No. 21-1262

In The
Supreme Court of the United States

TITLEMAX OF DELAWARE, INC. ET AL.,

Petitioners,

v.

RICHARD VAGUE, IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE PENNSYLVANIA DEPARTMENT OF BANKING AND SECURITIES,

Respondent.

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

BRIEF OF WASHINGTON LEGAL FOUNDATION AND ONLINE LENDERS ALLIANCE AS *AMICI CURIAE* SUPPORTING PETITIONERS

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QUESTION PRESENTED

Whether the dormant Commerce Clause prohibits Pennsylvania from extending its lending laws beyond its borders to loans that out-of-state lenders make at stores outside the Commonwealth.

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INTERESTS OF *AMICI CURIAE*[*]

Washington Legal Foundation is a nonprofit, public-interest law firm and policy center with supporters nationwide. WLF promotes free enterprise, individual rights, limited government, and the rule of law. It often appears as *amicus curiae* to advance its view that the dormant Commerce Clause is key to our federal structure. *See, e.g.*, *Pharm. Rsch. & Mfrs. of Am. v. Cnty. of Almaeda*, 575 U.S. 1034 (2015) (*per curiam*); *Am. Beverage Ass'n v. Snyder*, 735 F.3d 362 (6th Cir. 2013).

WLF also regularly publishes, through its Legal Studies Division, articles by outside experts on the dormant Commerce Clause. *See, e.g.*, Boyd Garriott et al., *The Case for Uniform Standards Grows as States Sew More Laws into Patchwork of Data-Privacy Regulations*, WLF LEGAL BACKGROUNDER (Sept. 27, 2019); Hyland Hunt, *Court Finds NY Unconstitutionally Shifted Cost Of "Opioid Stewardship Fund" To Out-Of-State Commerce*, WLF LEGAL OPINION LETTER (Mar. 15, 2019). WLF believes that proper application of the dormant Commerce Clause's prohibition on burdening interstate commerce is crucial to economic growth and the continued viability of our federal form of government.

Online Lenders Alliance represents the growing industry of innovative companies that develop and deploy pioneering financial technology,

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[*] No party's counsel authored any part of this brief. No person or entity, other than *amici* and their counsel, paid for the brief's preparation or submission. After timely notice, all parties consented to *amici*'s filing this brief.

including proprietary underwriting methods, sophisticated data analytics, and non-traditional delivery channels, to offer online consumer loans and related products and services. OLA's members include online lenders, vendors and service providers to lenders, consumer reporting agencies, payment processors, and online marketing firms. OLA leads the way in improving consumer protections with a set of standards ensuring that borrowers are fully informed, fairly treated, and using lending products responsibly.

To accomplish this, OLA members voluntarily agree to hold themselves to a set of best practices, a set of rigorous standards beyond legal and regulatory requirements. These are standards that OLA members, the industry, and any partners with whom OLA members work use to stay current on the changing legal and regulatory landscape. OLA Best Practices cover all facets of the industry, including advertising and marketing, privacy, payments, and mobile devices. Most importantly, OLA Best Practices aim to help consumers make educated financial decisions by ensuring that the industry fully discloses all loan terms in a transparent, easy-to-understand manner.

INTRODUCTION

"This Court has 'long recognized the role of the States as laboratories for devising solutions to difficult legal problems.'" *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787, 817 (2015) (quoting *Oregon v. Ice*, 555 U.S. 160, 171 (2009)). This allows "a single courageous State [to], if its citizens choose, serve as a laboratory; and try novel

social and economic experiments without risk to the rest of the country." *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).

Often, it is unclear whether an experiment will work. Some States force high schools to offer math all four years while other States permit high schools to choose their own math curriculum. *See generally* Jennifer Dournay Zinth, *High School Graduation Requirements*, Educ. Comm'n of the States (Mar. 2012), https://bit.ly/37CbA0X. It is hard to predict whether requiring more math courses results in overall better outcomes.

But imagine that Michigan requires that all schools teach math all four years while Wisconsin does not. A student in Michigan attends school in Wisconsin. If Michigan can require that school to offer math all four years, it would be foisting its views onto schools in Wisconsin. This would spell the end of our fifty laboratories of democracy.

This is what the Framers wanted to avoid. Learning from their mistakes with the Articles of Confederation, they baked horizontal federalism into our Constitution. One way they ensured that States could make their own policy decisions was the dormant Commerce Clause. This prevents States from enacting hegemonic statutes that interfere with other States' policy decisions.

Pennsylvania, however, has ignored these constitutional safeguards. It doesn't like some other States' usury laws. So it imposes its usury laws on out-of-state companies with no presence in the Commonwealth when they transact business with

Pennsylvania residents outside the Commonwealth's borders.

This disregard for horizontal federalism demands the Court's review. If left to stand, the Third Circuit's decision will give other States a license to regulate activities outside their borders. That would be inconsistent not only with the Founders' vision but also with this Court's dormant Commerce Clause jurisprudence.

The Court has agreed to decide an important case next term that preserves the States' ability to serve as laboratories of democracy. But, even after that case, the scope of States' ability to regulate out-of-state conduct will remain uncertain. Because of the clean procedural posture of this case, the Court can focus on the question presented and decide the purely legal issue of what standard applies when deciding whether a State's extraterritorial application of its laws violates the dormant Commerce Clause. The Court should thus grant the Petition and reinforce the territorial limits of state laws by limiting States' regulation of out-of-state conduct.

STATEMENT

Although the relevant conduct occurred in Delaware, Ohio, and Virginia, for simplicity this brief focuses on the Delaware operations. TitleMax is a Delaware corporation with no presence in Pennsylvania. Pet. App. 4a. It provides loans to consumers. *Id.* at 22a. Consumers use car titles as collateral for the loans and agree to repay the loans with interest. *Id.* at 3a. But unlike most loans today,

"the entire loan process—from the application to the disbursement of funds—takes place" at a physical storefront. *Id.* (cleaned up).

Unsurprisingly, some Pennsylvanians conduct business outside the Commonwealth. That includes going to Delaware and agreeing to consensual loans at TitleMax locations. *See* Pet. App. 32a-33a. As the loans are made in Delaware by a Delaware corporation, these loans must comply with Delaware law.

But the Pennsylvania Department of Banking and Securities expects TitleMax also to comply with Pennsylvania's lending laws if Pennsylvania residents make loan payments from the Commonwealth or secure the loan with a vehicle registered in the Commonwealth. The loan statutes include 7 P.S. §§ 6203, 6213 and 41 P.S. § 201. These statutes cap the interest rate that an unlicensed lender may charge at six percent or twenty-four percent.

The Department subpoenaed TitleMax seeking documents for all loans made to Pennsylvania residents. Pet. App. 4a-5a. TitleMax immediately stopped making loans to Pennsylvanians, *id.* at 5a, and sued seeking a declaration that Pennsylvania could not enforce its lending laws outside the Commonwealth's borders.

The District Court granted TitleMax summary judgment after finding that the dormant Commerce Clause barred Pennsylvania from encroaching on Delaware's sovereignty. Pet. App. 20a-33a. The Third Circuit, however, reversed that decision. *Id.* at 1a-

19a. In its view, a State may apply its laws to transactions outside its own borders so long as the transactions have some effect within the State. *See id.* at 18a. TitleMax now seeks certiorari because the decision will have major consequences and conflicts with those of other courts of appeals.

SUMMARY OF ARGUMENT

I.A. When the thirteen colonies won their independence from England, they did not immediately form a constitutional republic. Rather, the Articles of Confederation governed States' relations. This led to major problems because the States refused to respect each other's views. They acted aggressively by passing laws that burdened interstate commerce and imposed their policy views on the other States.

This Balkanization hurt the new nation's economic stability. Realizing these errors, the Founding Fathers desired a new governing document. They gathered in Philadelphia in the summer of 1787 and drafted the Constitution. The Framers came up with a solution to the problem of State aggrandizement by allowing States to govern their territory without interference from other States. Chief among these protections was the dormant Commerce Clause.

The dormant Commerce Clause, however, is not the only constitutional provision that protects horizontal federalism. The Founders erected many protections for State sovereignty. The Full Faith and Credit Clause headlines these protections. Others include the Extradition Clause and, later, the

Fourteenth Amendment's Due Process Clause, which restricts a State court's power to exercise jurisdiction over persons and conduct occurring outside the State's borders.

B. Pennsylvania's applying its lending laws in Delaware violates these core horizontal federalism principles. The conduct it seeks to regulate takes place entirely outside the Commonwealth by companies with no presence in Pennsylvania.

II. The Court recently agreed to decide when a State's regulation of intrastate activity has such a drastic effect on upstream out-of-state commerce that it violates the dormant Commerce Clause. *Nat'l Pork Producers v. Ross*, 2022 WL 892100 (U.S. Mar. 28, 2022) (*per curiam*). This case presents the inverse question: When may a State regulate out-of-state conduct because of possible downstream effects in the State? Deciding both cases in the same term would allow this Court to clarify the full scope and sweep of the dormant Commerce Clause.

This is a good vehicle to pair with *National Pork Producers*. Unlike petitioners in some other cases, TitleMax has disowned operating in Pennsylvania and has taken all reasonable steps to avoid subjecting itself to the Commonwealth's lending laws. Still, Pennsylvania is trying to reach across its borders and impose its laws on its sister State. And because the case was fully briefed and argued below, there are no vehicle issues that counsel against granting the Petition.

III.A. Not everyone can access loans from banks and credit unions. Over 2 million Americans

turn to title loans each year to cover their expenses. Even more turn to other forms of alternative lending. Governance of this industry is properly reserved for each State. Yet the Third Circuit said that Pennsylvania could force title loan companies in Delaware to operate differently or face significant liability if they choose to do business with Pennsylvania residents. This ruling conflicts with the dormant Commerce Clause.

B. Limiting access to alternative lending will hurt consumers. Rather than be able to smooth their consumption curves when faced with income or expense shocks, consumers will have to choose between putting food on the table and buying medicine. The Court should thus grant the Petition because of its broader societal effects.

ARGUMENT

I. THE DORMANT COMMERCE CLAUSE IS KEY TO HORIZONAL FEDERALISM.

When people invoke federalism, they usually mean vertical federalism. Horizontal federalism is the other side of the federalism coin. It involves how the States interact with each other. The Third Circuit, however, ignored those principles when upholding Pennsylvania's exercising jurisdiction outside its borders.

A. Successful Horizontal Federalism Requires That States Respect Other States' Policy Decisions.

1. When adopting the Articles of Confederation after the Revolutionary War, the thirteen States included no safeguards against burdening interstate commerce. *See* Merrill Jensen, *The New Nation: A History of the United States During the Confederation, 1781-1789*, 245-57 (1950). The Founders quickly recognized that the structure was broken and needed reform. A major impetus for the Constitutional Convention was the "Balkanization that [] plagued" the States "under the Articles of Confederation." *Hughes v. Oklahoma*, 441 U.S. 322, 325-26 (1979) (citing *H. P. Hood & Sons, Inc. v. Du Mond*, 336 U.S. 525, 533-34 (1949)); *see* The Federalist No. 7, 62-63 (Alexander Hamilton) (Clinton Rossiter ed. 1961).

To solve that problem, States gave Congress authority to "regulate Commerce * * * among the several States." U.S. Const. art. I, § 8, cl. 3; *see* The Federalist No. 42 at 267-68 (James Madison). The Commerce Clause was so critical to a functioning federal government that it was the first substantive power the new Constitution delegated to Congress. States disclaimed any ability to regulate interstate commerce. They ceded this power so commerce could flourish.

The Framers thought all States were disposed "to aggrandize themselves at the expense of their neighbors." The Federalist No. 6 at 60 (Alexander Hamilton) (quotation omitted). They feared this would lead to factions—the ultimate poison for the Union; the "most common and durable source" of

factions is economic inequality. The Federalist No. 10 at 79 (James Madison).

Maintaining States' sovereignty was the solution to the problem. The new Constitution thus built on the premise that "the peoples of the several states must sink or swim together, and that in the long run prosperity and salvation are in union and not division." *Baldwin* v. *G.A.G. Seelig*, 294 U.S. 511, 523 (1935). Its promise was unity in interstate trade and respect for the States' sovereignty within their own borders.

Each State retained power over its "ordinary course of affairs, concern[ing] the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State." The Federalist No. 45 at 293 (James Madison); *see Shelby Cnty., Ala. v. Holder*, 570 U.S. 529, 543 (2013). Sovereignty necessarily includes prohibiting encroachment of state power across borders. Otherwise, state sovereignty disappears.

Factions quickly form if state borders are merely nominal. So the Court has zealously guarded them: "Laws have no force of themselves beyond the jurisdiction of the State which enacts them." *Huntington v. Attrill*, 146 U.S. 657, 669 (1892); *see also New York Life Ins. Co. v. Head*, 234 U.S. 149, 160-61 (1914).

The Commerce Clause reflects that the States "are not separable economic units"—and that state protectionism would lead to conflict. *H.P. Hood*, 336 U.S. at 538; *see also* The Federalist No. 7, at 63 (Alexander Hamilton). The dormant Commerce

Clause prevents States from legislating extraterritorially. It strikes a balance that maintains "the autonomy of the individual States within their respective spheres." *Healy v. Beer Inst.*, 491 U.S. 324, 335-36 (1989). Properly limiting States' jurisdiction "confin[es] each state to its proper sphere of authority[]in a federalist system." Katherine Florey, *State Courts, State Territory, State Power: Reflections on the Extraterritoriality Principle in Choice of Law and Legislation*, 84 Notre Dame L. Rev. 1057, 1093 (2009). This is necessary because when "the burden of state regulation falls on" other States, typical "political restraints" are ineffective. *S. Pac. Co. v. Arizona ex rel. Sullivan*, 325 U.S. 761, 767-68 n.2 (1945) (collecting cases).

True enough, States must "recognize, and sometimes defer to, the laws, judgments, or interests of another." Gil Seinfeld, *Reflections on Comity in the Law of American Federalism*, 90 Notre Dame L. Rev. 1309, 1309 (2015). Policy judgments must be respected even if the people or leaders of another State vehemently disagree. But the Constitution requires that "while an individual state may make policy choices for its own state, a state may not impose those policy choices on the other states." Margaret Meriwether Cordray, *The Limits of State Sovereignty and the Issue of Multiple Punitive Damages Awards*, 78 Ore. L. Rev. 275, 292 (1999) (citing *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 568-73 (1996)). Here Pennsylvania is imposing its usury views on lenders throughout the nation. This violates the principles of horizontal federalism key to maintaining our federal form of government.

2. The dormant Commerce Clause works hand in glove with other constitutional provisions to promote horizontal federalism. For example, States lack personal jurisdiction over other States' residents absent a demonstrated connection to the forum State. *See, e.g.*, *Bristol-Myers Squibb Co. v. Superior Court of Cal., S.F. Cnty.*, 137 S. Ct. 1773, 1781 (2017). This rule "respect[s] the interests of other States" to exercise their "own reasoned judgment" over conduct within their borders. *BMW*, 517 U.S. at 571; *State Farm Mut. Auto Ins. Co. v. Campbell*, 538 U.S. 408, 422 (2003); Heather K. Gerken & Ari Holtzblatt, *The Political Safeguards of Horizontal Federalism*, 113 Mich. L. Rev. 57, 78 (2014).

Similarly, the Full Faith and Credit Clause requires a State to recognize "public acts, records and judicial proceedings of every other state," U.S. Const. art. IV, § 1—even if the State "disagrees with the reasoning underlying the judgment or deems it to be wrong on the merits." *V.L. v. E.L.*, 577 U.S. 404, 407 (2016) (*per curiam).* Agreeing in this way to respect the judgments of other States helped make the individual States "integral parts of a single nation." *Milwaukee Cnty. v. M.E. White Co.*, 296 U.S. 268, 277 (1935).

The Extradition Clause pushes in the same direction. It mandates that States give criminal defendants over to another State even if they believe "that what the fugitive did was not wrong or that rendition would be unfair." Allan Erbsen, *Horizontal Federalism*, 93 Minn. L. Rev. 493, 546 (2008).

Underlying each of these constitutional provisions is the principle of state comity. In other

words, each State must respect the sovereignty of the other forty-nine States. Applying a law to an out-of-state corporation that is doing business outside the State's borders violates the comity principle. The Third Circuit's decision, however, ignores this principle and horizontal federalism. Only this Court can set the record straight and ensure that our nation of fifty sovereigns can continue for another 230 years.

B. Pennsylvania's Law Violates The Dormant Commerce Clause.

The Third Circuit held that applying Pennsylvania's lending laws to TitleMax was not an extraterritorial application of the Commonwealth's laws. *See* Pet. App. 13a (TitleMax's "activities do not occur 'wholly outside' of Pennsylvania."). In its view, Pennsylvania residents' payment of their loans from within the Commonwealth and use of Pennsylvania-registered vehicles as collateral for their loans constituted sufficient in-state effects for Pennsylvania to have an interest in applying its laws to TitleMax's out-of-state loans. *See id.* (citing *Quik Payday, Inc. v. Stork*, 549 F.3d 1302, 1308 (10th Cir. 2008)). But this argument makes no sense.

The Third Circuit's and Tenth Circuit's analysis is not limited to title loans. According to these courts of appeals, if a loan recipient returns to a State after agreeing to the contract, that transaction is not extraterritorial for dormant Commerce Clause purposes. But an example shows the absurdity of this holding.

Assume a Pennsylvania resident's automobile breaks down in Dover, Delaware. He heads to the

local loan company to get money to fix his car. This loan company complies with Delaware law and is licensed as a loan agent. Further assume that, under Delaware law, the Pennsylvania resident need only provide his passport and email address to get the small loan.

If the loan had a seven-percent interest rate, Pennsylvania would argue that once its resident returned to the Commonwealth and began making payments to the Delaware loan company, that lender would be violating Pennsylvania law. Pennsylvania could make this argument even if the company did not know that it was loaning money to a Pennsylvania resident; the mere act of servicing the loan could make it liable under Pennsylvania law.

This essentially eviscerates Delaware's ability to regulate loans made by its corporations within its borders. That puts Delaware corporations to the choice of complying with the most stringent laws in the nation or refusing to do business with out-of-state residents. In the example above, the Delaware corporation would have two choices. First, it could ask for proof of residency—which is not required by Delaware law—and then loan money to only Delaware residents. Second, it could follow the most stringent loan statutes in the country.

But the Constitution gives Delaware power to control transactions within its borders. The Framers did not give the other States the ability to make laws for Delaware. Yet that is what the Third Circuit blessed here. The Third Circuit's rationalization notwithstanding, Pennsylvania's law is wholly extraterritorial.

Again, using the example above, the law is regulating conduct occurring only in Delaware. Even a Delaware resident borrowing money from a Delaware company in Delaware is affected by the Pennsylvania law. Either the Delaware resident must prove that he is not a Pennsylvanian or the interest rate must be capped at the most restrictive rate in the country. Again, no part of the transaction occurs in Pennsylvania. But under the Third Circuit's interpretation of the dormant Commerce Clause, this is permissible.

Even worse, nothing stops the Third Circuit's reasoning from applying to loans that were legal when the contract was signed. Imagine a Delaware resident borrows money from a Delaware corporation in Delaware. The loan carries a seven percent interest rate. A few months later, the borrower moves to Pennsylvania. Now, rather than sending the bills to Wilmington, the loan company sends the bills to Bethel Park.

Under the Third Circuit's rationale, Pennsylvania can impose its lending laws on the Delaware corporation for this loan. In other words, the company must lower its interest rate as soon as someone moves to Pennsylvania. Again, Pennsylvania had no connection with the initial loan. Yet the Third Circuit's reasoning would allow Pennsylvania to blue pencil the contract to change the interest rate.

This places lenders outside Pennsylvania in a bind. Do they price in the risk of a customer moving to Pennsylvania when setting interest rates? If so, that will hurt all customers. Rather than charge

seven percent, the company might have to charge ten percent to make up for the lost revenue that will happen when some customers move to Pennsylvania.

In short, there is no way around finding that Pennsylvania is regulating transactions occurring wholly outside its borders. That is what the dormant Commerce Clause forbids. Because proper application of the dormant Commerce Clause is key to horizontal federalism, the Court should grant the Petition.

II. THIS IS A GOOD VEHICLE TO DECIDE THE APPROPRIATE TEST IN DORMANT COMMERCE CLAUSE CASES.

As described in the Petition (at 12-19), the lower federal courts are hopelessly divided on the scope of the dormant Commerce Clause's prohibition on extraterritorial regulation. The Court recently acknowledged the confused state of dormant Commerce Clause jurisprudence by granting review in *National Pork Producers*.

But although both cases involve the extraterritoriality branch of dormant Commerce Clause jurisprudence, this case is different than *National Pork Producers* in an important way. There, the sellers' in-state activity—selling pork to California residents within the State's borders—has massive upstream effects on pork producers outside the State. Because so much pork is consumed in California, those producers must comply with California's laws to survive.

This case involves the inverse situation. Again, Pennsylvania is regulating activities that took place

outside the Commonwealth. TitleMax, a Delaware corporation, loaned money in Delaware. So this case addresses when a State may regulate out-of-state conduct that may have downstream effects in that State.

The parties here entered detailed stipulations of fact. TitleMax did not operate in Pennsylvania. It has no employees in the Commonwealth, has no physical locations in the Commonwealth, and does not advertise to Pennsylvania residents. In short, TitleMax did everything possible to avoid subjecting itself to Pennsylvania's lending laws.

This means that the Court can focus on the question presented and decide the purely legal issue of what standard applies when deciding whether a State's extraterritorial application of its laws violates the dormant Commerce Clause. It is hard to imagine how a case could more cleanly present this question presented.

Combining the questions presented in *National Pork Producers* and the question presented here would allow the Court to clarify the extraterritoriality branch of dormant Commerce Clause jurisprudence. Deciding only *National Pork Producers* would lead to further confusion. The courts will struggle applying that holding where, as here, States regulate out-of-state conduct with potential downstream effects. The Court should not create more uncertainty when it has the chance to grant the Petition and decide both issues together or in short succession.

III. THE COURT'S INTERVENTION IS NEEDED BECAUSE THIS CASE IS OF GREAT PUBLIC IMPORTANCE.

A. Many Consumers Turn To The Alternative Lending Sector For Financing.

This case may affect the whole alternative lending sector. Pennsylvania expects all lenders to comply with its lending laws if Pennsylvanians pay their loan from the Commonwealth—even if residents borrow money outside Pennsylvania.

Over 24.2 million U.S. households are underbanked and another 8.4 million households are unbanked. Fed. Deposit Ins. Corp., *FDIC National Survey of Unbanked and Underbanked Households*, 17 (2017), https://bit.ly/361tbio. These households often rely on the alternative lending sector, which offers title loans, installment loans, and pawn loans. *Id.* at 39-42.

Consumers borrow over $90 billion annually from the alternative lending sector. U.S. Dep't of the Treasury, *A Financial System That Creates Economic Opportunities: Nonbank Financials, Fintech, and Innovation*, 127 (July 2018) (citing Ctr. for Fin. Servs. Innovation, *2017 Financially Underserved Market Size Study*, 44-47 (Dec. 2017)).

Of that total, over $2 billion is title-loan lending. *See* Pew Charitable Trusts, *Auto Title Loans: Market practices and borrowers' experiences*, 3 (Mar. 2015). In other words, over 2 million Americans

annually turn to title loans because they lack other borrowing options. *Id.* at 1.

Title loan companies provide much needed financial services for those who cannot obtain traditional financing. Many consumers who turn to the alternative lending sector were rejected by banks or did not apply because of fear of rejection. Scott Fulford & Cortnie Shupe, *Consumer use of payday, auto title, and pawn loans: Insights from the Making Ends Meet Survey*, 16, Consumer Fin. Protection Bureau (May 2021), https://bit.ly/ 36ZGO25. For those who obtain title loans, less than half have credit cards. *See* Pew at 30. Consumers who use these loans are also more likely to experience income shocks that affect their ability to meet their financial obligations. *See* Fulford & Shupe, *supra* at 19-24.

B. Limiting Access To The Alternative Lending Sector Hurts Poorer Americans.

There are devastating effects when States restrict credit options through laws or regulations, like interest-rate caps. After Oregon passed a rate cap, bank overdraft fees and late bill payments increased while the overall financial condition of Oregon residents declined. *See generally* Jonathan Zinman, *Restricting consumer credit access: Household survey evidence on effects around the Oregon rate cap*, 34 J. Banking & Finance 546 (2010). And in Georgia, bankruptcy rates, bounced checks, and complaints to the Federal Trade Commission all increased after the State limited access to the alternative lending sector. Donald P. Morgan & Michael R. Strain, *Payday Holiday: How Households*

Fare after Payday Credit Bans, Fed. Reserve Bd. of N.Y. (Feb. 1, 2008), https://bit.ly/38xrXvX.

So allowing the Third Circuit's decision to stand would harm some of the most vulnerable members of society. Over eighty percent of those who receive title loans do not own their homes. Ill. Dep't of Fin. Insts., *Short Term Lending: Final Report*, 26 (2000). For these consumers, "their vehicle is one of their most valuable economic assets. Prohibiting them from pledging their vehicle for a title loan could force many of them to sell their cars instead. Most title loans for operating vehicles are eventually redeemed, thus consumers seem obviously better off by being able to keep their car and borrow against it rather than selling it outright." Todd J. Zywicki, *Consumer Use and Government Regulation of Title Pledge Lending*, 22 Loy. Consumer L. Rev. 425, 437 (2010). In other words, the title loan "structure is beneficial to [the] borrowers." *Id.* at 438.

Allowing Pennsylvania to regulate title loans outside its borders would thus have devastating results. Rather than be able to put food on the table and buy prescriptions, borrowers would be out of luck. The Court should not allow an important service to be shut down by another State. It should therefore grant review and reverse the Third Circuit's decision, which blesses such extraterritorial application of Pennsylvania's laws.

CONCLUSION

The Court should grant the Petition.

Respectfully submitted,

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