No. 25-1359

In the Supreme Court of the United States

TITLEMAX OF VIRGINIA, INC., ET AL.,
Petitioners,

v.

WENDY S. SPICHER, Secretary, 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 *AMICUS CURIAE* STATE OF SOUTH CAROLINA IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICUS CURIAE*[1]

Extraterritoriality is not a hypothetical concern for South Carolina. It undermines foundational federalism principles that animate the authority of the States. And, as this case illustrates, it has real world consequences for the States and their inhabitants.

A state agency in Pennsylvania wants to control the terms of loan contracts entered into in other States between Pennsylvania residents and out-of-state companies. These companies don't have offices or employees in Pennsylvania, don't conduct any business in Pennsylvania, and don't advertise in Pennsylvania. Yet the Pennsylvania agency has tried to force its will extraterritorially by levying tens of millions of dollars in fines on these out-of-state companies that dare follow the law of the States where they actually do business. And when the Pennsylvania agency is called to answer for its threats to federalism in federal court, it cries *Younger* abstention. But does *Younger* work that way? The answer matters greatly to South Carolina. It has an interest in preventing sister States from supplanting policy decisions made within South Carolina's territorial limits.

South Carolina has longstanding concerns about extraterritorial encroachment. That's because one State's overreach intrudes into the authority of other States. This Court should clear the fog by granting certiorari and confirming that *Younger* isn't a license for extraterritoriality.

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[1] Counsel of record for all parties timely received notice of South Carolina's intention to file this brief.

SUMMARY OF ARGUMENT

States often champion the abstention doctrine outlined by this Court in *Younger v. Harris*, 401 U.S. 37 (1971), as soundly rooted in principles of federalism. But when *Younger* abstention ceases to serve the underlying federalism principles that prompt it, South Carolina has a decidedly different view of the relevance and applicability of the doctrine. In such circumstances, South Carolina contends that courts should generally decline to apply *Younger* abstention and should instead fulfill their "virtually unflagging" obligation to hear and decide cases that raise weighty federalism concerns. *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976). In short, under these circumstances, courts shouldn't allow the tail to wag the dog.

In South Carolina's view, the decision below represents one such instance where *Younger* abstention was unwarranted considering the serious federalism concerns raised by the underlying claims. This Court should grant certiorari to clarify that a State may not find refuge in *Younger* abstention when its own conduct raises serious federalism concerns.

REASONS FOR GRANTING THE PETITION

I. The question presented is exceptionally important to South Carolina and its citizens.

Petitioners ask this Court to resolve a question of exceptional importance to South Carolina and its citizens: "[w]hether a State's 'generic,' *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans*, 491 U.S. 350, 365 (1989), interest in regulating the transactions that out-of-state companies enter into with the State's residents while in other states is sufficiently important to permit the State to evade federal court under *Younger*." Pet. i. It raises important concerns about the potential limits of *Younger* abstention in light of attempted extraterritorial regulation.

Start with the basics of abstention. This Court has long admonished lower courts that "[a]bstention from the exercise of federal jurisdiction is the exception, not the rule." *Colorado River*, 424 U.S. at 813. This is largely because of the "virtually unflagging obligation of the federal courts to exercise the jurisdiction given them." *Id.* at 817. After all, 28 U.S.C. § 1331 states that "district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." "Not *may* have jurisdiction, but *shall*. Not *some* civil actions arising under federal law, but *all*." *Axon Enter., Inc. v. Fed. Trade Comm'n*, 598 U.S. 175, 205 (2023) (Gorsuch, J., concurring) (emphasis in original).

Younger abstention is one such exception, and a narrow one at that. Ordinarily, a pending action in state court is "no bar to proceedings concerning the same matter in the Federal court[s]." *Sprint Comm'n Inc. v. Jacobs*, 571 U.S. 69, 73 (2013) (quoting *Colorado River*, 424 U.S. at 817). That doctrine is rooted in "equity, comity, and federalism." *Steffel v. Thompson*, 415 U.S. 452, 454 (1974). And those principles lead to the conclusion that "federal courts should ordinarily refrain from enjoining ongoing state criminal prosecutions." *Id.* at 460. Abstention can be justified in some of those cases because the "pending state proceeding" could "provide the federal plaintiff with the necessary vehicle for vindicating his constitutional rights . . . ." *Id.*

But *Younger* abstention is not an inexorable command and is only warranted in "exceptional" circumstances. *Sprint*, 571 U.S. at 78. For one, *Younger* abstention is only warranted for certain types of state proceedings: (1) ongoing state criminal prosecutions; (2) certain civil enforcement proceedings that are akin to state criminal prosecutions; and (3) certain civil proceedings involving orders that further a state court's ability to perform its judicial functions. *Id.*

For another, even when the state proceeding is of the type to which *Younger* might conceivably apply, courts must still consider additional factors before invoking *Younger*. *Id.* at 81. These factors, often called the *Middlesex* factors, are: (1) whether there are ongoing judicial proceedings; (2) whether those proceedings implicate important state interests; and (3) whether there is an adequate opportunity in the state proceeding to raise constitutional challenges. *See Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982).

And finally, even if those two hurdles are cleared, *Younger* identifies several circumstances where abstention is not appropriate: (1) bad faith harassment by state officials responsible for prosecution; (2) a statute that is flagrantly violative of express constitutional prohibitions; and (3) other "extraordinary circumstances" or "unusual situations." *Younger*, 401 U.S. at 53–54.

Petitioners raise a vital question about an important step in the *Younger* abstention analysis, namely whether a State's interest in regulating out-of-state transactions satisfies the second *Middlesex* factor. In raising this question, Petitioners necessarily ask this Court to grapple with complex questions of federalism and extraterritorial regulation, and ultimately whether this Court will extend the *Younger* abstention doctrine beyond its own theoretical underpinnings rooted in federalism.

II. This petition is an excellent vehicle to resolve that question.

Petitioners' case is an excellent vehicle to resolve the *Younger* abstention question because it squarely raises a complex question of alleged extraterritorial regulation.

Petitioners' Complaint alleges serious constitutional claims. And although all Petitioners' claims warrant careful consideration, their Commerce Clause claim is particularly deserving of close review because it raises extraterritoriality concerns that go to the heart of our constitutional structure.

Courts have long recognized the principle that "state laws may not generally operate extraterritorially." *Carolina Trucks & Equip., Inc. v. Volvo Trucks of N. Am., Inc.*, 492 F.3d 484, 489 (4th Cir. 2007); *see also Baldwin v. G.A.F. Seelig, Inc.*, 294 U.S. 511, 521 (1935) (one state may not "project its legislation" into another). This principle "is one of constitutional magnitude" rooted in both the structure and text our constitution. *Carolina Trucks,* 492 F.3d at 489–90.

First, it derives from the "structure of federalism," which is based upon "'the autonomy of the individual states within their respective spheres.'" *Id.* at 490 (quoting *Healy v. Beer Inst., Inc.*, 491 U.S. 324, 336 (1989)); *see also Drs. Hosp. of Augusta, L.L.C. v. CompTrust AGC Workers' Comp. Tr. Fund*, 371 S.C. 5, 9, 636 S.E.2d 862, 864 (2006) ("[T]he principle that state statutes generally have no extra-territorial effect remains a foundation of the respect for individual sovereignty the states must share with one another."). Within this system of federalism, all states "enjoy equal sovereignty." *Shelby County v. Holder*, 570 U.S. 529, 535 (2013). And no one state may seek to "enforce its own policy upon the other[s]." *State of Kansas v. Colorado*, 206 U.S. 46, 95 (1907).

Second, the bar on extraterritoriality derives from the text of the Constitution itself. In resolving extraterritoriality disputes, this Court has invoked a variety of express constitutional provisions, including the Due Process Clause, the Full Faith and Credit Clause, and particularly relevant here, the Commerce Clause. *See Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 376 (2023).

The Commerce Clause seeks to maintain "a national economic union unfettered by state-imposed limitations on interstate commerce." *Healy v. Beer Inst., Inc.*, 491 U.S. 324, 336 (1989). It generally "precludes the application of a state statute to commerce that takes place wholly outside of the State's borders, whether or not the commerce has effects within the State." *Id.* (quoting *Edgar v. MITE Corp.*, 457 U.S. 624, 642–43 (1982)).

For example, in *Healy v. Beer Institute, Inc.*, this Court held a Connecticut beer price affirmation law violated the Commerce Clause. In reaching that conclusion, the Court focused not only on the law's discriminatory effect but also on its extraterritorial effect. 491 U.S. at 335–36. The Court observed in part that "a statute that directly controls commerce occurring wholly outside the boundaries of a State exceeds the inherent limits of the enacting State's authority and is invalid regardless of whether the statute's extraterritorial reach was intended by the legislature." *Id.* at 336. "The critical inquiry is whether the practical effect of the regulation is to control conduct beyond the boundaries of the State." *Id.* at 336.

In *Midwest Title Loans, Inc. v. Mills*, 593 F.3d 660 (7th Cir. 2010), the Seventh Circuit relied on *Healy* to enjoin the application of Indiana's version of the Uniform Consumer Credit Code to an Illinois title loan company. In that case, the title loan company operated in and originated loans out of Illinois. The Seventh Circuit described the title loan company's operations as follows: "Each title loan that Midwest made to a Hoosier was in the form of a check, drawn on an Illinois bank, that was handed to the borrower at Midwest's loan office and could be cashed there. Illinois was also where the conditional transfer of title to the collateral was made (the handing over of the keys-the 'pawn') and where the payments required by the loan agreement were received by Midwest." *Id.* at 669.

Indiana's attempt to apply its own law to the Illinois title loan company violated the Commerce Clause because it represented an attempt to "regulate activities in other states," thereby "arbitrarily . . . exalt[ing] the public policy of one state over that of another." *Id.* at 668–69. According to the Seventh Circuit, the fact that the contract was made and executed in Illinois was "enough to show that the territorial-application provision [of the Indiana Consumer Code] violate[d] the commerce clause." *Id.* at 669.

Importantly, the Seventh Circuit's conclusion was not altered by the fact that the collateral for the loan might have been located in Indiana. In reaching this conclusion, the Seventh Circuit reasoned:

> Nor is the location of the collateral in Indiana a critical difference between this case and the other cases that have invalidated extraterritorial regulations. It just illustrates that a transaction made in one state can have repercussions in another. A firecracker bought by an Illinoisan in Indiana could cause an injury to the purchaser in Illinois. That would allow an Illinois court, in a suit by the injured purchaser against the Indiana seller, to apply its own law. But it would not allow Illinois to forbid Indiana to sell firecrackers to residents of Illinois in Indiana merely because Illinois forbids firms in Illinois to sell firecrackers and thus would not be discriminating against an out-of-state business.

Id.

Petitioners' allegations in this case are analogous to the facts of *Midwest*—and are, in at least one respect, stronger. Like the title loan company in *Midwest*, the Petitioners in this case object to the application of the law of one state—here, Pennsylvania—to loans that were provided to consumers at brick-and-mortar stores in other states. Pet. 6. And much like the loans in *Midwest*, the loans at issue here "were originated [out]side the territorial and sovereign boundaries of" Pennsylvania. Pet. 11. Further, Petitioners "ha[ve] no offices or employees in Pennsylvania, do[ ] not conduct any business in Pennsylvania, and do[ ] not advertise in Pennsylvania." Pet. 11.

And in that respect, Petitioners' claim in this case is somewhat stronger than the claim of the title loan company in *Midwest* because the loan company in that case advertised in Indiana. *See Midwest*, 593 F.3d at 669 ("Our conclusion is not altered by the fact that Midwest advertises in Indiana. If Indiana cannot prevent Midwest from lending money to Hoosiers in Illinois, it cannot prevent Midwest from truthfully advising them of this opportunity.").

Most importantly, however, Petitioners' claim raises the same constitutional concerns that were present in *Midwest*. Like Indiana, Pennsylvania allegedly seeks to regulate activity in another state, exalting its policy preferences over those of other states. Such allegations are weighty, serious, and implicate not only the Commerce Clause but also the very structure of our federal system. As discussed above, those concerns should compel the Court to decline to apply *Younger* abstention in these circumstances.

CONCLUSION

This Court should grant the petition.

[Signature on following page]

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