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

REPLY BRIEF FOR THE PETITIONERS

RYAN J. STRASSER
GRAHAM K. BRYANT
LAUREN H. MILLER
LEAH J. DEFAZIO
TROUTMAN PEPPER LOCKE LLP
1001 Haxall Point, 15th Floor
Richmond, VA 23219

MISHA TSEYTLIN
Counsel of Record
KEVIN M. LEROY
DYLAN J. DEWITT
TROUTMAN PEPPER LOCKE LLP
225 W. Randolph Street, Suite 2600
Chicago, IL 60606
(608) 999-1240
misha.tseytlin@troutman.com

(Additional counsel listed on inside cover.)

MARY GRACE W. METCALFE
TROUTMAN PEPPER LOCKE LLP
875 Third Avenue
New York, NY 10022

TROY C. HOMESLEY
TROUTMAN PEPPER LOCKE LLP
301 South College St.,
34th Floor
Charlotte, NC 28202

Attorneys for Petitioners

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REPLY BRIEF FOR THE PETITIONERS

Nothing in the Secretary's Brief In Opposition calls into question the Circuit split on how courts should analyze *Younger*'s important-state-interest element. The Secretary does not dispute that the Third Circuit (like the Fifth and Seventh Circuits) views this element only at the highest level of generality, without any regard for *Younger*'s federalism-based underpinnings, rendering this element effectively meaningless. While the Secretary attempts to rewrite the more searching approaches to the Question Presented that the Fourth and Tenth Circuits use, that effort fails. And she does not meaningfully defend the Third Circuit's rule as consistent with *Younger*'s federalism underpinnings.

The Secretary's asserted vehicle issues are illusory. The Secretary claims that a company that she calls "TitleMax" has engaged in various misdeeds, but no such company exists, and it is undisputed that none of the Petitioners made any loan in Pennsylvania. The Secretary also asserts that Petitioners overstated the negative consequences of her position for federalism, but this blinks reality. Under the Third Circuit's approach, any State can drag virtually any out-of-state company that sells its products or services to all comers into years of costly bureaucratic proceedings far from any place where it does business, and then prevent that company from seeking redress from the federal court located where the company actually operates. The Secretary does

not explain what any such company would be able to argue to avoid *Younger* abstention, if the State can point to a generic law-enforcement interest that will exist for every state enforcement proceeding—which is just what Pennsylvania did here.

This Court should grant the Petition.

I. The Circuits Are Divided On The Question Presented

A. The Circuits have adopted divergent approaches to how courts should evaluate the importance of "generic" state interests in *Younger* cases that implicate multiple sovereigns' interests, under *New Orleans Public Service, Inc. v. Council of City of New Orleans*, 491 U.S. 350, 365–67 (1989) ("*NOPSI*"). Pet.26–31. The Third Circuit's decision below, which relied upon published Third Circuit precedent, represents one side of the split. The panel looked to Pennsylvania's generic interest in enforcing its usury laws, concluded that this interest was generally important, and held that it justified abstention under *NOPSI* without considering the federalism implications of abstention. App.6a–8a (citing *PDX N., Inc. v. Comm'r N.J. Dep't of Lab. & Workforce Dev.*, 978 F.3d 871 (3d Cir. 2020)). The Fifth and Seventh Circuits have similarly misread *NOPSI* to mean that federal courts need only evaluate a State's asserted interest, defined at a highly general level, for facial legitimacy without considering the federalism interests that animate *Younger*. Pet.26–

28. Under this approach, any state proceeding enforcing "criminal laws and their analogs," *TMX Fin. Corp. Servs., Inc. v. Spicher*, No.24-11087, 2026 WL 74504, at *2 (5th Cir. Jan. 9, 2026), or other "legitimate" rules, *Stroman Realty, Inc. v. Martinez*, 505 F.3d 658, 664 (7th Cir. 2007), is good enough. Pet.22–28.

On the other side, the Fourth and Tenth Circuits consider federalism principles as part of their important-state-interest analysis. Pet.29–31 (citing *Harper v. Pub. Serv. Comm'n of W. Va.*, 396 F.3d 348 (4th Cir. 2005); *Seneca-Cayuga Tribe of Okla. v. Okla. ex rel. Thompson*, 874 F.2d 709 (10th Cir. 1989)). The Fourth Circuit in *Harper* concluded that "an overwhelming federal interest" in a case reduces the strength of the State's interest. 396 F.3d at 356; Pet.29–30. Since the Petition, the Fourth Circuit has revised its *Harper* analysis to turn on whether any binding dormant Commerce Clause decisions reduced the state interest. *TitleMax of S.C., Inc. v. Spicher*, 185 F.4th 141, 158–61 (4th Cir. 2026), *petition for cert. filed*, No.26-271. But even after this refinement, the Fourth Circuit continues to recognize, like the Tenth Circuit, that the important-state-interest element requires consideration of state interests in the context of the federalism principles that underpin *Younger*. *Id.*; *Seneca-Cayuga*, 874 F.2d at 714; Pet.30–31.

B. The Secretary does not meaningfully engage with the Third Circuit's side of the split, and her discussion of the other side fares no better. She

asserts that the Fourth Circuit applies the same approach as the Third, Fifth, and Seventh Circuits do, but she does so only by recasting *Harper* as turning on a doctrine that, she concedes, it "did not" mention: *Younger*'s exception for "flagrantly and patently" unconstitutional state laws. BIO.18–19 (quoting *Younger v. Harris*, 401 U.S. 37, 53 (1971)). *Harper* had nothing to do with this rarely used exception. *Harper*'s analysis "turn[ed] fundamentally on" "whether [the state proceeding] implicates important state interests." *Harper*, 396 F.3d at 352. The Fourth Circuit confirmed as much in *TitleMax of South Carolina, Inc.*—a point that the Secretary does not confront. There, under the subheading "Important State Interest," the Fourth Circuit explained that *Harper* evaluated "the nature of the state's interest" to assess whether "abstention" was "justif[ied]." *TitleMax of S.C., Inc.*, 185 F.4th at 159–60, 163.

As to the Tenth Circuit's ruling in *Seneca-Cayuga*, the Secretary merely offers the irrelevant observation that "Pennsylvania is not seeking to regulate in an area that is committed to the federal government." BIO.21. That misses the point. *Younger* requires federal courts to evaluate a State's asserted interest in light of "Our Federalism." 401 U.S. at 44. Courts must consider whether the asserted state interest is consistent with the aspects of federalism presented in the underlying case, which might involve federal-state comity (*Seneca-Cayuga*) or horizontal federalism among co-equal sovereign States (*Harper* and *TitleMax of South Carolina, Inc.*). Pet.16–21,

29–31. Indeed, *Harper* cited *Seneca-Cayuga* with approval in discussing how federalism principles apply in the important-state-interest analysis. 396 F.3d at 357 n.3. The Third Circuit's approach is fundamentally different. Pet.26–28.

II. The Secretary Makes No Effort To Defend The Third Circuit's Rubberstamp Approach To The Important-State-Interest Element

A. The Third Circuit's holding below that Pennsylvania's enforcement action furthered its "generic" interest in "enforc[ing] [its] usury laws" and thus justified abstention violated this Court's *Younger* case law. App.8a. Those precedents required the Third Circuit to evaluate Pennsylvania's asserted interest in its state proceeding from the perspective of comity and Our Federalism. Pet.17–18, 22. But defined generally enough, every state enforcement proceeding advances some facially legitimate state interest. Consequently, the Third Circuit's approach "extend[s] *Younger* to virtually all parallel state and federal proceedings," contrary to this Court's admonitions. *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 81 (2013); Pet.22–23.

If the Third Circuit had analyzed Pennsylvania's claimed interest through the lens of Our Federalism, it would have concluded that "the enforcement of usury laws" against out-of-state companies that only make or facilitate out-of-state loans is not sufficiently important to warrant abstention. Pet.23–25. A State

cannot, consistent with federalism principles, enforce its policy decisions beyond "the limits of its own territory." Pet.24 (quoting *Hoyt v. Sprague*, 103 U.S. 613, 630 (1880)). Pennsylvania's interest in regulating interest rates charged by out-of-state companies inside other States and dragging those companies into Pennsylvania for enforcement is not "important" under *Younger*. Pet.25. By ruling otherwise, the Third Circuit blessed Pennsylvania's transgression of other States' stronger interests in regulating transactions occurring within their boundaries. Pet.25; *see also* Br. of *Amicus Curiae* State of S.C. in Supp. of Pet'rs at 1–2 (July 8, 2026).

B. The Secretary's position appears to be that so long as an interest is not as general as "public safety" or "the public good," that is sufficient under *NOPSI*. BIO.16. But *NOPSI* viewed the State's interest in the context of federalism principles, evaluating whether Louisiana had a "substantial, legitimate interest in regulating *intrastate* retail rates," as opposed to a general interest in enforcing its State laws. 491 U.S. at 365 (emphasis added). The Secretary's contrary view—and the Third Circuit's approach—renders the important-state-interest element practically irrelevant, as every state enforcement proceeding enforces some state law.

Properly viewed in light of the federalism principles animating *Younger*, the actual interest that Pennsylvania's enforcement proceeding advances is in stopping out-of-state companies from

charging its residents interest rates in out-of-state transactions that Pennsylvania thinks are too high. *See* Pet.25. That interest is not important under *Younger*. The six Petitioners are separate companies, some of which are no longer operational, some of which have never originated loans, and all of which operated exclusively in States other than Pennsylvania. Pet.6–7. Petitioners' home States have an important interest in regulating their conduct; Pennsylvania does not. Pet.10–11.

The Secretary attempts to rehabilitate the Third Circuit's disregard of federalism principles by invoking the Third Circuit's prior ruling on a separate issue in *TitleMax of Delaware, Inc. v. Weissmann*, 24 F.4th 230 (3d Cir. 2022), BIO.15, but that effort fails, while contradicting the Secretary's prior representations to this Court. *Weissmann* did not "reject[ ] [Petitioners'] dormant Commerce Clause claim on the merits." *Contra* BIO.15. That case considered Pennsylvania's authority to *investigate* out-of-state companies' potential violations of Pennsylvania laws and said nothing about Pennsylvania's authority to *enforce* those laws against companies that lawfully originated loans in other States. Pet.7–10. That is why, when resisting review of *Weissmann*, the Secretary assured this Court that any challenge to "Pennsylvania's ability to apply" its usury laws was "unripe." Br. in Opp'n at 8, 10–11, *TitleMax of Del., Inc. v. Vague*, No.21-1262 (U.S. May 23, 2022); *see* Pet.9–10. Having convinced this Court to deny review of the dormant Commerce

Clause claim in *Weissmann* because that case involved no enforcement action, the Secretary cannot now be heard to tell this Court that it should close the federal courthouse doors to Petitioners' dormant Commerce Clause *and* minimum-contacts/Due Process Clause challenges to the now-extant enforcement proceedings because of *Weissmann*.

The Secretary asserts that the Third Circuit's bottom-line ruling is correct because "TitleMax"—the nonexistent entity that the Secretary invented by artificially lumping together Petitioners and their affiliates—has conducted some activity in Pennsylvania. BIO.15. The Secretary points to allegations of "TitleMax" "call[ing]" and "send[ing] text messages" to Pennsylvania residents and "collect[ing] payments" sent from inside Pennsylvania and the like. BIO.15 (citation omitted). The Secretary does not allege that any specific Petitioner took those actions, and even if one did, that would not matter under *Younger*. It is common for a lender, merchant, or service provider to send bills for services provided to the address that the customer gives; and companies routinely take security interests in particularly expensive products, in order to secure payment. *See* U.C.C. §§ 2-401, 9-110, 9-203. None of this gives the States where the customers happen to live a sufficiently important interest in dragging out-of-state companies into their bureaucracy for offering their goods or services to all comers, from any State, and then closing the federal courthouse door in the companies' faces. Regardless, even if Petitioners'

corporate affiliates took some action in Pennsylvania that could tip the *Younger* federalism balance in some respect, it would be irrelevant here. Petitioners have consistently explained without rebuttal that they are "separate legal units with distinct legal rights and obligations," *Galette v. N.J. Transit Corp.*, 607 U.S. 509, 524 (2026) (citation omitted); *see* App.4a, 7a–8a. The Secretary's failure to respond with any contrary evidence constitutes waiver. *See* Sup. Ct. R. 15.2; *Aetna Health Inc. v. Davila*, 542 U.S. 200, 212 n.2 (2004).

III. The Question Presented Is Important, And The Secretary's Claimed Vehicle Issues Are Illusory

A. This case is an ideal opportunity to address whether a State's "generic" interest in enforcing its laws in transactions that occur beyond that State's borders can be important enough to merit *Younger* abstention. Pet.34–36.

Pennsylvania's actions in the underlying enforcement action illustrate why a State's generic interest in law enforcement unbounded by consideration for comity cannot justify closing federal courthouse doors. Pet.31–34. Petitioners are six distinct entities based in various States outside Pennsylvania, which have never conducted any business in Pennsylvania. Pet.6–7. Yet Pennsylvania has dragged these companies through years of agency proceedings, with no end in sight. Pet.6–10. The

Third Circuit's cursory approach bars these companies from federal court because of Pennsylvania's asserted interest in enforcing its laws to prevent its residents from taking out loans at rates that Pennsylvania thinks are too high, without any regard to the fact that the loans are legal in the States where they were made.

Pennsylvania's abuse of Petitioners has gotten even more extreme since the Petition in this case. An independent hearing examiner whom the Secretary appointed found in a forty-page opinion—after an extensive evidentiary hearing—that the Department of Banking and Securities failed to establish that any of the Petitioners engaged in any activity in Pennsylvania or violated any Pennsylvania law. The Department then appealed to its own Commission, which went "as one might expect." *SEC v. Jarkesy*, 603 U.S. 109, 145 (2024) (Gorsuch, J., concurring). The Commission summarily reversed in a preordained decision, Pet.15, offering scant reasoning that ignored concessions from the Department's witness, while imposing a joint and several judgment of nearly $47.3 million. *See* Final Order, *Dep't of Banking & Secs. v. TitleMax of Del., Inc.*, No.240032 (BNK-OSC) (Sept. 24, 2026), *available at* https://tinyurl.com/558u4mjp. The prosecutor who lost at the evidentiary hearing supervises the attorney who advised the Commission as it decided to reverse that loss. *See* Pet. for Rev., *TitleMax of Del., Inc. v. Dep't of Banking & Secs.*, No.1659 C.D. 2026 (Pa. Commw. Ct. Oct. 26, 2026). Three state-court

actions challenging the Commission's actions are now pending—including the Department's own challenge seeking even more penalties, *see TitleMax of Del., Inc.*, No.1659 C.D. 2026 (Pa. Commw. Ct.); *CCFI Cos., LLC v. Geishauser*, No.389 M.D. 2026 (Pa. Commw. Ct.); *CCFI Cos., LLC v. Geishauser*, No.492 M.D. 2026 (Pa. Commw. Ct.)—but Petitioners have not obtained rulings on any issues, including the federal constitutional issues that they raised in this case. The Third Circuit's ruling continues to bar Petitioners from obtaining federal judicial review. Pet.13.

Absent this Court's review, the Third Circuit's rubberstamp approach blesses unchecked extraterritorial enforcement of state laws. The Third Circuit's rule permits States to subject out-of-state companies to extensive state-law enforcement proceedings far from anywhere they do business, without regard to their home States' competing sovereign interests. Pet.31–34.

B. The Secretary's "vehicle" problems are illusory.

First, the Secretary's "forum shopping" objection falls flat because Petitioners are six legally separate entities that each perform or performed distinct activities in different States. Pet.6–7. That each sued in its home district court to challenge Pennsylvania's unconstitutional enforcement action, Pet.10 n.3, is the opposite of "forum shopping," *contra* BIO.23. The Secretary's refusal to acknowledge Petitioners'

corporate separateness, without offering any evidence to the contrary, is no vehicle issue. *See supra* pp.8–9.

Second, the Secretary's assertion that resolution of the Circuit split will "not benefit" Petitioners because all Circuits affirmed abstention is unavailing. BIO.24–26. Under a correct application of the important-state-interest element, Petitioners will prevail. *See supra* pp.5–9.

Finally, the Secretary promises that Pennsylvania's playbook for extraterritorial enforcement applies only in the lending context, where transactions "have a longer lifespan" than those in other sectors. BIO.26. But the Secretary identifies no *legal principle* limiting States eager to regulate beyond their borders without any accountability in federal court. BIO.26. To the contrary, Pennsylvania's example here provides a template for other States to determine that foreign transactions that appear to "end at the point of sale," BIO.26 (citation and alteration omitted), create ongoing negative consequences inside their borders. For instance, a State could point to the consequences of residents within its borders shooting guns bought from out-of-state sellers or continuing a course of treatment for gender dysphoria prescribed by out-of-state doctors to justify enforcement proceedings against out-of-state gun sellers or doctors. Pet.33–34.

And to mirror the Secretary's objection here more precisely, a State could determine that an out-of-state

doctor mailing a bill to one of the State's residents for out-of-state gender-dysphoria treatment empowers the State to drag that doctor across state lines to answer for her provision of that treatment. Under the Third Circuit's approach, the State's asserted interest in consumer protection or law enforcement would be enough to close the federal courthouse doors to those out-of-state doctors, without regard to their home States' sovereign interests, and the Secretary offers no plausible response.

CONCLUSION

This Court should grant the Petition.

Respectfully submitted,

RYAN J. STRASSER
GRAHAM K. BRYANT
LAUREN H. MILLER
LEAH J. DEFAZIO
TROUTMAN PEPPER LOCKE LLP
1001 Haxall Point, 15th Floor
Richmond, VA 23219

MARY GRACE W. METCALFE
TROUTMAN PEPPER LOCKE LLP
875 Third Avenue
New York, NY 10022

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MISHA TSEYTLIN
Counsel of Record
KEVIN M. LEROY
DYLAN J. DEWITT
TROUTMAN PEPPER LOCKE LLP
225 W. Randolph Street, Suite 2600
Chicago, IL 60606
(608) 999-1240
misha.tseytlin@troutman.com

TROY C. HOMESLEY
TROUTMAN PEPPER LOCKE LLP
301 South College St., 34th Floor
Charlotte, NC 28202

Attorneys for Petitioners