos, *Online College Programs Increasingly Put Black and Hispanic Students at Risk*, THE CENTURY FOUND. (Nov. 17, 2023), https://tcf.org/content/commentary/online-college-programs-increasingly-put-black-and-hispanic-students-at-risk/ [https://perma.cc/5MLV-N96N]; Jeremy Bauer-Wolf, *Caltech Settlement Underscores Need for OPM Oversight in Higher Ed*, NEW AM. (July 9, 2025), https://www.newamerica.org/insights/caltech-settlement-underscores-need-for-opm-oversight-in-higher-ed/ [https://perma.cc/ALK2-8V7A].

Beyond OPMs, many institutions now rely on lead generators and enrollment management firms to help them meet enrollment numbers, hit financial targets, and improve retention rates.[34] Several public institutions have gone even further, directly acquiring for-profit schools. Purdue University acquired Kaplan University and relaunched it as Purdue Global in 2018.[35] The University of Arizona acquired Ashford University in 2020.[36] The University of Arkansas purchased Grantham University in 2021.[37] In each case, a state-affiliated public entity stepped into the shoes of a for-profit operator and inherited its enrollment infrastructure, its marketing apparatus, and sometimes its regulatory and legal history. And in each case, the "new" institution enjoyed the protection of sovereign immunity that had never been designed with such arrangements in mind.

B. Sovereign Immunity Generally Unquestioned in the Higher Education Context

Sovereign immunity is the centuries-old principle that a sovereign cannot be sued without its consent.[38] In the United States, the doctrine has been understood, since at least the founding era, to be "personal" to the state, meaning that it is available to the state itself but not to lesser entities that the state creates.[39] In practice, however, the extension of immunity to state-created entities like public universities was rarely questioned. Courts applying multifactor state-law tests generally concluded that public universities, colleges, and their boards of regents and trustees were sufficiently intertwined with the state to share its immunity, and the threshold "arm of the State" status was often resolved without rigorous analysis.[40] As

34. Jon Marcus, *Going to a "Witch Doctor" Colleges' Reliance on Enrollment Management Firms Grows Despite Alarm Over Companies Strategies*, *in* LIFTING THE VEIL ON ENROLLMENT MANAGEMENT: HOW A POWERFUL INDUSTRY IS LIMITING SOCIAL MOBILITY IN AMERICAN HIGHER EDUCATION 74–101 (Stephen J. Burd ed., 2024); Ozan Jaquette, Karina Salazar & Patricia Martín, *Finding the "Right" Students: The Student List Business and Enrollment Management*, *in* LIFTING THE VEIL ON ENROLLMENT MANAGEMENT: HOW A POWERFUL INDUSTRY IS LIMITING SOCIAL MOBILITY IN AMERICAN HIGHER EDUCATION 188–222 (Stephen J. Burd ed., 2024).

35. *Transaction Complete for Purdue Global*, PURDUE U. NEWSROOM (Mar. 23, 2018), https://www.purdue.edu/newsroom/archive/releases/2018/Q1/transaction-complete-for-purdue-global.html [https://perma.cc/9U7E-LXVV].

36. Lindsay McKenzie, *University of Arizona's Big Online Push*, INSIDE HIGHER ED (Aug. 3, 2020), https://www.insidehighered.com/news/2020/08/04/university-arizona-acquires-ashford-university [https://perma.cc/39FN-RLFP].

37. Natalie Schwartz, *U of Arkansas to Acquire For-Profit Grantham U for $1*, HIGHER ED DIVE (Aug. 11, 2021), https://www.highereddive.com/news/u-of-arkansas-to-acquire-for-profit-grantham-u-for1/604838/ (on file with the *Fordham Law Review*).

38. *See* Franchise Tax Bd. of Cal. v. Hyatt, 139 S. Ct. 1485, 1499 (2019) ("States [have] retained immunity from private suits, both in their own courts and in other courts.").

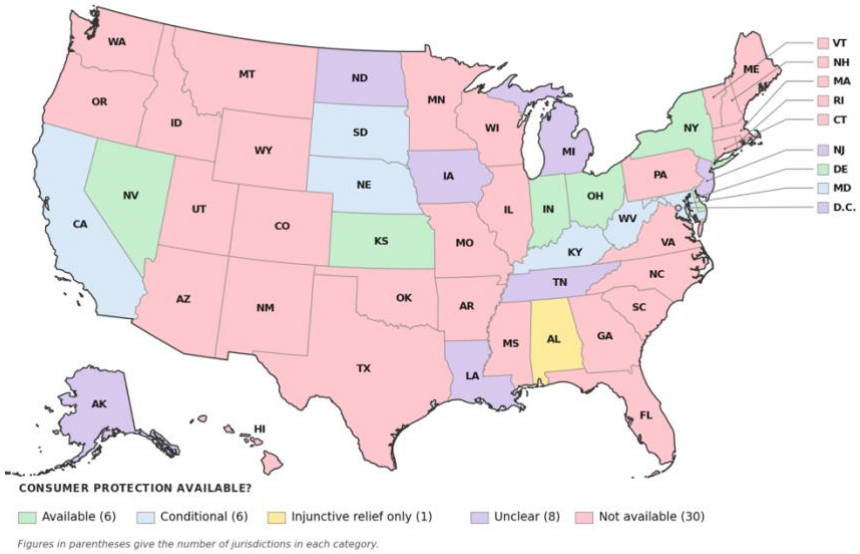
39. Galette v. N.J. Transit Corp., 146 S. Ct. 854, 865 (2026).

40. *See, e.g.*, Vernon v. Trs. of Gaston Coll., No. 23 CVS 3059, 2024 WL 3898620, at *6 (N.C. Super. Ct. Aug. 21, 2024) (holding that Gaston College is a "creature[] of the sovereign" and not a proper defendant under consumer protection statutes); Pampu v. Wingo, 918 S.E.2d 717, 736 (S.C. Ct. App. 2025) (recognizing that the state university was "partially private" but

a consequence, students at public institutions had no meaningful recourse under state consumer law, regardless of how egregious the misconduct or how extensively the institution had adopted practices indistinguishable from private-sector operators.

Before *Galette*, courts in at least twenty-five states held that sovereign immunity barred consumer protection claims against public institutions.[41] Several additional states excluded public institutions from coverage through statutory definitions that do not include public institutions as potential defendants.[42] At least one state permitted public institution students to sue for injunctive relief.[43] But only a handful of states clearly subjected public institutions to consumer protection liability on the same terms as their private institution counterparts.[44]

The map below reflects the pre-*Galette* availability of state consumer protection law remedies for students at public institutions of higher education across all fifty states and the District of Columbia.



holding, without applying the *Galette* framework, that this did not disqualify it from "state agency status" and the accompanying sovereign immunity).

41. *See infra* Appendix: Pre-*Galette* Availability of State Consumer Protection Remedies for Students at Public Institutions of Higher Education.

42. *See infra* Appendix: Pre-*Galette* Availability of State Consumer Protection Remedies for Students at Public Institutions of Higher Education.

43. *See infra* Appendix: Pre-*Galette* Availability of State Consumer Protection Remedies for Students at Public Institutions of Higher Education.

44. *See infra* Appendix: Pre-*Galette* Availability of State Consumer Protection Remedies for Students at Public Institutions of Higher Education.

III. *GALETTE V. NEW JERSEY TRANSIT CORPORATION*: THE FRAMEWORK AND ITS IMPLICATIONS

Galette supplies a uniform federal framework for determining which state-created entities may invoke a state's sovereign immunity. The framework turns on how a state structured the entity and on who bears formal liability for judgments against it, rather than on the practical funding and control relationships that multifactor tests previously emphasized.[45] This part sets out the decision and the three inquiries it directs, explains why arm-of-the-state status remains a question of federal law that no state may answer for itself, and considers what the framework should mean for public colleges and universities.

A. How the Court Analyzed New Jersey Transit's Sovereign Immunity Claim

The New Jersey Transit Corporation (NJ Transit) is the third-largest provider of bus, rail, and light rail transit in the United States.[46] Created by the New Jersey Legislature in 1979 as a "body corporate and politic with corporate succession," it was simultaneously described as "an instrumentality of the State exercising public and essential governmental functions."[47] When NJ Transit buses struck and injured private individuals in New York City and Philadelphia, those individuals sued in their home state courts.[48] NJ Transit moved to dismiss in both cases, claiming entitlement to New Jersey's sovereign immunity.[49] The New York Court of Appeals held that NJ Transit was not an arm of New Jersey; the Pennsylvania Supreme Court held the opposite.[50]

The Supreme Court granted certiorari to resolve the conflict and unanimously held that NJ Transit is not an arm of New Jersey. The Court's analysis rests on three principal inquiries, applied in a rough order of importance:

1. *Corporate structure and legal separateness*. Because sovereign immunity is personal to the State itself, whether a state-created entity enjoys that same immunity requires consideration of whether the entity was constituted as a discrete corporation possessing traditional corporate powers—such as the right to sue and be sued, to hold property, to enter into contracts, and to incur debt. State-created entities that undertake significant actions independently from the state may not be covered by sovereign immunity. Corporate form is "particularly salient," because "separately incorporated organizations are separate legal units with distinct legal rights

45. *See infra* Part III.A.
46. *See* Galette v. N.J. Transit Corp., 146 S. Ct. 854, 864 (2026).
47. *Id.* at 863 (quoting N.J. STAT. ANN. § 27:25–4(a) (West 2018)).
48. *Id.*
49. *Id.* at 864.
50. *See id.*

and obligations."[51] A State that creates a corporation, rather than an unincorporated agency, does so knowing that the corporation enjoys the advantages and disadvantages of separate legal status, including the fact that it is no longer part of the State itself.[52] But corporate form "is not the only structure that signals the State has created a legally separate entity."[53]

2. *Formal liability for judgments*. The second inquiry is whether the State is formally and legally obligated to pay any judgment against the entity. "If the State is formally liable for judgments against an entity, that entity is more likely to be an arm of the State because its liabilities necessarily undermine the State's ability to make choices about how to allocate the State fisc."[54] The "practical financial relationship," on the other hand, between the State and entity, including the State's history of funding the entity or informally guaranteeing its obligations, carries "less relevance."[55] Put simply, a state cannot confer immunity on a state-created entity simply by agreeing to fund or indemnify it.[56]

3. *State control (with caution)*. Although the degree of state control over the entity may bear on the question, the Supreme Court also recognized that states typically maintain "ultimate control" over all state-created entities, including those—like cities and counties—that do not enjoy arm-of-the-state status.[57] Importantly, the Court noted that it has "never once found a corporation that was liable for its own judgments to be an arm of the State, even when the State had significant control over the entity," including cases where the State was the sole shareholder and possessed plenary appointment and removal authority.[58]

B. Why the Galette *Framework Is a Federal Question*

Galette reaffirmed that federal law governs the analysis of whether a state-created entity is considered an arm of the state.[59] Not only did the Court refuse to defer to any state's highest court on the threshold question of arm-of-the-state status, but it also did not credit as dispositive New Jersey's legislative characterization of NJ Transit as an "instrumentality of the State."[60]

Further, the Court expressly rejected the argument, made by twenty-three states as amici curiae, that a state's characterization of a state-created entity

51. *Id.* at 868 (citing Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc., 140 S. Ct. 2082, 2087 (2020)).
52. *See id.*
53. *Id.*
54. *Id.* at 869.
55. *Id.*
56. *See id.*
57. *Id.* (quoting Hess v. Port Auth. Trans-Hudson Corp., 513 U.S. 30, 47 (1994)).
58. *Id.*
59. *Id.* at 875; *cf.* Regents of Univ. of Cal. v. Doe, 519 U.S. 425, 429 n.5 (1997) (noting that the question of whether a state agency is an arm of the state is "a question of federal law" that "can be answered only after considering the provisions of state law that define the agency's character").
60. *Galette*, 146 S. Ct. at 863 (quoting N.J. STAT. ANN. § 27:25–4(a) (West 2018)).

should control the arm-of-the-state inquiry.[61] The implication is significant: arm-of-the-state status is a question of federal law, governed by a uniform framework, and no state's formulation of that question is binding on courts applying sovereign immunity doctrine.[62] Nevertheless, the *federal* question of whether an entity is entitled to sovereign immunity is separate from the *state* law question of whether that immunity has been waived.[63]

C. *What* Galette *Means for Public Colleges and Universities*

Galette does not mean that every public university loses sovereign immunity overnight. The answer for most institutions will require a detailed analysis of applicable state law. Many institutions, particularly state flagships, are created by state constitutional provisions and are often treated, under the applicable state constitution and statute, as integral parts of the state itself—not corporations liable for their own judgments. But many other public institutions—including regional universities, community college districts, system offices, and entities legislatively created as boards with corporate powers—may face a different result. As legal commentators have observed in the wake of *Galette*, "there are a lot of cases holding universities and hospitals to be arms of the state that do not apply this analysis," and a systematic review may yield outcomes different from what courts and institutions have long assumed.[64]

Any state that wants a particular entity to retain immunity may legislatively ensure sovereign immunity as the Court recognized in *Galette*.[65] But another path exists: state legislatures can also make clear, by statute, that state consumer protection laws apply equally to all postsecondary institutions—public and private—and that students harmed by violations at public institutions are entitled to the same remedies as students at private ones.

IV. FOUR INTERLOCKING COMPONENTS OF A COMPREHENSIVE LEGISLATIVE SOLUTION

Four components, working together, can close the gap between protections available to private and public school students in higher education. A State must (1) bring all institutions of higher education within the reach of its consumer protection statute, (2) waive sovereign immunity for student claims under that statute, (3) confirm that the sovereign immunity waiver carries both monetary damages and injunctive relief, and (4) ensure protections reach out-of-state public institutions that enroll its residents online. Each

61. *Id.* at 875.

62. *Accord Regents of Univ. of Cal.*, 519 U.S. at 429 n.5 (noting that the question of whether a state agency is an arm of the state is "a question of federal law" that "can be answered only after considering the provisions of state law that define the agency's character").

63. *See* Palmer v. Ohio, 248 U.S. 32, 34 (1918).

64. DIVIDED ARGUMENT: *A Subversive Mission*, at 46:36 (Spotify, Mar. 11, 2026).

65. *Galette*, 146 S. Ct. at 875.

component addresses a distinct failure, and a state that adopts some but not all of them may leave students without a remedy in predictable cases. This part considers each in turn.

A. Expressly Subject Public Institutions to Consumer Protection Laws

States must ensure that generally applicable consumer protection statutes expressly apply to public institutions of higher education. As a threshold matter, sovereign immunity does not matter in this context if a state's consumer protection statute fails to include postsecondary institutions. If the scope of the consumer protection statute (often phrased in terms of "persons," or "merchants," or "sellers") does not encompass postsecondary institutions, no college or university will be subject to that statute, regardless of sovereign immunity.[66] But a second problem exists: even a catch-all definition that would arguably include all postsecondary institutions—for example, "any other organization, legal entity, or group of individuals however organized"[67]—does not ensure the waiver of sovereign immunity (irrespective of *Galette*), because most states require that a waiver of sovereign immunity must be express, not implied. Amending the state's consumer protection statutes to ensure that all institutions of higher education are covered—both public and private—is a simple and durable fix.

A legislature could accomplish this by adding the following to the relevant part of the consumer protection statute: "For purposes of this Act, institutions of higher education, whether public or private, and whether in-state or out-of-state, are persons subject to this Act."

B. Waive Sovereign Immunity for Consumer Claims Against Public Institutions

Where sovereign immunity would otherwise bar claims, legislatures should waive that immunity for purposes of consumer protection claims brought by students. Such a waiver can be enacted within the consumer protection statute, within the state's higher education statute, or as a standalone provision. Any waiver must be express, encompass claims for monetary damages (not just injunctive relief), and make clear that students at public institutions are entitled to remedies coextensive with those available to students at private institutions.

A targeted legislative waiver of sovereign immunity for consumer claims is a partial waiver, not a general one. It need not expose the state treasury (whether paying directly or indirectly) to liability for every conceivable claim against every public institution. It is a carefully scoped, policy-driven decision to ensure that institutions that operate in the higher education consumer marketplace are accountable under the same legal standards as private competitors engaging in the same actions. This means accountability

66. *See infra* Appendix: Pre-*Galette* Availability of State Consumer Protection Remedies for Students at Public Institutions of Higher Education.

67. D.C. CODE § 28–3901(a)(1) (2023).

for fraudulent, unfair, or deceptive practices regarding recruiting students, collecting tuition, and making representations that induce enrollment, among other things.

A legislature wishing to make this waiver explicit might add to its consumer protection code:

> [State] waives sovereign immunity for claims brought by enrolled or former students against institutions of higher education under this Act. Monetary damages shall be available as a remedy for successful claims brought under this Act against any institution of higher education, whether public or private, to the same extent as they would be available if brought against any other person subject to this Act.

C. Ensure Monetary Damages Are Available

A waiver that permits only injunctive relief is largely meaningless for students who have already been harmed. Returning to the original example, if Jack (at the private university) can recover tuition overpaid because of the school's misrepresentation, Diane (at the public institution) should be able to do the same. Legislatures should confirm expressly that any waiver of immunity for consumer claims encompasses the full range of remedies available under the statute, including actual damages, statutory damages (where provided), treble damages (where authorized), and attorney's fees to incentivize the representation of student consumers.

D. Address Out-of-State Institutions

The sovereign immunity problem is not limited to in-state public institutions. As online education has grown, out-of-state public universities have enrolled enormous numbers of students in states where they maintain neither physical presence nor formal licensure relationships traditionally required of brick-and-mortar operators. When students in State A are harmed by misrepresentations made by a public institution from State B, the extraterritorial application of State B's sovereign immunity—if it applies at all—creates jurisdictional and substantive gaps that states did not historically need to address in this context.

Galette's holding that arm-of-the-state status is a federal question helps, but it is not a panacea. A court in State A need not simply defer to State B's characterization of its own institution. But if the *Galette* framework results in State B having arm-of-the-state status, the State A court must then apply State B's law regarding waiver.

States can and should condition the authorization of out-of-state institutions to recruit, enroll, and educate in-state students on those institutions' express waiver of sovereign immunity for consumer protection claims brought by in-state students. This conditioned authorization approach—that is, requiring a waiver as a term of institutional licensure or state authorization—is both legally sound and administratively tractable.

In a growing number of enrollment situations, the consumer-facing entity is neither the state-chartered university nor a fully private institution, but

some combination: a public university's online division, a joint venture between a public university and a private OPM, or a rebranded for-profit school acquired by a public system. Legislative fixes should be drafted broadly enough to reach all of these configurations as well as those that will arise in the future, focusing on the nature of the student-facing transaction rather than the technical corporate structure of the institution.

CONCLUSION

Jack and Diane enrolled in what looked like very similar programs. They heard the same promises. They paid similar fees (or at least thought they would). The difference in their legal situation when those promises turned out to be false has never reflected any principled policy choice. It has reflected, instead, the accident of which type of institution each happened to attend, overlaid by a centuries-old doctrine designed to protect the dignity of sovereigns that has been extended, largely without examination, to entities that are legally and practically distinct from the State itself.

As state legislatures consider statutory amendments in light of *Galette*, consumer advocates should pay attention. During the post-*Galette* period of institutional review, states that engage in the process will analyze statutory language to determine which of their public entities qualify as genuine arms of the state and which do not. This is the time to ask (1) whether public institutions that are considered arms of the state should be held to the same standard as private institutions, and (2) whether all institutions—public and private alike—should face consumer liability for fraudulent, deceptive, or unfair acts.

The answer to both questions should be the same: Yes. Whether students attend a public institution or a private one should not determine whether consumer protection laws can reach the institution that wronged them.

APPENDIX: CHECKLIST AND MODEL LEGISLATIVE LANGUAGE

A. Checklist for State Legislators and Advocates

☐ Expressly include all institutions of higher education—public and private, in-state and out-of-state—in the definition of "person" (or equivalent) subject to the state's consumer protection statutes.

☐ Enact an express waiver of sovereign immunity for consumer protection claims brought by students against public institutions of higher education, whether within the consumer protection statute, the higher education statute, or a standalone provision.

☐ Ensure the waiver encompasses claims for monetary damages, not merely injunctive relief, and that students at public institutions are entitled to the same remedies as students at private ones.

☐ Condition the authority of out-of-state public institutions to recruit, enroll, and educate in-state students on those institutions' express waiver of sovereign immunity for consumer protection claims brought by in-state students.

☐ Draft provisions broadly enough to reach joint ventures, OPM arrangements, and acquired for-profit entities operating under a public university's banner.

☐ Review prior statutory language that excludes "governmental entities" or "the state" from coverage and amend to expressly include public institutions of higher education.

B. Model Language: Consumer Protection Statute Amendment

The following language is illustrative. Bracketed terms should be adapted to the state's statutory structure.

Section [X]. Applicability to Institutions of Higher Education.

(a) For purposes of this Act, "person" includes any institution of higher education operating within this state or enrolling students who are residents of this state, whether public or private, and whether organized under the laws of this state or any other state or jurisdiction.

(b) [State] expressly waives sovereign immunity for claims brought by enrolled or former students against institutions of higher education under this Act. Monetary damages shall be available as a remedy for successful claims brought under this Act against any institution of higher education to the same extent as they would be available if brought against any private institution.

(c) As a condition of authorization to operate within this state and to recruit, enroll, or educate residents of this state, any out-of-state postsecondary educational institution shall expressly waive sovereign immunity for claims brought by such students or their representatives pursuant to this Act.

C. Model Language: Higher Education Statute Amendment

As an alternative (or complement) to the consumer protection statute amendment, the following could be added to the state's higher education code:

Section [Y]. Student Consumer Protection.

(a) All postsecondary institutions authorized to operate within this state are subject to [State Consumer Protection Statute].

(b) [State] waives sovereign immunity for actions brought by students under [State Consumer Protection Statute] against public institutions of higher education. Such actions may be brought individually or as a class action that may include actual damages, statutory damages, injunctive relief, and attorney's fees as provided under [State Consumer Protection Statute].

(c) Any violation of [State Higher Education Act] or any rule adopted pursuant thereto constitutes a deceptive act or practice under [State Consumer Protection Statute]. Any remedy provided by this section shall be in addition to other remedies provided by law.

APPENDIX: PRE-*GALETTE* AVAILABILITY OF STATE CONSUMER PROTECTION REMEDIES FOR STUDENTS AT PUBLIC INSTITUTIONS OF HIGHER EDUCATION

The Notes column includes citations to controlling or illustrative authority. Where no case law exists, the entry reflects the best available inference from analogous authority and statutory text.

State/ Jurisdiction	Consumer Protection Available?	Notes
Alabama	Injunctive Relief Only	Waiver of sovereign immunity extends to non-monetary equitable relief only; no monetary damages available. Because the consumer protection statute defines "person" to include "other legal entity," students may seek injunctive relief to prevent an institution from continuing harmful behaviors, but students who have already been harmed cannot recover damages.[68]
Alaska	Unclear	The Alaska Constitution waives absolute sovereign immunity, but courts have not determined whether any exception applies to consumer protection statutes in the higher education context. A court affirmed the dismissal of an unfair trade practice claim against the University of Alaska on the ground that the challenged transaction did not involve consumer goods—suggesting that if the underlying transaction had involved consumer goods or services, the institution would have been a proper defendant.[69]
Arizona	Not Available	Sovereign immunity bars consumer protection claims against public institutions.[70]

68. Ala. State Univ. v. Danley, 212 So. 3d 112, 124 (Ala. 2016) (holding that sovereign immunity is waived for injunctive relief); ALA. CODE § 8-19-3(10) (2021) (defining "person" to include "other legal entity").

69. *See* Aloha Lumber Corp. v. Univ. of Alaska, 994 P.2d 991, 1002 (Alaska 1999) (dismissing the claim because the transaction did not involve consumer goods); State v. Alaska State Emps. Ass'n, 190 P.3d 720, 722 (Alaska 2008) ("The Alaska Constitution waives absolute sovereign immunity.").

70. *See* ARIZ. REV. STAT. ANN. § 12-820.01 (2002) (lacking express waiver of liability).

State/ Jurisdiction	Consumer Protection Available?	Notes
Arkansas	Not Available	Where consumer protection claims against the state would "operate to control the action of the State or subject it to liability," they are barred by sovereign immunity.[71]
California	Conditional	Public universities are not entitled to sovereign immunity where they acted in a capacity no different from a private university or individual.[72] The Board of Regents would therefore appear subject to suit under California's Unfair Competition Law (UCL)[73] when engaging in proprietary rather than governmental activities.[74] Neither the UCL nor the Consumers Legal Remedies Act,[75] however, defines "person" to include a municipal or other public corporation, so any waiver as to either statute appears to rest on the proprietary-governmental distinction or the ability to bring an Unfair Practices Act claim against a "municipal or other public corporation," than on other statutory text.[76]
Colorado	Not Available	As an arm of the State, public universities and their employees in their official capacities are immune from suit under the doctrine of sovereign immunity.[77]

71. *See* Ark. Lottery Comm'n v. Alpha Mktg., 428 S.W.3d 415, 419 (Ark. 2013).

72. Regents of Univ. of Cal. v. Superior Ct. of S.F., 322 Cal. Rptr. 3d 114, 120 (Cal. Ct. App. 2024) (finding that public universities are not immune when acting like private actors).

73. CAL. BUS. & PROF. CODE §§ 17200–17210 (West 1977).

74. *See id.* § 17201. A "person" is defined without reference to public corporations for purposes of the Unfair Competition Law. *Id.* §§ 17200–17210. In the separate Unfair Practices Act, "person" is defined to include a "municipal or other public corporation." *Id.* §§ 17000–17101.

75. CAL. CIV. CODE §§ 1750–1784 (West 1970).

76. *Id* § 1761(c). Here, "person" is defined, for purposes of the Consumers Legal Remedies Act, as "an individual, partnership, corporation, limited liability company, association, or other group, however organized." *Id* §§ 1750–1784.

77. *See* Churchill v. Univ. of Colo. at Boulder, 285 P.3d 986, 998 (Colo. 2012) ("As an arm of the state, the University and its employees in their official capacities are immune from suit under the doctrine of state sovereign immunity.").

State/ Jurisdiction	Consumer Protection Available?	Notes
Connecticut	Not Available	Sovereign immunity bars unfair competition and unfair trade practice claims against state entities absent an express statutory waiver.[78]
Delaware	Available	The consumer protection statute defines "person" to include governmental entities, making students at public institutions likely protected to the same extent as students at private institutions.[79]
District of Columbia	Unclear	The District of Columbia Consumer Protection Procedures Act[80] defines "person" broadly enough to arguably include public institutions of higher education, but sovereign immunity remains an unresolved question.[81]
Florida	Not Available	Sovereign immunity is waived only with respect to monetary damages for torts; no waiver exists for consumer protection claims.[82]
Georgia	Not Available	The Uniform Deceptive Trade Practices Act (UDTPA)[83] does not expressly waive the state's sovereign immunity, does not specifically create a cause of action against the State, and exempts conduct in

78. *See* Charter Commc'ns v. Univ. of Conn., No. X07CV000072038S, 2000 WL 1820827, at *2 (Conn. Super. Ct. Nov. 2, 2000) (dismissing unfair trade practices claim on sovereign immunity grounds); Nodoushani v. S. Conn. State Univ., No. NNHCV084030030S, 2008 WL 3306728, at *3 (Conn. Super. Ct. July 15, 2008) ("Absent a waiver of sovereign immunity, the court lacks subject matter jurisdiction over [a] claim against the state.").

79. DEL. CODE ANN., tit. 6, § 2511(7) (2021) (defining "person" to include government).

80. D.C. CODE § 28-3901(a)(1) (2026).

81. *Id.* (defining "person" broadly to include "any other organization, legal entity, or group of individuals however organized"); District of Columbia v. Owens-Corning Fiberglass Corp., 572 A.2d 394, 404–05 (D.C. 1989) (recognizing the District of Columbia's version of sovereign immunity).

82. FLA. STAT. § 768.28 (2024) (expressly waiving sovereign immunity only for monetary damages in tort).

83. GA. CODE ANN. §§ 10–1–370 to 10–1–375 (West 2017).

State/ Jurisdiction	Consumer Protection Available?	Notes
		compliance with a statute administered by a state agency.[84]
Hawaii	Not Available	Statutory laws of general application do not apply to the State unless the legislature explicitly made them so; the doctrine of sovereign immunity precludes any suit against the State without express consent.[85]
Idaho	Not Available	A statutory waiver is required to bring suit against any governmental unit; no such waiver exists for consumer protection claims.[86]
Illinois	Not Available	A political body cannot be considered a "person" within the meaning of the consumer protection statute.[87]
Indiana	Available	The consumer protection statute defines "person" to include "the state of Indiana or its subdivisions or agencies," making students at public institutions likely protected to the same extent as students at private institutions.[88]
Iowa	Unclear	The consumer protection statute does not expressly cover government or governmental entities.[89] But Iowa courts have recognized an implied waiver of

84. Ga. Lottery Corp. v. Patel, 836 S.E.2d 634, 637 (Ga. Ct. App. 2019) ("Because the UDTPA does not expressly waive the State's sovereign immunity . . . we find no clear waiver of sovereign immunity under the UDTPA.").

85. Big Island Small Ranchers Ass'n v. State, 588 P.2d 430, 436 (Haw. 1978) ("Statutory laws of general application are not applicable to the State unless the legislature in the enactment of such laws made them explicitly applicable to the State.").

86. Sanchez v. State, Dep't of Corr., 141 P.3d 1108, 1113 (Idaho 2006) ("It is the general rule that, under the doctrine of sovereign immunity, a governmental unit can only be sued upon its consent." (quoting Univ. of Utah v. Twin Falls County, 842 P.2d 689, 696 (Idaho 1992))).

87. Cooney v. Chicago Pub. Sch., 943 N.E.2d 23, 30 (Ill. App. Ct. 2010) (holding that a political body may not be considered a "person" under the consumer statute).

88. IND. CODE § 24-5-0.5-2(a)(2) (1982).

89. *See* IOWA CODE § 714H.2(7) (2009) (defining "person" pursuant to section 714.16); *id.* § 714.16 (defining person to not include government or governmental entities).

State/ Jurisdiction	Consumer Protection Available?	Notes
		sovereign immunity under certain circumstances.[90]
Kansas	Available	The consumer protection statute defines "person" to include the "government" and a "government subdivision or agency," making students at public institutions likely protected to the same extent as students at private institutions.[91]
Kentucky	Conditional	Sovereign immunity is waived for claims arising from written contracts; a student may be able to pursue relief by characterizing the underlying consumer dispute as a breach of the enrollment or financial agreement.[92]
Louisiana	Unclear	An unfair trade practice and consumer protection action against a state defendant has survived a motion to dismiss, but no case law specifically addresses consumer protection claims against a public institution of higher education.[93] The Louisiana Constitution waives immunity for tort and contract suits.[94] Louisiana has enacted no comparable waiver for claims under its Unfair Trade Practices and Consumer Protection Law (LUTPA),[95] which defines "person" to reach "any other legal entity" but includes no government-specific language.[96]

90. *See* Terrace Hill Soc'y Found. v. Terrace Hill Comm'n, 6 N.W.3d 290, 295 (Iowa 2024) (finding that the State can waive sovereign immunity implicitly by creating a legal obligation that "subject[s] it to liability" regardless of how the claim is styled (citing Lee v. Polk Cnty. Clerk of Ct., 815 N.W.2d 731, 737–38 (Iowa 2012))).

91. KAN. STAT. ANN. § 50-624(i) (2019).

92. KY. REV. STAT. ANN. § 45A.245 (West 1978) (waiving immunity for written contracts).

93. *See* Strahan v. Dep't of Agric. and Forestry, 645 So. 2d 1162, 1166 (La. Ct. App. 1994) (remanding the unfair trade practices claims against a state entity for further proceedings).

94. *See* LA. CONST. ANN. art. XII, § 10(A) (1974).

95. *See* LA. REV. STAT. ANN. § 51:1401–51:1429 (2023).

96. *See id.* § 51:1402(8); Law Indus., LLC v. State, Dep't of Educ., 370 So. 3d 1067, 1074 (La. 2024) (holding that a LUTPA claim does not lie against the State where it acts "in furtherance of [its] governmental function" and so is not engaged in "trade or commerce").

State/ Jurisdiction	Consumer Protection Available?	Notes
Maine	Not Available	Sovereign immunity applies to consumer protection claims against state entities absent a waiver where the state is the true party in interest.[97]
Maryland	Conditional	Case law suggests that sovereign immunity may be waived for injunctive relief, or for monetary claims in which the plaintiff is seeking no more than the amount of funds available to the entity. A monetary judgment may not be maintained against the state or a state agency "unless funds had been appropriated for the purpose or the agency can provide funds by taxation."[98]
Massachusetts	Not Available	Sovereign immunity can bar a claim against a governmental entity acting in a business capacity for unfair trade practices.[99]
Michigan	Unclear	The definition of "person" in the Michigan Consumer Protection Act (MCPA)[100] could be read to include public institutions.[101] However, courts have recognized that Michigan's public institutions are "a part of the government of the state."[102] Courts have also held that "governmental immunity" can, in some circumstances, bar claims under the MCPA.[103]

97. *See* Carey v. Me. Bd. of Overseers of the Bar, No. CV-17-17, 2017 WL 6513581, at *22 (Me. Super. Ct. Oct. 25, 2017) (dismissing consumer protection claims against a state entity); *see also* Drake v. Smith, 390 A.2d 541, 543 (Me. 1978) (reiterating applicability of sovereign immunity absent a waiver where the State is the true party in interest).

98. Bd. of Trs. of Howard Cmty. Coll. v. John K. Ruff, Inc., 366 A.2d 360, 362 (Md. 1976) (quoting Am. Structures v. City of Baltimore, 364 A.2d 55, 56 (Md. 1976)).

99. *See* Univ. of Mass. v. Phio Pharm. Corp., No. 1984CV02455BLS1, 2020 WL 6342956, at *5 (Mass. Super. Ct. Sept. 24, 2020) (holding sovereign immunity can bar unfair trade practices claims against governmental entities acting in a business capacity).

100. MICH. COMP. LAWS ANN. §§ 445.901–445.922 (2018).

101. *Id.* § 445.902(d).

102. Branum v. State, 145 N.W.2d 860, 862 (Mich. Ct. App. 1966).

103. *See, e.g.,* Pryor v. Clegg, No. 200720, 1999 WL 33444323, at *4 (Mich. Ct. App. May 18, 1999).

State/ Jurisdiction	Consumer Protection Available?	Notes
Minnesota	Not Available	The Minnesota Consumer Fraud Act does not apply to the State as an entity.[104] The sovereign immunity doctrine precludes litigation against the State unless a statute either explicitly names the State or contains language expressly demonstrating the legislature's intent to permit actions against the State.[105]
Mississippi	Not Available	Government organizations could fall within the Mississippi Consumer Protection Act (MCPA),[106] which defines "person" to include "other legal entity."[107] However, express waiver is required,[108] and there has not been an express waiver of immunity for MCPA.
Missouri	Not Available	A public college is not a "person" within the meaning of the State consumer protection statute, and the statute therefore does not apply to public institutions of higher education.[109]
Montana	Not Available	The constitutional waiver of sovereign immunity applies "only to claims sounding in tort"; no waiver exists for consumer protection claims.[110]
Nebraska	Conditional	"Any statute purporting to waive the state's sovereign immunity must be clear in doing so and must be strictly construed

104. MINN. STAT. § 325F.69 (1985).

105. *See* First Nat'l Bank of the N. v. Miller Schroeder Fin., Inc., 709 N.W.2d 295, 298–99 (Minn. Ct. App. 2006) (finding that the Consumer Fraud Act does not apply to the state as an entity); *see also* Anderson v. Harpstead, No. A23-0969, 2024 WL 413506, at *2 (Minn. Ct. App. Jan. 25, 2024) (finding that Minnesota Uniform Deceptive Trade Practices Act claims are barred by sovereign immunity).

106. MISS. CODE ANN. §§ 75-24-1 to 75-24-359 (1994).

107. *Id.* § 75-24-3(a).

108. *See* State v. Blenden, 748 So. 2d 77, 87 (Miss. 1999).

109. *See* Bottorff-Arey v. Truman State Univ., 633 S.W.3d 508, 515 (Mo. Ct. App. 2021) (holding that public higher education institutions are not a "person" within the meaning of the consumer protection statute).

110. Robinson v. State, 68 P.3d 750, 752 (Mont. 2003) ("The constitutional waiver of sovereign immunity in Art. II, Sec. 18, Mont. Const., has been held to apply only to claims sounding in tort.").

State/ Jurisdiction	Consumer Protection Available?	Notes
		in favor of the State."[111] While the Nebraska Consumer Protection Act (CPA)[112] defines "person" too narrowly to likely encompass government entities,[113] the Uniform Deceptive Trade Practices Act (UDTPA)[114] defines "person" in a way that expressly includes government entities: > a natural person, a corporation, a government, a governmental subdivision or agency, a business trust, an estate, a trust, a partnership, a joint venture, a limited liability company, an unincorporated association, a sole proprietorship, or two or more of any of such persons having a joint or common interest or any other legal or commercial entity.[115] Therefore, while immunity is not waived for claims arising under Nebraska's CPA, it likely is waived for claims arising under Nebraska's UDTPA.[116]
Nevada	Available	Nevada has broadly waived sovereign immunity under the theory that "the State should generally take responsibility when it commits wrongs."[117] The waiver is subject to an exception for discretionary functions grounded in public policy.[118]

111. Wadman v. State, 510 N.W.2d 426, 429 (Neb. Ct. App. 1993).
112. NEB. REV. STAT. §§ 59-1601 to 59-1608.01 (2008).
113. *Id.* § 59-1601(1).
114. *See* NEB. REV. STAT. §§ 87-301 to 87-306 (1969).
115. *See id.* § 87-301(19).
116. *Id.*
117. Echeverria v. State, 495 P.3d 471, 476 (Nev. 2021).
118. *Id.* (finding that a broad sovereign immunity waiver is available because the legislature did not act "silently"); *see* Martinez v. Maruszczak, 168 P.3d 720, 723–24 (Nev. 2007) (discussing discretionary function exception and requirement that exceptions be grounded in public policy).

State/ Jurisdiction	Consumer Protection Available?	Notes
New Hampshire	Not Available	Sovereign immunity bars consumer protection claims against state entities.[119]
New Jersey	Unclear	The New Jersey Consumer Fraud Act (CFA)[120] defines "person" in a broad way that could include a state entity like a public university.[121]
New Mexico	Not Available	A waiver of sovereign immunity must be clear and unambiguous.[122] Immunity has been waived for tort claims and certain statutory claims,[123] but there has been no such clear waiver of immunity for claims arising under the New Mexico Unfair Practices Act.[124]
New York	Available	A public entity can be liable under New York General Business Law[125] so long as the claim concerns a "consumer-oriented transaction," is brought in the New York Court of Claims, and complies with the applicable requirements.[126]
North Carolina	Not Available	Public institutions are "creatures of the sovereign" and are not proper defendants under North Carolina's consumer protection statutes.[127]
North Dakota	Unclear	Insufficient precedent to determine whether sovereign immunity bars

119. *See* Cheers P.R. & C. Gaming Corp. v. N.H. Lottery Comm'n, No. 2022-0602, 2023 WL 7274755, at *1–2 (N.H. Nov. 3, 2023) (holding that sovereign immunity bars consumer protection claims).

120. N.J. STAT. ANN. §§ 56:8-1 to 56:8-227 (West 2000).

121. *Id.* § 56:8-1(d) (CFA definition of "person"); *id.* §§ 59:1-1, 59:1-3, 59:13-2 (excluding entities with sue-and-be-sued authority from definition of "State").

122. *See* Cockrell v. Bd. of Regents of N.M. State Univ., 45 P.3d 876, 885–87 (N.M. 2002).

123. *See* N.M. STAT. ANN. § 41-4-2 (1976).

124. *Id.* § 57-12-2(A) (defining "person" narrowly so as not to waive sovereign immunity for claims against the State).

125. *See* N.Y. GEN. BUS. LAW §§ 1–47 (McKinney 1909).

126. *See* N.Y. CT. CL. ACT § 8 (2014) (waiving immunity with respect to claims in the Court of Claims); *see id.* § 9 (establishing Court of Claims jurisdiction "[t]o render judgment in favor of the claimant or the state for such sum as should be paid by or to the state").

127. Vernon v. Trs. of Gaston Coll., No. 23 CVS 3059, 2024 WL 3898620, at *6 (N.C. Super. Ct. Aug. 21, 2024) (Gaston College is "a creature[] of the sovereign" and not a proper defendant under consumer protection statutes).

State/ Jurisdiction	Consumer Protection Available?	Notes
		consumer protection claims against public institutions of higher education.[128]
Ohio	Available	The consumer protection statute defines "person" to include the government, making students at public institutions likely protected to the same extent as students at private institutions.[129]
Oklahoma	Not Available	"The general rule applied to laws in derogation of sovereignty is that a statute will not be construed to divest the state of its immunities unless the intention to do so is clearly expressed."[130] While both the Unfair or Deceptive Acts or Practice (UDAP) statutes contain the phrase "other legal entity," neither the Oklahoma Consumer Protection Act[131] nor the Oklahoma Deceptive Trade Practices Act[132] contain express waivers of immunity.[133]
Oregon	Not Available	"The intent to waive the state's immunity must be found in the statutes since it is only the legislative assembly which has been given the authority to waive it."[134] There is no such waiver in Oregon's Unlawful Trade Practices Act (UTPA)[135]—the statute explicitly

128. *See* N.D. CENT. CODE § 51-15-01(4) (2023) (defining "person" without reference to governmental entities); N.D. CONST. art. I, § 9; Bulman v. Hulstrand Constr. Co., 521 N.W.2d 632, 639 (N.D. 1994) (abolishing common-law sovereign immunity prospectively); N.D. CENT. CODE § 32-12.2-02(1), (5) (limiting claims against the State to parties that the legislative assembly has authorized and to claims existing as of April 22, 1995). We were unable to identify a North Dakota decision that addressed whether chapter 51-15 reaches public institutions of higher education.

129. OHIO REV. CODE ANN. § 1345.01(B) (West 2023) (defining "person" to include government).

130. McGaha v. Bd. of Regents of Univ. of Okla., 691 P.2d 895, 897–98 (Okla. 1984).

131. OKLA. STAT. tit. 15, §§ 751–765 (1972).

132. OKLA. STAT. tit. 78, §§ 51–56 (2008).

133. OKLA. STAT. tit. 15, § 752 (defining "person" without reference to government); OKLA. STAT. tit. 78, § 52.

134. State v. Shinkle, 373 P.2d 674, 679 (Or. 1962).

135. OR. REV. STAT. §§ 646.605–646.656 (1971).

State/ Jurisdiction	Consumer Protection Available?	Notes
		exempts the State from the definition of "person."[136]
Pennsylvania	Not Available	Sovereign immunity bars actions brought under the Unfair Trade Practices and Consumer Protection Law (UTPCPL)[137] against public universities.[138]
Rhode Island	Not Available	Express waiver of sovereign immunity is required.[139] There is no such waiver in Rhode Island's Deceptive Trade Practices Act.[140]
South Carolina	Not Available	State agencies receive sovereign immunity, and a university can be a state agency sufficient to receive sovereign immunity.[141]
South Dakota	Conditional	Sovereign immunity is waived for public entities if they participate in a risk sharing pool or purchase liability insurance.[142] No precedent applies this waiver to higher education, but it has been applied to public kindergarten through twelfth grade school districts.[143] Further, South Dakota's Deceptive Trade Practices and Consumer Protection Law[144] defines "person" broadly, opening the door to public higher education institutions being

136. *Id.* § 646.605.
137. 73 PA. CONS. STAT. §§ 201-1 to 201-9.2 (1976).
138. *See* Crockett v. Edinboro Univ., 811 A.2d 1094, 1095 (Pa. Commw. Ct. 2002) (holding that sovereign immunity barred UTPCPL claim against a public university).
139. *See* Pellegrino v. R.I. Ethics Comm'n, 788 A.2d 1119, 1123 (R.I. 2002) ("This Court has held that the 'Legislature is presumed not to have relinquished any part of the state's sovereign power unless [its] intent to do so [has been] clearly expressed or arises by necessary implication from the [relevant] statutory language.'" (quoting Int'l Depository, Inc. v. Rhode Island, 603 A.2d 1119, 1122 (R.I. 1992))).
140. *See* 6 R.I. GEN. LAWS § 13.1-1(3) (2024) (defining "person" to include "any other legal entity" but not expressly to include the government).
141. *See* Pampu v. Wingo, 918 S.E.2d 717, 736 (S.C. Ct. App. 2025).
142. *See* S.D. CODIFIED LAWS § 21-32A-1 (1986).
143. *See* Brown v. Egan Consol. Sch. Dist. No. 50-2, 449 N.W.2d 259, 262 (S.D. 1989).
144. S.D. CODIFIED LAWS §§ 37-24-1 to 37-24-64 (1987).

State/ Jurisdiction	Consumer Protection Available?	Notes
		held liable where sovereign immunity is waived.[145]
Tennessee	Unclear	Sovereign immunity is waived for certain written contracts; a student may be able to pursue relief by characterizing a consumer claim as a breach of an enrollment or financial agreement.[146] Tennessee's Consumer Protection Act[147] defines "person" to include "governmental agency" and "any other legal or commercial entity however organized" but it is unclear whether courts would consider higher education institutions to fall within the definition.[148]
Texas	Not Available	Governmental entities are not included in Texas' Deceptive Trade Practices Act (DTPA)[149] definition of "person," and neither the DTPA nor other consumer protection statutes clearly and unambiguously provide for a waiver of immunity from suit for governmental units.[150]
Utah	Not Available	Unless expressly waived, sovereign immunity applies to governmental entities in Utah.[151] The Governmental Immunity Act of Utah[152] contains no such waiver, and the Utah Consumer Sales Practices Act's[153] former definition

145. *Id.* § 37-24-1 (defining "person" to include "any other legal entity").
146. *See* TENN. CODE ANN. § 9-8-307(a)(1)(L) (2023) (waiving immunity for certain written contracts).
147. TENN. CODE ANN. §§ 47-18-101 to 47-18-138 (2023).
148. *Id.* § 47-18-103(18).
149. TEX. BUS. & COM. CODE ANN. §§ 17.01–17.955 (West 1967).
150. *See* McBride v. Tex. Dep't of Crim. Just., No. 13-05-391-CV, 2008 WL 521002, at *7 (Tex. App. Feb. 28, 2008) ("Governmental entities are not included in the DTPA's definition of 'person'"); *see also* Univ. of Houston Main Campus v. Simons, No. 01-02-00368-CV, 2002 WL 31388906, at *2 (Tex. App. Oct. 24, 2002) ("Neither the DTPA nor the Debt Collection Act clearly and unambiguously provides for a waiver of immunity from suit for governmental units.").
151. *See* UTAH CODE ANN. § 63G-7-101 (West 2017).
152. *Id.* §§ 63G-7-101 to 63G-7-904.
153. UTAH CODE ANN. §§ 13-11-1 to 13-11-23 (West 1973).

State/ Jurisdiction	Consumer Protection Available?	Notes
		of "person"—which did reach a "government, governmental subdivision or agency"—does not supply the express waiver Utah requires.[154]
Vermont	Not Available	Sovereign immunity protects the State from suit unless immunity is expressly waived by statute.[155] The Vermont Consumer Fraud Act[156] defines "seller" narrowly so as not to waive sovereign immunity.[157]
Virginia	Not Available	Sovereign immunity is not waived merely because the definition of "person" in a statute is broad enough to cover the government and its instrumentalities; an express waiver is required.[158] The Virginia Consumer Protection Act[159] defines "person" broadly, but does not contain an express waiver of sovereign immunity.[160]
Washington	Not Available	Political subdivisions are not expressly included in Washington's Consumer Protection Act.[161] Courts have construed statutory language that does not expressly include political subdivisions as excluding them from coverage.[162]

154. *Id.* § 13-11-3(5) (defining "person" to include a "government, governmental subdivision or agency"), *amended by* 2025 Utah Laws ch. 442 (deleting the definition of "person"); *see also* UTAH CODE ANN. § 63G-7-301 (enumerating waivers of immunity, none of which reaches a statutory consumer claim).

155. *See* LaShay v. Dep't of Soc. & Rehab. Servs., 625 A.2d 224, 228 (Vt. 1993).

156. VT. STAT. ANN. tit. 9, §§ 2451–2494z (2021).

157. *Id.* § 2451a(3).

158. *See* Fogleman v. Commonwealth, No. 0841-22-2, 2023 WL 6065593, at *3 (Va. Ct. App. Sept. 19, 2023) (finding that immunity is not waived where the definition of "person" was broad enough to cover the government, but no express waiver was present).

159. VA. CODE ANN. §§ 59.1-196 to 59.1-207 (1977).

160. *Id.* § 59.1-198 (defining "person" to include "any other legal entity" but not indicating the intended inclusion of government in any concrete way).

161. WASH. REV. CODE §§ 19.86.010–19.86.920 (1984).

162. *See* Ottgen v. Clover Park Tech. Coll., 928 P.2d 1119, 1122 (Wash. Ct. App. 1996) (holding statutory language that does not expressly include political subdivisions is read as excluding them from Consumer Protection Act).

State/ Jurisdiction	Consumer Protection Available?	Notes
West Virginia	Conditional	A student's ability to recover may be limited to whether the state's insurance policy covers the particular claim at issue—"[s]uits which seek no recovery from state funds, but rather allege that recovery is sought under and up to the limits of the State's liability insurance coverage, fall outside the traditional constitutional bar to suits against the State."[163]
Wisconsin	Not Available	Express waiver of sovereign immunity is required.[164] Neither Wisconsin's false advertising provision,[165] nor its competition and trade provision,[166] contain such waivers.
Wyoming	Not Available	A public university enjoys sovereign immunity when engaging in governmental activity.[167] Additionally, there is no express waiver of sovereign immunity in the Wyoming Consumer Protection Act.[168]

163. *See* Davari v. W. Va. Univ. Bd. of Governors, 857 S.E.2d 435, 438 (W. Va. 2021) (citing Pittsburgh Elevator Co. v. W. Va. Bd. of Regents, 310 S.E.2d 675, 688 (1983)).

164. *See* State v. P.G. Miron Constr. Co., 512 N.W.2d 499, 503 (Wis. 1994).

165. *See* WIS. STAT. § 100.18 (2023).

166. *See id.* § 100.20.

167. *See* City of Laramie v. Univ. of Wyoming, 542 P.3d 607, 614–18 (Wyo. 2024) (holding that the university had sovereign immunity because it was engaged in governmental activity at the time the relevant contract was entered).

168. *See* WYO. STAT. ANN. §§ 40-12-101 to 40-12-509 (1973).