No. ______

In the Supreme Court of the United States

TMX FINANCE CORPORATE SERVICES, INC.,
PETITIONER,
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 FIFTH CIRCUIT*

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether 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 within other States' borders is sufficiently important to permit the State to evade federal court under *Younger v. Harris*, 401 U.S. 37 (1971).

PARTIES TO THE PROCEEDINGS

Petitioner (plaintiff-appellant below) is TMX Finance Corporate Services, Inc.

Respondent (defendant-appellee below) is Wendy S. Spicher, the Secretary of the Pennsylvania Department of Banking and Securities.

CORPORATE DISCLOSURE STATEMENT

Pursuant to this Court's Rule 29.6, Petitioner TMX Finance Corporate Services, Inc., provides the following Corporate Disclosure Statement.

TMX Finance LLC, is the parent corporation of Petitioner TMX Finance Corporate Services, Inc.

No publicly held corporation owns 10 percent or more of Petitioner's stock. Neither Petitioner nor its parent corporation has an active stock ticker symbol.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

TMX Fin. Corp. Servs., Inc. v. Spicher, No. 24-11087 (5th Cir.) (judgment from panel entered January 9, 2026, denial of rehearing and rehearing en banc entered March 5, 2026).

TMX Fin. Corp. Servs., Inc. v. Spicher, No. 3:24-cv-2054 (N.D. Tex.) (order dismissing action under the doctrine of *Younger* abstention entered December 5, 2024).

There are no proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

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PETITION FOR WRIT OF CERTIORARI

This Petition involves one aspect of the escalating effort of States to reach into other States' borders to accomplish their own policy objectives. While this Court in *Suncor Energy (U.S.A.) Inc. v. County Commissioners of Boulder County*, No. 25-170, is considering the substantive merits of whether and when the Constitution and federal law permit States to regulate within other States' borders, the Question Presented here deals with an important, often predicate issue: whether States can render federal limits on their extraterritorial overreach practically irrelevant by bottling out-of-state companies in expensive, years-long agency proceedings, while blocking federal court review under the *Younger v. Harris*, 401 U.S. 37 (1971), abstention doctrine.

The present case arises from an unconstitutional civil enforcement proceeding that Pennsylvania imposed on several out-of-state companies for making or facilitating loans at interest rates that Pennsylvania believes are too high. Pennsylvania's pre-enforcement investigation established that those loans were all made in brick-and-mortar stores in other States, all at rates that comply with those States' laws. Pennsylvania nevertheless has dragged these out-of-state companies into a multi-year proceeding within its bureaucracy because a small percentage of the borrowers happen to live in Pennsylvania. The Petitioner here—a company that provided back-office support for certain companies including those offering these out-of-state loans—sought relief from the federal courts in its home State of Texas, arguing that the Pennsylvania proceedings violate the dormant Commerce Clause for regulating extraterritorially and the Due Process Clause because Petitioner lacks minimum contacts with Pennsylvania. The Fifth Circuit held that *Younger* abstention means that Petitioner has no access to federal court to raise its federal claims.

The Fifth Circuit's misunderstanding of *Younger* is part of an established circuit split. The Third, Fifth, and Seventh Circuits misread this Court's *Younger* case law as superseding federal courts' "obligation" to exercise their jurisdiction, *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 77 (2013) (citation omitted), whenever a State asserts a "generic" state interest under *New Orleans Public Service, Inc. v. Council of City of New Orleans*, 491 U.S. 350, 365 (1989) ("*NOPSI*"), defined at the highest level of generality and without regard to *Younger*'s federalism-based origins. But a State can always point to a broadly defined interest—such as enforcement of "criminal laws and its analogues," which is what the Fifth Circuit found sufficient here, App.6a—to support any state enforcement proceedings. As the Fourth Circuit has explained, reading *NOPSI*'s "generic" interest language to authorize such "a lofty level of generality" in characterizing the state interests would "nulli[fy]" this *Younger* element. *Harper v. Pub. Serv. Comm'n of W. Va.*, 396 F.3d 348, 353 (4th Cir. 2005). The proper focus, as the Fourth Circuit has recognized, is whether the State's interest is sufficiently weighty to justify abstention in light of *Younger*'s federalism-based underpinnings.

There is an urgent need for this Court to resolve this circuit split in either this case or in *TitleMax of Virginia, Inc. v. Spicher*, No. 25-1359 (U.S. June 8, 2026), which arises from the same enforcement proceeding. Given the growing regulatory warfare among ideologically divided States, the approach that the Fifth Circuit blessed threatens "Our Federalism." *Younger*, 401 U.S. at 44. Under the Fifth Circuit's misreading of *Younger*, a State that decides that certain treatments for gender dysphoria should be banned for its residents could drag a doctor from another State into the State's bureaucracy for providing such treatments in his own State, and then block the doctor from asserting his federal rights in federal court. The same goes for a State that wants to ban its citizens from buying certain types of firearms. That State could ensnare a small, out-of-state gun shop in interminable agency proceedings in a State where it does no business simply for selling such firearms to the State's residents, again with no access to federal court.

In this way, most limits on States' extraterritorial overreach—from substantive restrictions like those at issue in *Suncor* to due-process/minimum-contacts limitations—could be rendered practically toothless. Using Pennsylvania's playbook, now blessed by the

Fifth Circuit, States can rope virtually any company or service provider into their agency proceedings, far from any place where those companies do business, and keep them bottled there for years with no access to federal court to vindicate their federal rights.

This Court should grant the Petition and reverse. Alternatively, this Court should grant the pending petition in *TitleMax of Virginia, Inc.* and hold this Petition for disposition of that case.

DECISIONS BELOW

The Fifth Circuit's panel opinion is not reported but is available at 2026 WL 74504 (5th Cir. Jan. 9, 2026), and reproduced at App.1a–7a. The District Court's opinion is not reported but is available at 2024 WL 4995580 (N.D. Tex. Dec. 5, 2024), and reproduced at App.8a–16a.

JURISDICTION

The Fifth Circuit entered its judgment on January 9, 2026. App.1a. The Fifth Circuit entered an order denying rehearing and rehearing en banc on March 5, 2026. App.17a. On April 28, 2026, Justice Alito granted an application to extend the time to file a petition for a writ of *certiorari* to July 3, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Commerce Clause of the Constitution provides: "The Congress shall have Power . . . [t]o regulate Commerce . . . among the several States." U.S. Const. art. I, § 8, cl. 3.

The Due Process Clause of the Fourteenth Amendment to the Constitution provides: "No State shall . . . deprive any person of life, liberty, or property, without due process of law . . . ." U.S. Const. amend. XIV, § 1.

Subsection (a) of Section 201 of the Pennsylvania Loan Interest and Protection Law provides: "Except as provided in Article III of this act, the maximum lawful rate of interest for the loan or use of money in an amount of fifty thousand dollars ($50,000) or less in all cases where no express contract shall have been made for a less rate shall be six per cent per annum." P.L 13, 41 P.S. § 201(a).

Section 3(A) of the Pennsylvania Consumer Discount Company Act, P.L. 262, 7 P.S. § 6203(A), provides in part that "no person shall engage or continue to engage in this Commonwealth . . . in the business of negotiating or making loans or advances of money on credit . . . and charge, collect, contract for, or receive interest . . . in excess of the interest that the lender would otherwise be permitted by law to charge if not licensed under this act . . . ." Section 3(A) is reproduced in full in the Appendix. App.19a.

STATEMENT

A. Petitioner provided back-office services like information technology and accounting functions for various corporate affiliates, some of which offer or facilitate short-term vehicle title loans or pawns in States such as Delaware, South Carolina, Texas, Georgia, and Tennessee. RE23–25;[1] Compl. at 3–4, *TMX Fin. Corp. Servs., Inc. v. Spicher*, No. 3:24-cv-2054 (N.D. Tex. Aug. 13, 2024), Dkt. No. 1 ("N.D. Tex. Compl."). Since its formation in 2019, Petitioner has operated only in Texas and Georgia. RE24, N.D. Tex. Compl. at 4. Petitioner has never originated a loan, and none of the companies to which Petitioner provided services make or facilitate loans in Pennsylvania. RE23–25.

The Secretary serves as the Pennsylvania Department of Banking and Securities' ("Department") chief executive and administrative officer. N.D. Tex. Compl. at 4. The Secretary administers and enforces the Pennsylvania Loan Interest and Protection Law ("LIPL") and the Consumer Discount Company Act ("CDCA"), *id.* at 2–

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[1] References to "RE___" are to pages in the Record Excerpts, *TMX Fin. Corp. Servs., Inc. v. Sec'y Penn. Dep't of Banking & Sec.*, No. 24-11087 (5th Cir. Mar. 20, 2025), Dkt. No. 64.

4, which together govern the interest rates for certain loans made "in th[e] Commonwealth," 7 P.S. § 6203(A).[2] Neither statute regulates activities to collect debts due under such loans, which other Pennsylvania laws and regulators (like the Bureau of Consumer Protection) govern. *See Commonwealth v. Auto Equity Loans of Del., LLC*, 276 A.3d 1223, 2022 WL 946083, at *1 (Pa. Commw. Ct. Mar. 30, 2022) (unpublished table decision).

B. In 2017, the Department issued an investigatory subpoena as part of a multi-year investigation into various non-party companies, including some for whom Petitioner provided back-office services. The subpoena sought information that purported to allow the Department to ascertain whether certain entities were "making loans" "in th[e] Commonwealth [of Pennsylvania]" that exceeded Pennsylvania's interest-rate limits. 7 P.S. § 6203(A); *see* Mem. Op. at 3–5, *Commonwealth of Pa. Dep't of Banking & Secs. v. TitleMax of Del., Inc.*, No. 417 M.D. 2017 (Pa. Commw. Ct. Feb. 22, 2023); *TitleMax of Del., Inc. v. Weissmann*, 505 F. Supp. 3d 353, 355 (D. Del. 2020). The subpoenaed entities challenged

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[2] The LIPL establishes the maximum interest rate for most consumer loans at "six per cent per annum," 41 P.S. § 201(a), and the CDCA applies this cap to persons who "engage in this Commonwealth . . . in the business of negotiating or making loans or advances," 7 P.S. § 6203(A). The LIPL and CDCA are considered "in pari materia" and "construed together" "as one statute." 1 Pa. Cons. Stat. § 1932(b).

the investigation in federal court, arguing that it violated the dormant Commerce Clause. *TitleMax of Del., Inc. v. Weissmann*, 24 F.4th 230, 235 (3d Cir. 2022). The Third Circuit rejected this challenge, holding that the Secretary could constitutionally investigate their business activities to determine whether they violate Pennsylvania law. *Id.* at 239–41. This Court declined to review after the Secretary argued in his brief in opposition that the case involved only an investigation, and that no enforcement action had been initiated. Br. in Opp'n at 8, 10–11, *TitleMax of Del., Inc. v. Vague*, No. 21-1262 (U.S. May 23, 2022).

The Secretary then initiated that very enforcement action in June 2024 by filing an Order to Show Cause ("OSC") directing Petitioner and certain other related companies to show cause why they should not pay $52.7 million in civil penalties, plus restitution, for making or facilitating loans that exceeded the interest-rate cap that the CDCA and the LIPL set. RE30–31, 38–43. The Secretary's earlier investigation established that none of the companies had ever originated or facilitated a loan in Pennsylvania. So, the Secretary's theory set forth in the OSC enforcement action was that any loan made to a Pennsylvania resident—even if the transaction lawfully occurs in a store in another State—is a loan made "in" Pennsylvania for purposes of Pennsylvania law. RE41–42. The Secretary alleged that Petitioner and other related companies made 5,270 such loans to

Pennsylvania residents that exceeded the LIPL's interest cap. RE42.

C. Petitioner quickly sued under 42 U.S.C. § 1983 in the U.S. District Court for the Northern District of Texas—where Petitioner is headquartered—arguing that the Secretary's enforcement proceeding violates the dormant Commerce Clause for regulating extraterritorially and the Due Process Clause because Petitioner lacks minimum contacts with Pennsylvania. RE32–35. As Petitioner explained, it "has no offices or employees in Pennsylvania, does not conduct any business in Pennsylvania, and does not advertise in Pennsylvania," and "[e]very one of the loans at issue in the [OSC] . . . were originated by an entity other than [Petitioner] and issued 'wholly outside' the territorial and sovereign boundaries of" Pennsylvania. N.D. Tex. Compl. at 21–22, 24.

The District Court granted the Secretary's motion to dismiss on *Younger* grounds, App.11a–12a, and the Fifth Circuit affirmed, App.1a–7a. In evaluating *Younger*'s important-state-interest element, the Fifth Circuit relied on language from this Court's decision in *NOPSI* that courts should look to "the importance of the generic proceedings to the State." App.5a–6a (quoting *NOPSI*, 491 U.S. at 365). The Fifth Circuit reasoned that "states have a substantial interest in enforcing their criminal laws and their analogs," which includes Pennsylvania's usury laws. App.6a. The Fifth Circuit did not analyze whether Pennsylvania had an "important" state interest in policing the interest rates that out-of-state companies can charge in out-of-state stores, or whether Texas had a stronger interest in not having a company lawfully operating in Texas dragged across the country to answer for Texas-based actions. App.5a–6a. The Fifth Circuit then observed that Petitioner did "not identify any federal interest that could plausibly override" Pennsylvania's generic interest based upon its dormant Commerce Clause and due-process/minimum-contacts arguments. App.6a. To support that conclusion, the Fifth Circuit cited only Justice Sotomayor's concurring opinion in *National Pork Producers Council v. Ross*, 598 U.S. 356 (2023) (Sotomayor, J., concurring in part), App.6a, even though that case did not involve any challenge to a law regulating lawful transactions occurring in other States and had nothing to do with Petitioner's due-process/minimum-contacts argument. The Fifth Circuit thereafter denied Petitioner's petitions for rehearing and rehearing en banc. App.17a–18a.[3]

[3] Related companies that Pennsylvania targeted in its OSC also challenged the enforcement action's constitutionality in their home district courts. *See TitleMax of Del., Inc. v. Spicher*, No. 1:24-cv-930 (D. Del.); *CCFI Cos., LLC v. Spicher*, No. 3:24-cv-220 (S.D. Ohio); *TitleMax of Va., Inc. v. Spicher*, No. 7:24-cv-532 (W.D. Va); *TMX Fin. LLC v. Spicher*, No. 4:24-cv-175 (S.D. Ga.); *TitleMax of S.C. v. Spicher*, No. 4:24-cv-04399 (D.S.C.). On the Secretary's motion, the district courts in Delaware, Ohio, Virginia, and Georgia transferred their cases

D. Since the Secretary filed the OSC in June 2024, Petitioner and the related companies that Pennsylvania targeted have had to spend two years and many millions of dollars mired in enforcement proceedings in a State where they do no business. After they moved to dismiss the OSC, the hearing examiner recommended denying the motion. The Banking Commission—the final agency adjudicator—refused to rule on the internal agency appeal. And the Pennsylvania Commonwealth Court then held that it lacked appellate jurisdiction to hear the subsequent appeal. *TitleMax of Del., Inc. v. Dep't of Banking & Sec.*, No. 635 C.D. 2025, 2026 WL 1077707, at *5–7 (Pa. Commw. Ct. Apr. 21, 2026).

With the courthouse doors closed to it in both federal and state court, Petitioner was forced to

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to the Middle District of Pennsylvania. *See TitleMax of Del., Inc. v. Spicher*, No. 1:24-cv-02224 (M.D. Pa.); *CCFI Cos., LLC v. Spicher*, No. 1:24-cv-02134 (M.D. Pa.); *TitleMax of Va., Inc. v. Spicher*, No. 1:24-cv-02212 (M.D. Pa.); *TMX Fin. LLC v. Spicher*, No. 1:24-cv-02093 (M.D. Pa.). The Middle District of Pennsylvania abstained under *Younger*, and the Third Circuit affirmed. *TitleMax of Va., Inc. v. Spicher*, No. 1:24-cv-02212, 2025 WL 221798 (M.D. Pa. Jan. 16, 2025), *aff'd* No. 25-1137, 2026 WL 49584 (3d Cir. Jan. 7, 2026). A petition for a writ of *certiorari* in that case is now pending. *TitleMax of Va., Inc. v. Spicher*, No. 25-1359 (U.S. June 8, 2026). In the remaining case, *TitleMax of S.C. v. Spicher*, the district court also dismissed on *Younger* grounds, and the appeal remains pending before the Fourth Circuit. *TitleMax of S.C., Inc. v. Spicher*, No. 4:24-cv-4399, 2025 WL 2378121 (D.S.C. Aug. 15, 2025), *appealed* No. 25-2027 (4th Cir.).

continue in these agency proceedings in a State where it does no business, with no end in sight. In October 2025, after the denial of its motion to dismiss, Petitioner had to spend substantial sums of money to defend itself in an extensive evidentiary hearing. The hearing examiner then proposed ruling in Petitioner's favor, articulating her conclusion that, in addition to other bases, the Secretary had not put forth enough evidence to establish any violation of Pennsylvania law. The Department thereafter appealed to the Banking Commission. The Department is surely confident of its chance of success before that Commission, given that the Secretary is the Vice Chair of the Commission and presumably authorized the OSC proceedings against Petitioner to begin with. And once the Banking Commission issues its final ruling, the parties will almost certainly pursue appeals as of right to the Pennsylvania state appellate courts. *See* Pa. R. App. P. 1511.

REASONS FOR GRANTING THE PETITION

I. The Fifth Circuit's Resolution Of The Question Presented Is Contrary To This Court's Case Law

A. The *Younger* abstention doctrine provides a narrow exception to the rule that a pending state proceeding typically poses "no bar to proceedings concerning the same matter in the Federal court having jurisdiction." *Sprint*, 571 U.S. at 73 (quoting *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976)). In *Younger*, this Court explained that "Our Federalism" normally requires federal courts to abstain from enjoining pending state-court criminal proceedings. 401 U.S. at 44. This Court principally grounded its conclusion in "the notion of 'comity'"—that federal courts should have a "proper respect for state functions" given that our Nation "is made up of a Union of separate state governments" and that "the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways." *Id.* "Our Federalism" requires "sensitivity to the legitimate interests of both State and National Governments," so the federal courts should try "to vindicate and protect federal rights and federal interests" without "unduly interfer[ing] with the legitimate activities of the States." *Id.*

In *Middlesex County Ethics Committee v. Garden State Bar Association*, 457 U.S. 423 (1982), this Court applied *Younger* to state administrative proceedings when the proponent of abstention established three elements. First, the proceeding must constitute "an ongoing state judicial proceeding." *Id.* at 432. Second, the proceeding must "implicate important state interests" or "vital state interests." *Id.* And third, the federal plaintiff must have "an adequate opportunity in the state proceedings to raise constitutional challenges." *Id.* This Court later extended *Middlesex* to proceedings before state administrative bodies that were subject to eventual judicial review, as long as those proceedings vindicated "important state interests." *Ohio Civ. Rts. Comm'n v. Dayton Christian Schs., Inc.*, 477 U.S. 619, 627–29 (1986).

This Court returned to *Younger* in *NOPSI*, a case involving a public electric utility's federal-court preemption challenge to the New Orleans City Council's decision to bar the utility from recovering costs from retail ratepayers in Louisiana through a rate increase. 491 U.S. at 356–58. *NOPSI* explained how federal courts must perform *Younger*'s "inquir[y] into the substantiality of the State's interest in its [parallel] proceedings." *Id.* at 365. Federal courts "do not look narrowly to [the State's] interest in the *outcome* of the particular case"; that is, whether the federal plaintiff presents a "substantial constitutional challenge" to the state proceedings. *Id.* Instead, federal courts must "look to [ ] the importance of the generic proceedings to the State." *Id.* Addressing the case before it, *NOPSI* explained that "the appropriate question here is not whether Louisiana has a substantial, legitimate interest in reducing NOPSI's retail rate below that necessary to recover its wholesale costs, but whether it has a substantial, legitimate interest in regulating *intrastate* retail rates." *Id.* (emphasis added). Louisiana had such an important interest because "the regulation of utilities is one of the most important of the functions traditionally associated with the police power of the States." *Id.* (citations omitted).

Finally, this Court "define[d] *Younger*'s scope" in *Sprint*, 571 U.S. at 78, and "clarif[ied]" that the doctrine applies only in "exceptional circumstances," *id.* at 82. *Sprint* explained that all three *Middlesex* factors—including the requirement that pending state proceedings "implicate[ ] important state interests"—must be satisfied before a district court can abstain under *Younger*. *Id.* at 81 (citations omitted). Failing to enforce *Younger*'s strict limits would give the doctrine "extraordinary breadth," "extend[ing] *Younger* to virtually all parallel state and federal proceedings, at least where a party could identify a plausibly important state interest." *Id.*

In all, this Court's *Younger* case law requires federal courts to abstain only where a State's "generic" interest in a parallel state proceeding is sufficiently "important," viewed through the lens of Our Federalism. *Younger* applies when the "State's interests in the proceeding are so important that exercise of the federal judicial power would disregard the comity between the States and the National Government." *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 11 (1987). That is why *NOPSI* considered whether Louisiana had a "substantial, legitimate interest in regulating *intrastate retail rates*," rather than the enforcement of its laws in general. 491 U.S. at 365 (emphasis added). Adopting a laxer approach would accord *Younger* "extraordinary breadth," "extend[ing] [it] to virtually all parallel state and federal proceedings, at least where a party could identify a plausibly important state interest." *Sprint*, 571 U.S. at 81.

B. The Fifth Circuit below contravened this Court's *Younger* precedent by holding that *Younger* applied because the OSC furthered Pennsylvania's "'generic'" state interest under *NOPSI* in "enforcing [its] criminal laws and their analogs." App.5a–6a (quoting *NOPSI*, 491 U.S. at 365). The Fifth Circuit defined the state interest at issue at the highest level of generality, while also giving no regard to the federalism basis for *Younger*. But, of course, asserting that a State satisfies *Younger*'s important-state-interest element whenever it identifies a facially legitimate interest, phrased at the highest level of generality, fails to pay heed to this Court's admonition in *Sprint* that federal courts are not to "extend *Younger* to virtually all parallel state and federal proceedings." 571 U.S. at 81. "[V]irtually all" state agency enforcement proceedings involve enforcing state law, which would satisfy the Fifth Circuit's understanding of *NOPSI*. *Id.* It follows that in every federal case that implicates parallel state proceedings, the Fifth Circuit's approach would satisfy the important-state-interest element of *Younger* abstention, nullifying that element.

The Fifth Circuit's mistake derives from its misreading of *NOPSI*'s directive that to determine "the substantiality of the State's interest in its [parallel] proceedings," federal courts must "look to [ ] the importance of the *generic* proceedings to the State." 491 U.S. at 365 (emphasis added). The Fifth Circuit misconstrued this "generic" instruction to mean that courts must consider the State's interests at the highest level of generality, without regard to any other considerations. But *NOPSI* did not look at Louisiana's interest in enforcing its laws generally, disconnected from the federalism-based concerns that underpin *Younger*. To the contrary, *NOPSI* considered Louisiana's "substantial, legitimate interest in regulating *intrastate* retail rates." *Id.* (emphasis added).

The Fifth Circuit's dismissive treatment of the assault that Pennsylvania's invocation of *Younger* would have on "Our Federalism," 401 U.S. at 44, only further underscores its violation of this Court's case law. The Fifth Circuit invoked Justice Sotomayor's concurring opinion in *National Pork Producers*, App.6a, but that case dealt with California's regulation of the pork that can be sold within California's borders, 598 U.S. at 376 n.1. It has nothing to do with the federalism issues that arise when a State invokes *Younger* to shield from federal-court review its act of dragging out-of-state companies into its own agency proceedings for conducting business entirely within *other* States. *Id.*

The relevant body of law for understanding the federalism implications of Pennsylvania's invocation of *Younger* here is the foundational case law about the territorial limits of States' legitimate interests, which the parties and *amici* are exploring in their briefing in *Suncor*. *See, e.g.*, Br. for Pet'rs, *Suncor Energy (U.S.A.) Inc.*, No. 25-170, at 21–24; Br. for the United States as *Amicus Curiae* Supporting Pet'rs, *Suncor*

Energy (U.S.A.) Inc., No. 25-170, at 17–21; Br. of *Amicus Curiae* Consumers' Rsch. in Supp. of Pet'rs, *Suncor Energy (U.S.A.) Inc.*, No. 25-170, at 3–21. To just briefly summarize that body of law, "[a] basic principle of federalism is that each State may make its own reasoned judgment about what conduct is permitted or proscribed within its borders." *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 422 (2003). States have the "reserved" power under the Constitution to regulate their "internal commerce." *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 194–95 (1824). That authority applies only "within the limits of [a State's] own territory"; States may not regulate activities occurring entirely in other States, under those States' laws. *Hoyt v. Sprague*, 103 U.S. 613, 630 (1880). No State "can impose its own legislation" or "enforce its own policy upon the other" States within those States' borders, *Kansas v. Colorado*, 206 U.S. 46, 95, 97 (1907), because "the government of a particular territory[ ] [can] have no force beyond its limits," *Strader v. Graham*, 51 U.S. (10 How.) 82, 94 (1850). "State sovereign authority is bounded by the States' respective borders." *Fuld v. Palestine Liberation Org.*, 606 U.S. 1, 14 (2025); *accord Bonaparte v. Tax Court*, 104 U.S. 592, 594 (1882); *Nielsen v. Oregon*, 212 U.S. 315, 321 (1909); *Huntington v. Attrill*, 146 U.S. 657, 669 (1892); *N.Y. Life Ins. Co. v. Head*, 234 U.S. 149, 161 (1914).

These principles lead to the conclusion that Pennsylvania's regulatory interest here is not "important" within the meaning of *Younger*'s federalism-based rule. *Sprint*, 571 U.S. at 77 (citation omitted). The interest that the OSC proceeding purports to advance is preventing out-of-state companies from charging Pennsylvania residents rates in out-of-state transactions that are higher than the Commonwealth would like. *Supra* p.8. Even if one were to define the state interest at stake more broadly, Pennsylvania's claimed interest is in protecting its citizens from entering into voluntary transactions in other States, under those States' laws. Under either formulation, Pennsylvania does not have an important interest here under the principles of federalism that animate the *Younger* doctrine. *See State Farm*, 538 U.S. at 422; *Hoyt*, 103 U.S. at 630; *Ogden*, 22 U.S. (9 Wheat.) at 36, 195; *Fuld*, 606 U.S. at 14; *Bonaparte*, 104 U.S. at 594; *Nielsen*, 212 U.S. at 321; *Head*, 234 U.S. at 161. To the contrary, the States where those transactions take place have a much stronger, constitutionally based interest in setting the regulatory rules for those transactions and in not having companies lawfully operating in their borders under those rules dragged into other States' administrative proceedings. Permitting Pennsylvania to escape federal-court review for such extraterritorial regulation would thus undermine the federalism principles that underpin *Younger*.

II. The Question Presented Implicates A Circuit Split

The Courts of Appeals are divided on how to apply *NOPSI*'s mandate that a federal court must look to whether the State's proceedings involve an important-enough "generic" interest to justify *Younger* abstention. On one side of this split, the Third, Fifth, and Seventh Circuits have misconstrued *NOPSI*'s "generic" interest language as requiring only an analysis as to whether the State's interest, defined at a high level of generality, is facially legitimate. On the other side, the Fourth and Tenth Circuits have ruled that a State's interest must be important within the context of the federalism justification for *Younger*. This Court should grant review to resolve this important circuit split. Rule 10(a).

A. As explained above, *see supra* pp.16–17, the Fifth Circuit in the present case interpreted *NOPSI* to conclude that Pennsylvania's "generic" interest in enforcing its "criminal laws and their analogs"—an interest that the Fifth Circuit defined at the highest level of generality—justified abstaining under *Younger*. App.5a–6a. The Fifth Circuit did not even discuss Texas's (or any other States') far more weighty interests in regulating what business activities companies may lawfully engage in within those States' sovereign borders, or how Pennsylvania's interest in regulating transactions occurring entirely in other States is important enough to justify abstention under *Younger*'s federalism-based rule.

The Third Circuit likewise misconstrued *NOPSI* in a case arising from the same enforcement proceedings. The entities involved in that case are six financial services companies that either originated loans in brick-and-mortar stores outside of Pennsylvania or did not issue loans at all. *TitleMax of Va., Inc. v. Spicher*, No. 25-1137, 2026 WL 49584 (3d Cir. Jan. 7, 2026); Appellants' Combined Br. at 9–10, *TitleMax of Va., Inc. v. Spicher*, No. 25-1137 (3d Cir. Apr. 24, 2025), Dkt. 59. Those entities brought federal constitutional challenges against Pennsylvania's OSC enforcement proceedings like those that Petitioner filed in this case, and the Secretary moved to dismiss on *Younger* abstention grounds. In addressing the *Younger* question on appeal, the Third Circuit relied on one of its prior published decisions quoting *NOPSI* to hold that, in evaluating "the substantiality of the State's interest in its proceedings," courts must look to "the importance of the generic proceedings to the State." *TitleMax of Va., Inc.*, 2026 WL 49584, at *3 (quoting *PDX N., Inc. v. Comm'r N.J. Dep't of Lab. & Workforce Dev.*, 978 F.3d 871, 885 (3d Cir. 2020)). The Third Circuit then reasoned that, "[v]iewed generically, the enforcement of usury laws is important to Pennsylvania." *Id.* The Third Circuit did not conduct any inquiry as to whether Pennsylvania has an "important" state interest in enforcing interest rates that out-of-state companies can charge in out-of-state transactions, including whether this was important enough in light of the federalism values animating *Younger*. *Id.* at *3–4. A petition for a writ of *certiorari* in *TitleMax of Virginia, Inc.* is pending. *TitleMax of Va., Inc. v. Spicher*, No. 25-1359 (U.S. June 8, 2026).

The Third Circuit's approach in *TitleMax of Virginia, Inc.* is consistent with how it construed *Younger*'s important-state-interest element in the published decision that it cited. In deciding *PDX North*, which involved shipping companies that challenged on Commerce Clause grounds tax-enforcement proceedings that New Jersey brought against the companies alleging that they misclassified workers, the Third Circuit invoked *NOPSI* to hold that New Jersey's "generic" "interest in the collection of unemployment compensation taxes" justified abstention. 978 F.3d at 877, 885. The Third Circuit again did not analyze the purported interest in the context of the federalism values that *Younger* advances. *Id.* at 885.

The Seventh Circuit took a similar approach in *Stroman Realty, Inc. v. Martinez*, 505 F.3d 658 (7th Cir. 2007), holding that *Younger* precluded federal courts from reviewing a federal challenge to Illinois's consumer-protection enforcement action against a Texas timeshare company that employed associates who only held Texas real-estate licenses, *id.* at 660–61, 663–64. The Seventh Circuit relied on *NOPSI* to hold that Illinois's "generic" "state interest" in regulating "real estate professionals engaged in the business of timeshare brokerage" justified abstaining under *Younger*. 505 F.3d at 663–64 (quoting *NOPSI*, 491 U.S. at 365). Like the Third and Fifth Circuits, the Seventh Circuit did not assess the importance of Illinois's interest in light of the federalism principles underlying *Younger*, giving no consideration to

Texas's sovereign interest in regulating businesses operating within its borders. *Id.* at 663.

B. The Fourth and Tenth Circuits have adopted a different approach to *Younger*'s important-state-interest analysis than that taken by the Third, Fifth, and Seventh Circuits.

The Fourth Circuit has articulated its contrary approach in considerable detail. In *Harper v. Public Service Commission of West Virginia*, the Fourth Circuit explained that this Court's "requirement that the state interest be 'important' precludes some candidates from admission," and requires analyzing States' proffered interest through the federalism prism that animates the *Younger* doctrine. 396 F.3d at 353. Applying this approach, *Harper* declined to order abstention in a dispute between an Ohio waste-disposal company and the Public Service Commission of West Virginia, which had prohibited the Ohio company from operating in West Virginia and mired the company in its agency proceedings. *Id.* at 350, 356. West Virginia claimed an "important state interest in protecting the health and welfare of its citizens." *Id.* at 354 (quotation omitted). The Fourth Circuit rejected this interest as "too remote," adding that an "interest in limiting interstate access to the waste removal market" did not comport with *Younger*'s federalism values. *Id.* at 355–56.

The Fourth Circuit recognized that reading *NOPSI*'s "generic" interest language to authorize "a lofty level of generality" in characterizing state interests would "nulli[fy]" the important-state-interest element. *Harper*, 396 F.3d at 353; *accord Life Partners, Inc. v. Morrison*, 484 F.3d 284, 300–01 (4th Cir. 2007) (Virginia's alleged "interest in regulating viatical settlements" insufficiently important to justify abstention given the "overwhelming federal interest" in regulating interstate commerce, quoting *Harper*, 396 F.3d at 356).

The Tenth Circuit has likewise understood *Younger*'s important-state-interest element to require considering the State's proffered interest in light of *Younger*'s federalism justifications. In *Seneca-Cayuga Tribe of Oklahoma v. Oklahoma ex rel. Thompson*, 874 F.2d 709 (10th Cir. 1989), the Tenth Circuit declined to order *Younger* abstention in a case involving an Indian tribe's action to enjoin a pending state-court case that Oklahoma brought to terminate the Indian tribe's bingo games. *Id.* at 710, 717. Oklahoma argued that it had "important state interest[s]" due to its desire to "prevent[ ] the infiltration of organized crime" in "high-stakes bingo games" and to "protect[ ] the State's economy and tax base." *Id.* at 711–12. The Tenth Circuit held that the State's "interests [were] not of great weight" because the Indian tribe's "activities" were "necessarily primarily of federal interest" under the federal Indian Gaming Regulatory Act. *Id.* at 712–13 & n.3. Given that the parallel state action concerned "issues of federal law in an area in which federal interests predominate, the State's interest in the litigation

[was] in [the Tenth Circuit's] view not important enough to warrant *Younger* abstention." *Id.* at 714.

III. The Question Presented Is Important And This Court Should Resolve It In Either This Case Or In *TitleMax of Virginia, Inc.*

A. The Fifth Circuit's approach has profoundly negative implications for the federalism values that underlie *Younger*, which this Court can rectify by answering the Question Presented.

Under the Fifth Circuit's approach, a State can haul an out-of-state company into lengthy state proceedings if that company sells its services (or even merely facilitates the sale of services) to customers regardless of what State they happen to reside in. All that the State would have to do is make it unlawful under the State's laws for its residents to buy goods or services of that type. The State could then launch proceedings to enforce that state law against an out-of-state company and evade federal-court review by invoking its "substantial interest in enforcing" its own "criminal laws and their analogs." App.6a. The targeted company would have no opportunity to object to those proceedings in federal court—including on the basis that the State's extraterritorial regulation violates the dormant Commerce Clause, *see Healy v. Beer Inst., Inc.*, 491 U.S. 324, 336 (1989), or that dragging the company into a State where it does no business violates the Due Process Clause, *see Bristol-*

Myers Squibb Co. v. Superior Ct., 582 U.S. 255, 262–63 (2017).

The damage from such extraterritorial overreach would fall not only on the out-of-state company, as happened to Petitioner here; it would also impose harm of a sovereign character on the States where the company does business in compliance with that State's laws. As explained above, each State has sovereign authority to enact laws that govern "within the limits of its own territory." *Hoyt*, 103 U.S. at 630; *see State Farm*, 538 U.S. at 422; *Ogden*, 22 U.S. (9 Wheat.) at 36, 195; *Fuld*, 606 U.S. at 14; *Bonaparte*, 104 U.S. at 594; *Nielsen*, 212 U.S. at 321; *Head*, 234 U.S. at 161. "A basic principle of federalism is that each State may make its own reasoned judgment about what conduct is permitted or proscribed within its borders." *State Farm*, 538 U.S. at 422. If a State can drag an out-of-state company into its bureaucracy simply because some of its many customers happen to reside in that State, the State where the company actually does business will lose a portion of its sovereign dignity. That State will suffer the indignity of its sister State punishing companies for doing business within that State's borders, in compliance with that State's laws. *Id.*

This dynamic is all too likely to occur, given the recent trend of States seeking to reach beyond their borders to impose their policy preferences on their sister States. *See generally Suncor Energy (U.S.A.) Inc.*, No. 25-170. Take just a couple of examples, presaged in the introduction. One State could make it a crime for any company to sell a particular type of firearm or ammunition magazine to any of its residents. If that State's residents travel to another State that permits sale of these guns or ammunition magazines, the first State could subject a small gun shop (or even a back-end company providing support services for that shop) to years of state administrative proceedings before an agency far away from where the shop does any business. That State could stop the gun shop from raising powerful federal constitutional arguments in federal court based on the State's claimed interest in "enforcing [its] criminal laws and their analogs" to protect its own residents. App.6a. Another State could prohibit any doctors who serve its residents anywhere from providing what the State considers to be improper treatment for gender dysphoria. If the State's residents travel across the country to obtain such treatments from doctors in another State where those procedures are legal, the residents' home State could subject those doctors to agency proceedings in a distant forum. If the doctors come to federal court—perhaps to raise potentially winning dormant Commerce Clause and Due Process/minimum-contacts claims—the State could invoke the Fifth Circuit's approach, claiming that it has a generic interest in "enforcing criminal laws and their analogs" to protect its citizens from what the State considers to be harmful treatments. App.6a.

B. This case presents an ideal vehicle for addressing these concerns by resolving the Question

Presented. The Fifth Circuit based its *Younger* decision on Pennsylvania's asserted generic interest, framed at the highest level of generality: "a substantial interest in enforcing" its "criminal laws and their analogs." App.6a. The OSC did not claim that Petitioner made or facilitated a single loan in Pennsylvania. The Department's only possible complaint as to Petitioner is that it provided back-office support for some companies that made brick-and-mortar loans to customers in other States, where some small percentage of those customers happen to be Pennsylvania residents. Because of the Fifth Circuit's decision, Petitioner remains trapped in proceedings in a State in which it conducts no business, with no end in sight. Despite spending substantial sums and over two years resisting this unconstitutional enforcement action, Petitioner has still not yet received judicial review of its federal constitutional challenges.

This case has no vehicle problems to resolving the Question Presented. The Question Presented is dispositive of whether Petitioner's complaint will be dismissed under *Younger*. This Court's review would decide only the *Younger* question under the important-state-interest element, leaving the merits of Petitioner's federal claims for the lower federal courts to resolve. No factual development is necessary to answer the Question Presented. The District Court dismissed solely on *Younger* grounds, App.10a–16a, and the Fifth Circuit affirmed on the same basis, App.3a–7a. And granting the Petition would provide much-needed guidance to federal courts considering their obligations under *Younger* in the cases that arise when one State endeavors to enforce its laws within the borders of a sister State—an issue that continues to recur.

CONCLUSION

This Court should grant the Petition.

Respectfully submitted,

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July 2026

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APPENDIX

TABLE OF APPENDICES

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, FILED JANUARY 9, 2026

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 24-11087

TMX FINANCE CORPORATE SERVICES, INCORPORATED,

Plaintiff—Appellant,

versus

WENDY SPICHER, IN HER OFFICIAL CAPACITY AS SECRETARY OF THE PENNSYLVANIA DEPARTMENT OF BANKING AND SECURITIES,

Defendant—Appellee.

January 9, 2026, Filed

Appeal from the United States District Court for the Northern District of Texas. USDC No. 3:24-CV-2054.

Before Southwick, Higginson, and Wilson, *Circuit Judges.*

PER CURIAM:[*]

This is an appeal from the district court's grant of a motion to dismiss based on abstention. Starting in 2017, the Pennsylvania Department of Banking and Securities has investigated a group of TitleMax-affiliated entities. After multiple subpoenas and several years of discovery, the Department's investigation culminated in an enforcement action in the form of an order to show cause (OSC) why the TitleMax entities should not pay over $52 million in monetary sanctions for entering into and enforcing loan agreements with Pennsylvania consumers in violation of Pennsylvania's usury laws.

Just weeks after the OSC issued, Appellant TMX Finance Corporate Services (TMX FCS) and its affiliates filed lawsuits in six federal district courts across the country seeking equitable relief against the state enforcement proceeding. *TitleMax of S.C., Inc. v. Spicher*, No. 24-cv-04399, 2025 U.S. Dist. LEXIS 158586, 2025 WL 2378121, at *2 (D.S.C. Aug. 15, 2025) (documenting lawsuits). This appeal concerns the suit filed in the Northern District of Texas. In essence, TMX FCS claimed that the OSC was unconstitutional because, as a distinct corporate entity, TMX FCS has never engaged in lending activity and the Department has failed to allege any wrongful conduct TMX FCS has itself performed. This suit was dismissed in the district court under the *Younger* abstention doctrine. TMX FCS timely appealed, arguing the district court committed a host of errors.

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* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

We AFFIRM for the following reasons:

1. TMX FCS contends that the district court erred by failing to make a threshold determination in the abstention analysis. *See Sprint Communs., Inc. v. Jacobs*, 571 U.S. 69, 73, 134 S. Ct. 584, 187 L. Ed. 2d 505 (2013) (detailing the threshold requirement). TMX FCS correctly identifies that the Supreme Court, in *Sprint*, clarified that the *Younger* abstention analysis requires federal courts to determine whether a parallel state proceeding falls into one of several categories: "state criminal prosecutions, civil enforcement proceedings, [or] civil proceedings involving certain orders that are uniquely in furtherance of the state courts' ability to perform their judicial functions." *Id.* (quotation marks omitted) (quoting *New Orleans Pub. Serv., Inc. v. Council of New Orleans*, 491 U.S. 350, 367-68, 109 S. Ct. 2506, 105 L. Ed. 2d 298 (1989) (*NOPSI*)). Though the district court did not rule on this question, it does not follow that we must reverse. Indeed, "we review judgments, not opinions," and we may yet affirm if the "judgment can be sustained as an application of law to the facts alleged." *Escalante v. Lidge*, 34 F.4th 486, 494 (5th Cir. 2022). This is such a case: The OSC fits comfortably into the mold of a relevant civil enforcement proceeding. *See Sprint*, 571 U.S. at 79-81; *see also* 41 Pa. Cons. Stat. § 505; 7 Pa. Cons. Stat. § 6218. Accordingly, this initial requirement, though not explicitly determined, is satisfied.

2. TMX FCS also contends the district court erred in ruling in favor of the Commission on each of the remaining elements of *Younger* abstention. After having made the gateway determination that the state proceeding is a

quasi-criminal enforcement proceeding, we must ascertain whether abstention is appropriate by considering whether: "(1) the federal proceeding would interfere with an ongoing state judicial proceeding; (2) the state has an important interest in regulating the subject matter of the claim; and (3) the plaintiff has an adequate opportunity in the state proceedings to raise constitutional challenges." *Daves v. Dallas County*, 64 F.4th 616, 625 (5th Cir. 2023) (*en banc*) (citation and quotation marks omitted).

As to the first consideration, TMX FCS makes two arguments as to why the Pennsylvania state proceeding is not ongoing. It first contends that the Department improperly served it with process, thus failing to initiate the proceeding. That argument encounters Supreme Court precedent counseling abstention "where state criminal proceedings are begun against the federal plaintiffs [even] after the federal complaint is filed but before any proceedings of substance on the merits have taken place in the federal court." *Hicks v. Miranda*, 422 U.S. 332, 349, 95 S. Ct. 2281, 45 L. Ed. 2d 223 (1975). Regardless of whether the state proceeding is *properly* ongoing, it is undoubtedly ongoing at this point, with substantial investment of administrative resources and the adjudication of numerous motions; the federal case, by contrast, has not held any "proceedings of substance on the merits" but has rather been wholly occupied with the abstention question. *See Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 436-37, 102 S. Ct. 2515, 73 L. Ed. 2d 116 (1982) (quoting *Hicks*, 422 U.S. at 349). Thus, regardless of whether service was proper under state law, TMX FCS's argument fails.

TMX FCS also argues the current suit would not interfere with the Pennsylvania enforcement proceeding because the equitable relief it seeks against the 2024 Subpoena and "further extraterritorial regulation" falls under the prospective relief exception to *Younger* abstention. For claims seeking wholly prospective relief that would not interfere with the pending enforcement proceeding, abstention is not appropriate because comity and respect for state tribunals play no significant part. *See Ballard v. Wilson*, 856 F.2d 1568, 1570 (5th Cir. 1988). This is not such a case. TMX FCS's claim would "unavoidably be decided against the backdrop of pending state proceedings." *Id.* at 1570. This is true because many of TMX FCS's arguments relating to the 2024 Subpoena and to the OSC mirror each other, particularly those pertaining to corporate separateness, want of personal jurisdiction, and lack of lending activity.

As to the second consideration for the propriety of abstention, TMX FCS argues that Pennsylvania has no important state interest in enforcing its usury laws here. In support, TMX FCS first contends that Pennsylvania has no interest in enforcing its usury laws in this case because it cannot have an interest in doing something it does not have jurisdiction or authority to do, *i.e.*, because Pennsylvania tribunals lack personal jurisdiction over TMX FCS and TMX FCS did not exist at the time of the subpoena. This argument would have us view state interests through too narrow an aperture. The Supreme Court has directed courts not to "look narrowly to [the state's] interest in the *outcome* of the particular case" but rather to look to "the importance of the generic proceedings to the State." *NOPSI*, 491 U.S. at 365. Certainly, states have a substantial interest in enforcing their criminal laws and their analogs. *See Gates v. Strain*, 885 F.3d 874, 880 (5th Cir. 2018). The Pennsylvania usury laws at issue create both criminal and civil penalties. 41 Pa. Cons. Stat. § 505; 7 Pa. Cons. Stat. § 6218.

TMX FCS also asserts that the Dormant Commerce Clause outweighs Pennsylvania's interest in enforcing its state law because the federal interest in enforcing the Dormant Commerce Clause "protects all states by ensuring that no state erects the kind of barriers to trade and economic activity that threatened the survival of a fledgling country under the Articles of Confederation." *Harper v. Pub. Serv. Comm'n*, 396 F.3d 348, 355-56 (4th Cir. 2005). Setting aside the question of whether TMX FCS forfeited this argument in its briefing, TMX FCS's contention does not pass muster. The most apparent error is that TMX FCS does not identify any federal interest that could plausibly override the potent federalism justifications for abstention in this case other than the now-familiar assertions that TMX FCS "could not have violated the[] provisions" of the state laws at issue and that Pennsylvania lacks personal jurisdiction over TMX FCS. Since TMX FCS does not assert that the law was facially discriminatory, it must face *Pike* balancing. *See National Pork Producers Council v. Ross*, 598 U.S. 356, 143 S. Ct. 1142, 1165-66, 215 L. Ed. 2d 336 (2023) (Sotomayor, J., concurring in part) (citing *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 90 S. Ct. 844, 25 L. Ed. 2d 174 (1970)). *Pork Producers* demonstrates that *Pike* balancing requires more than what TMX FCS here provided. *Id.* Thus, TMX

FCS's arguments fail as to this second consideration for abstention.

As to the third consideration for abstention, TMX FCS contends that the Pennsylvania rules of administrative procedure do not allow for its motion objecting to constitutional defects to be ruled on before a merits hearing is completed. This argument fails for two reasons. First, the assertion that Pennsylvania's rules of administrative procedure do not allow it to raise its objections is belied by the fact that TMX FCS filed such a motion to dismiss raising constitutional objections with the administrative tribunal. That motion was then denied on the merits. Second, it is "sufficient . . . that constitutional claims may be raised in state-court judicial review of the administrative proceeding," as is the case here. *Ohio C.R. Comm'n v. Dayton Christian Schs.*, 477 U.S. 619, 629, 106 S. Ct. 2718, 91 L. Ed. 2d 512 (1986); 2 Pa. Cons. Stat. § 702. As a result, TMX FCS's arguments are unavailing.

AFFIRMED.

APPENDIX B — MEMORANDUM OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION, FILED DECEMBER 5, 2024

UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Civil Action No. 3:24-CV-2054-N

TMX FINANCE CORPORATE SERVICES, INC.,

Plaintiff,

v.

WENDY SPICHER,

Defendant.

December 5, 2024, Decided
December 5, 2024, Filed

MEMORANDUM OPINION AND ORDER

This Order addresses Defendant Wendy Spicher's motion to dismiss [32]. The Court holds that abstention under the *Younger* doctrine is proper. Because the Court grants the motion to dismiss on abstention grounds, the Court does not reach the issues of personal jurisdiction or preclusion.

I. Origins Of The Motion

TMX Finance Corporate Services, Inc. ("TMX FCS") filed this federal lawsuit in response to a pending state administrative civil proceeding against it in Pennsylvania. It seeks protection from this Court against the Order to Show Cause issued by the Pennsylvania Department of Banking and Securities (the "Department") that requires TMX FCS to answer on the merits. TMX FCS argues that the Pennsylvania administrative agency lacks jurisdiction over TMX FCS. However, because the *Younger* doctrine prevents the Court from ruling on this issue, the Court grants the motion to dismiss.

II. Rule 12(B)(6) Legal Standard

When deciding a Rule 12(b)(6) motion to dismiss, a court must determine whether the plaintiff has asserted a legally sufficient claims for relief. *Blackburn v. City of Marshall*, 42 F.3d 925, 931 (5th Cir. 1995). A viable complaint must include "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007). "On motion under Rule 12(b)(6), the Court must decide whether the facts as alleged, if true, would entitle the plaintiff to some legal remedy." *S&W Enters., L.L.C. v. Southtrust Bank of Ala., N.A.*, 2001 U.S. Dist. LEXIS 25195, 2001 WL 238095, at *4 (N.D. Tex. 2001). "Dismissal is proper where there is either a lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." *Vines v. City of Dallas*, 851 F. Supp. 254, 259 (N.D. Tex. 1994) (citing

Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1988)).

III. The Court Grants The Motion to Dismiss Because the *Younger* Abstention Doctrine Applies

The *Younger* doctrine "espouse[s] a strong federal policy against federal-court interference with pending state judicial proceedings absent extraordinary circumstance." *Middlesex Cnty. Ethics Comm. v. Garden St. Bar Ass'n*, 457 U.S. 423, 431, 102 S. Ct. 2515, 73 L. Ed. 2d 116 (1982) (citing *Younger v. Harris*, 401 U.S. 37, 44, 91 S. Ct. 746, 27 L. Ed. 2d 669 (1971)). Under *Younger*, "a federal court, with valid subject-matter jurisdiction, [is] nonetheless prohibited from enjoining" a state judicial proceeding that meets the *Younger* factors "without a valid showing of 'extraordinary circumstances' that would warrant federal intervention." *Lawrence v. McCarthy*, 344 F.3d 467, 470 (5th Cir. 2003) (quoting *Younger*, 401 U.S. at 45, 53-54).

Courts look at three factors to determine if *Younger* abstention applies: (1) does the conflicting proceeding "constitute an ongoing state judicial proceeding," (2) "do the proceedings implicate important state interests," and (3) "is there an adequate opportunity in the state proceeding to raise constitutional challenges." *Middlesex*, 457 U.S. at 432.

A. *Ongoing State Judicial Proceeding*

First, the Court looks to whether there is an ongoing state judicial proceeding. The Plaintiff asks the Court to rule in response to a pending state administrative civil proceeding. Courts have found that a state administrative civil proceeding is an "ongoing judicial proceeding" under *Younger*. *E.g., Baran v. Port of Beaumont Nav. Dist.*, 57 F.3d 436, 441 (5th Cir. 1995) ("Abstention under *Younger v. Harris* is appropriate when federal court jurisdiction would interfere with pending criminal, civil, or administrative state proceedings." (citations omitted)). The state administrative proceedings began before this case was filed in this Court and are ongoing—indeed, that is the very reason this Court has been asked to enjoin the proceedings. TMX FCS argues that because a stay was issued in the Pennsylvania proceeding on the same day Defendant's motion to dismiss was filed, there was no ongoing proceeding, despite that stay now being lifted. Pl.'s Resp. 10 [42]. However, courts have found that "'state proceedings are "ongoing" for *Younger* abstention purposes, notwithstanding [a stay]' if the state proceeding 'was pending at the time [the plaintiff] filed its initial complaint in federal court.'" *PDX N., Inc. v. Comm'r N.J. Dep't of Lab. & Workforce Dev.*, 978 F.3d 871, 885 (3d Cir. 2020) (second alteration in original) (quoting *Addiction Specialists, Inc. v. Township of Hampton*, 411 F.3d 399, 408-409 (3d Cir. 2005)). Here, the administrative proceeding was pending at the time TMX FCS filed its initial complaint, so the temporary stay does not affect the "ongoing" status. Therefore, this case clearly meets the first factor of the *Younger* abstention doctrine.

B. *Important State Interests*

Second, the Court looks to whether the proceeding implicates important state interests. Pennsylvania's important interests in enforcing its laws against usury, and against the very loans in question in this case, is established. *TitleMax of Del., Inc. v. Weissmann*, 24 F.4th 230 (3d Cir. 2022) ("Pennsylvania has a strong interest in prohibiting usury. Applying Pennsylvania's usury laws to TitleMax's loans furthers that interest."). Thus, this case clearly meets the second factor of the *Younger* abstention doctrine.

C. *Adequate Opportunity to Raise Constitutional Challenges*

Third, the Court finds that the state proceeding affords an adequate opportunity to raise constitutional challenges. "Where vital state interests are involved, a federal court should abstain 'unless state law clearly bars the interposition of the constitutional claims.'" *Middlesex*, 457 U.S. at 432 (citing *Moore v. Sims*, 442 U.S. 415, 426, 99 S. Ct. 2371, 60 L. Ed. 2d 994 (1982)). A "federal court should assume that state procedures will afford an adequate remedy, in the absence of unambiguous authority to the contrary." *Pennzoil v. Texaco, Inc.*, 481 U.S. 1, 15, 107 S. Ct. 1519, 95 L. Ed. 2d 1 (1987).

TMX FSC claims that it will not have an adequate opportunity to assert constitutional claims because they will be unable to assert the defense of lack of personal jurisdiction since an answer is due on December 16, 2024, and they will be forced to respond on the merits before a ruling on personal jurisdiction has been made. Pl.'s Br. 14 [27]. TMX FSC claims that it will be unable to obtain a ruling on personal jurisdiction prior to a hearing on the merits, based on its reading of the Pennsylvania Code. *Id.*

13-14. The Court determines that the evidence presented is insufficient to support this interpretation, and there is no evidence presented to show that TMX FSC has attempted to assert lack of personal jurisdiction or was denied the opportunity to do so.

Plaintiff argues that it will not be able to "obtain effective relief" because 1 Pa. Code § 35.180 prevents the hearing officer from ruling on dispositive motions "until a merits hearing . . . has occurred." Pl.'s Br. 13-14 (emphasis omitted). However, while the "presiding officer is not authorized to rule on any motion before the conclusion of the hearing where the ruling constitutes a final determination by the agency," the Pennsylvania Code "does not preclude such action by the agency head." *United Healthcare Benefits Tr. v. Ins. Comm'r*, 152 Pa. Commw. 549, 620 A.2d 81, 83-84 (Pa. Commw. Ct. 1993). In fact, the statute provides expressly for the referral of any motion to the agency head for ultimate determination. 1 Pa. Code § 35.180(a). While a presiding hearing officer may be limited under Section 35.180, the limitation does not mean that TMX FCS here cannot obtain a ruling on a dispositive motion prior to a merits hearing. *See, e.g., United Healthcare Benefits*, 620 A.2d at 83-84 (affirming a summary judgment ruling prior to a merits hearing); *Allen v. Pub. Sch. Emps.' Ret. Bd.*, 848 A.2d 1031, 1034 n.8 (Pa. Commw. Ct. 2004) ("[T]his limitation only applie[s] to designated presiding officers and not to an agency head, or in this case, the Board"); *Mellinger v. Dept. of Cmty. Affs.*, 111 Pa. Commw. 377, 533 A.2d 1119, 1122-23 (Pa. Commw. Ct. 1987) (affirming dismissal after referral to the Secretary without an evidentiary hearing).

Therefore, TMX FCS has adequate opportunity to be heard. Additionally, TMX FCS has the opportunity to pursue an interlocutory appeal within the administrative state proceeding if the motion is denied. *See* 1 PA. CODE § 35.190.

Additionally, TMX FCS may seek appellate review of any adverse decision in the administrative proceeding. 2 Pa. Cons. Stat. § 702 ("Any person aggrieved by an adjudication of a Commonwealth agency who has a direct interest in such adjudication shall have the right to appeal therefrom to the court vested with jurisdiction of such appeals.").

Finally, the Court is unconvinced by the argument that TMX FCS will suffer irreparable harm if it is forced to participate in the administrative proceeding because it will have to answer by the upcoming deadline. TMX FSC has had six months and three extensions to answer the OSC and a stay which gave them two additional months, during which time they have shown no evidence that they took any steps to move for dismissal on lack of personal jurisdiction or that they were denied the opportunity to do so by the Department.

Plaintiffs carry the burden to show that the state does not afford an adequate opportunity to raise constitutional challenges and have not met that burden here. This case also meets the third factor of the *Younger* abstention doctrine.

D. *No Extraordinary Exception Applies*

TMX FCS argues that even if *Younger* applies, the Court should exercise jurisdiction because the irreparable harm is "both great and immediate" and because there is a showing of bad faith. Pl.'s Resp. 16 (citing *Mitchum v. Foster*, 407 U.S. 225, 230, 92 S. Ct. 2151, 32 L. Ed. 2d 705 (1972)). However, this exception should only be used under "extraordinary circumstances" in cases of "proven harassment," prosecutions taken "in bad faith without hope of obtaining a conviction" or "other extraordinary circumstances where irreparable injury can be shown." *Perez v. Ledesma*, 401 U.S. 82, 85, 91 S. Ct. 674, 27 L. Ed. 2d 701 (1971). The Court holds that this high standard has not been met here. Because TMX FCS has not adequately shown it is unable to raise constitutional challenges in the administrative proceeding, as discussed above, the Court does not accept its argument that its constitutional rights will be irreparably harmed. Additionally, TMX FCS has not presented evidence of bad faith beyond the argument that the merits of the Pennsylvania proceeding will fail because TMX FCS does not itself make loans. This does not convincingly establish any bad faith. Finally, the argument that the Department is biased does not overcome the strong "presumption of honesty and integrity in those serving as adjudicators." *Hasie v. Office of Comptroller of Currency*, 633 F.3d 361, 368 (5th Cir. 2011). The Secretary has recused herself from all TitleMax related adjudicative matters, Def.'s Reply 7 n.8, which satisfies all allegations of bias TMX FCS makes. Therefore, the Court holds that no extraordinary exception applies here to overcome *Younger* abstention.

CONCLUSION

Because the three elements of the *Younger* abstention doctrine have been met, the Court grants the motion to dismiss.[1] The Court abstains under *Younger* and dismisses this case without prejudice.

Signed December 5, 2024.

/s/ David C. Godbey
David C. Godbey
Chief United States District Judge

1. Accordingly, the Court denies TMX FCS's motions for temporary restraining order [48] and preliminary injunction [15], as well as Spicher's motion to transfer case out of district or alternatively to stay discovery and pretrial deadlines [41], as moot.

APPENDIX C — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT DENYING REHEARING AND REHEARING EN BANC, FILED MARCH 5, 2026

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 24-11087

TMX FINANCE CORPORATE
SERVICES, INCORPORATED,

Plaintiff—Appellant,

versus

WENDY SPICHER, IN HER OFFICIAL CAPACITY
AS SECRETARY OF THE PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES,

Defendant—Appellee.

Appeal from the United States District Court for the Northern District of Texas USDC No. 3:24-CV-2054

ON PETITION FOR REHEARING AND REHEARING EN BANC

Before Southwick, Higginson, and Wilson, *Circuit Judges.*[*]

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* Judge Don R. Willett did not participate in the consideration of the rehearing en banc.

Per Curiam:

The petition for panel rehearing is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (Fed. R. App. P.40 and 5th Cir. R.40), the petition for rehearing en banc is DENIED.

APPENDIX D — STATUTORY PROVISION INVOLVED

Section 3(A) of the Pennsylvania Consumer Discount Company Act, P.L. 262, 7 P.S. § 6203(A).

Section 3. License Required.—A. On and after the effective date of this act, no person shall engage or continue to engage in this Commonwealth, either as principal, employe, agent or broker, in the business of negotiating or making loans or advances of money on credit, in the amount or value of twenty-five thousand dollars ($25,000) or less, and charge, collect, contract for or receive interest, discount, bonus, fees, fines, commissions, charges, or other considerations which aggregate in excess of the interest that the lender would otherwise be permitted by law to charge if not licensed under this act on the amount actually loaned or advanced, or on the unpaid principal balances when the contract is payable by stated installments except a domestic business corporation organized under or existing by virtue of the Business Corporation Law of this Commonwealth, after first obtaining a license from the Secretary of Banking of the Commonwealth of Pennsylvania in accordance with the provisions of this act.