No. 26-271

In the Supreme Court of the United States

TITLE MAX OF SOUTH CAROLINA, 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 FOURTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

TitleMax of South Carolina, Inc., is a consumer car title lender that issues loans to borrowers at exorbitantly high interest rates. Although TitleMax has no office in Pennsylvania, TitleMax obtains a security interest in Pennsylvania-registered automobiles, records those liens with the Pennsylvania Department of Transportation, and has the right to repossess these vehicles from within Pennsylvania if the borrower defaults. As a result, when TitleMax resisted an investigative subpoena from the Pennsylvania Department of Banking and Securities about its usurious lending practices (and the federal courts did not abstain), the Third Circuit ruled that Pennsylvania was not enforcing its usury laws extraterritorially.

Once TitleMax complied with the subpoena, the Department commenced an administrative enforcement proceeding against TitleMax for violating Pennsylvania's usury laws. TitleMax sued in federal court seeking to enjoin the state administrative proceeding on the basis that it violates the Dormant Commerce Clause. The District Court, however, abstained under *Younger v. Harris*, 401 U.S. 37 (1971), and the Fourth Circuit affirmed.

The question presented is,

Whether, under *Younger*, the Fourth Circuit correctly abstained from enjoining Pennsylvania from enforcing its usury laws in the state administrative proceeding?

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INTRODUCTION

This petition is one of three that TitleMax has currently pending before this Court raising the same question presented. *See TitleMax of Virginia, Inc. v. Spicher*, 25-1359; *TMX Fin. Corporate Servs. v. Spicher*, 26-23. These petitions represent the latest chapter in TitleMax's desperate—and increasingly dubious—attempt to convince the federal judiciary to intrude upon the Pennsylvania Department of Banking and Securities' efforts to hold TitleMax accountable for its predatory lending practices *within Pennsylvania*. Even though TitleMax has thousands of usurious loan agreements with Pennsylvania citizens, has recorded thousands of vehicle liens with the *Pennsylvania Department of Transportation*, and regularly enforces its loans by physically entering Pennsylvania to repossess vehicles, it, remarkably, claims that Pennsylvania's enforcement action against it somehow implicates the Dormant Commerce Clause.

TitleMax first started pressing this theory in 2017 after the Department simply issued an investigative subpoena. After the Third Circuit rejected TitleMax's claim that Pennsylvania was attempting to impose its usury laws extraterritorially, this Court denied review. *TitleMax of Delaware v. Weissman*, 24 F.4th 230 (3d Cir. 2022), *cert denied sub nom. TitleMax of Delaware v. Vague*, 142 S.Ct. 2870 (2022). TitleMax's claim—like its litigation strategy—has not improved since then.

Following the denial of certiorari, the Department initiated administrative enforcement proceedings against TitleMax. Instead of simply defending against that action, TitleMax responded by blanketing the federal courts with copy-cat lawsuits, bringing identical claims against the Department's Secretary in six different district courts throughout the country. *CCFI*

Companies, LLC and TitleMax of Ohio, Inc. v. Spicher, No. 3:24–cv–00220–TMR–PBS (S.D. Ohio); *TitleMax of South Carolina, Inc. v. Spicher*, No. 4:24–cv–04399–JD (D.S.C.); *TitleMax of Virginia, Inc. v. Spicher*, No. 7:24–cv–00532–PSB–CKM (W.D. Va.); *TMX Fin. LLC and Title Max Funding, Inc. v. Spicher*, No. 4:24–cv–00175–RSB–CLR (S.D. Ga.); T*itleMax of Delaware, Inc. v. Spicher*, No. 24–930–GBW (D. Del.); *TMX Fin. Corp. Serv., Inc. v. Spicher*, No. 3:24–cv–02054–D (N.D. Tex.).

In each suit, TitleMax repackaged its prior claim that Pennsylvania was attempting to impose its usury law beyond its borders and asked the court to halt the Department's ongoing enforcement proceeding. Several of those district courts rightly criticized TitleMax for its blatant forum shopping and piecemeal litigation strategy. *See e.g.*, *CCFI Companies v. Spicher*, 2024 WL 5077766, *3 (W.D. Ohio 2024) ("In all practicality, the fact that Plaintiffs have filed multiple lawsuits in multiple forums appears to be an effort to get as many bites at the apple as possible outside of Pennsylvania, having already received an unfavorable ruling from the Third Circuit in 2022."); *Titlemax of Delaware, Inc. v. Spicher*, 2024 WL 5187651, *3 (D. Del. 2024) ("[T]he fact that TitleMax, in one corporate form or another, filed nearly identical lawsuits against Defendant in six different federal jurisdiction smells of forum shopping."). Ultimately, the district courts abstained under *Younger*. TitleMax then filed three separate appeals in three separate appellate courts, all of which affirmed on *Younger* abstention grounds. *TitleMax of Virginia, Inc. v. Pa. Dep't of Banking & Sec.*, 2026 WL 49584 (3d Cir. 2026); *TitleMax of S. Carolina, Inc. v. Spicher*, 185 F.4th 141 (4th Cir. 2026); *TMX Fin. Corp. Serv., Inc. v. Spicher*, 2026 WL 74504 (5th Cir. 2026).

Undeterred by this unanimity, TitleMax returns to this Court for a second (third, and fourth) time. In a feeble attempt to revive its unsound Dormant Commerce Clause theory, TitleMax strains to identify a split among the circuits over the proper application of *Younger*. But no such split exists, as evidenced by the Third, Fourth, and Fifth Circuit's rejection of TitleMax's plea for them to refrain from abstaining.

TitleMax presents no good reason to review any of its competing petitions. And review would serve only to reward TitleMax for its vexatious litigation strategy.

STATEMENT OF THE CASE

1. Under the Loan Interest and Protection Law and the Consumer Discount Company Act, Pennsylvania prohibits lenders from charging more than 6% interest on loans less than $50,000 unless the lender is licensed. *See* 41 P.S. § 201(a); 7 P.S. § 6203. A person who knowingly and intentionally violates the Loan Interest and Protection Law commits a third-degree misdemeanor and is subject to a $10,000 fine and the payment of restitution. 41 P.S. §§ 505, 506(c)(3).

The Pennsylvania Department of Banking and Securities is the state agency charged with enforcing these laws. *See* 41 P.S. § 506(b); 7 P.S. § 6212. The Department is authorized to conduct investigations into suspected violations of usury laws, including issuing subpoenas for "the production of pertinent books, papers, electronic data or information of any kind." 41 P.S. § 506(b); 7 P.S. § 6212.

2. In 2017, the Department issued an investigative subpoena to TitleMax and the TMX Finance Family of

Companies concerning possible violations of Pennsylvania's usury laws.[1] Appx. A at 2a, 8a. That investigative subpoena sought, *inter alia*, loan agreements between TitleMax and Pennsylvania consumers, a list of vehicles repossessed in Pennsylvania, and any electronic transfers of funds from Pennsylvania consumer bank accounts. JA8a; *see TitleMax of Delaware*, 24 F.4th at 235.[2] TitleMax refused to comply with the subpoena.

3. Instead, it sued the Department's Secretary in the United States District Court for the District of Delaware. *TitleMax of Delaware*, 24 F.4th at 235. TitleMax claimed that Pennsylvania was attempting to enforce its law extraterritorially, in violation of the Dormant Commerce Clause. *Id.* Meanwhile, the Department filed a petition in state court seeking to enforce its subpoena. *Ibid.* The District Court granted TitleMax summary judgment. *Ibid.*

The Third Circuit, however, reversed and directed entry of judgment in favor of the Secretary. *Ibid.* at 241. The court explained that Pennsylvania's application of its usury laws did "not violate the extraterritoriality principle." *Ibid.* at 240. TitleMax's transactions involve both loans and collection, and these activities do not occur wholly outside Pennsylvania. *Id.* at 239. TitleMax loans are not a "simple conveyance of money at a brick-and-mortar store in a location beyond Pennsylvania's border." *Ibid.* Rather, the loan creates a creditor-debtor relationship with obligations on both sides until the debt is fully paid. *Ibid.* As a result of that relationship, Pennsylvanians make payments to

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[1] TMX Finance, LLC was the TitleMax parent company at the time of the investigative subpoena. TitleMax operates a multitude of related entities. Appx. A at 5a n.3.

[2] JA refers to the Joint Appendix before the Fourth Circuit.

TitleMax while physically present in the state, TitleMax gains a security interest in Pennsylvania-registered automobiles, and TitleMax records these liens with the Pennsylvania Department of Transportation, which gives TitleMax the right to repossess these vehicles. *Ibid.*

Because TitleMax conducts significant activities within Pennsylvania, the Third Circuit next applied the *Pike* balancing test. *See Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970). Pennsylvania's usury laws treat in-state and out-of-state lenders the same. *TitleMax of Delaware*, 24 F.4th at 240-41. As Pennsylvania law does not discriminate, that is the end of the inquiry. *Ibid.* at 241.

But even if local benefits are considered, they "weigh in favor of applying Pennsylvania laws to TitleMax." *Ibid.* The laws protect Pennsylvania consumers from TitleMax's usurious lending rates, which may be as high as 180%. *Ibid.* Applying Pennsylvania's usury laws to TitleMax's loans furthers Pennsylvania's "strong interest in prohibiting usury." *Ibid.* And, any burden on interstate commerce from the application of Pennsylvania's usury laws "is, at most, incidental." *Ibid.* Accordingly, the Third Circuit held, Pennsylvania may "investigate and apply its usury laws to TitleMax without violating the Commerce Clause." *Ibid.*

TitleMax petitioned this Court for a writ of certiorari. The Court denied the petition. *TitleMax of Delaware, Inc., v. Vague*, 142 S.Ct. 2870 (2022).

4. Based on the information the Department received from TitleMax—once it finally complied with the subpoena—the Department's compliance office initiated an administrative enforcement proceeding against TitleMax via an order to show cause. Appx. A

at 2a, 12a;[3] JA54-55. The Department alleged that from July 2008 through September 2017, TitleMax entered into 5,270 agreements with Pennsylvania residents for loans of less than $50,000 that exceeded the 6% cap imposed by Pennsylvania's usury laws. Appx. A at 13a; JA54. Some of these loans set an interest rate as high as 720%. Appx. A at 13a; JA54. Under the terms of those agreements, TitleMax disburses funds to the borrower who grants a security interest in his or her vehicle. JA54-55. TitleMax then records a lien with the Pennsylvania Department of Transportation on the vehicles associated with the title-secured loans. *Ibid.* The Department further alleged that TitleMax services its loans in Pennsylvania by collecting payments, sending text messages or making phone calls to borrowers who reside in Pennsylvania, and repossessing vehicles in Pennsylvania after a borrower defaults. *Ibid.*; Appx. A at 13a.

5. But rather than answer the order to show cause, TitleMax initiated a forum-shopping campaign against the Secretary by filing "nearly identical lawsuits" against Secretary Spicher in six different federal district courts. *TitleMax of Delaware, Inc. v. Spicher*, 2024 WL 5187651, *3 (Dec. 20, 2024, D. Del.); Appx. A at 15a.[4] In each lawsuit, TitleMax alleged that Pennsyl-

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[3] The order to show cause was issued to TitleMax of Delaware, Inc., TitleMax of Ohio, Inc., TitleMax of Virginia, Inc., TitleMax of South Carolina, Inc., TitleMax Funding, Inc., TMX Finance, LLC, TMX Finance Corporate Services, Inc., CCFI Companies, LLC, and all successors, or predecessors in interest, affiliates, subsidiaries, or parent companies of any of the foregoing. JA301, 364, 532, 593.

[4] See *CCFI Companies, LLC and TitleMax of Ohio, Inc. v. Spicher*, No. 3:24-cv-00220-TMR-PBS (S.D. Ohio); *TitleMax of*

vania is seeking to enforce its usury laws extraterritorially, in violation of the Dormant Commerce Clause. Appx. A at 15a. As relief, TitleMax sought to enjoin the Department from enforcing the order to show cause and continuing with the administrative enforcement proceeding. Appx. B at 47a-48a. TitleMax did not seek damages.

5a. The Secretary moved to transfer the actions to the Middle District of Pennsylvania. Appx. A at 16a. The Southern District of Georgia, the Southern District of Ohio, the District of Delaware, and the Western District of Virginia granted the Secretary's request, with each court criticizing TitleMax's attempted forum shopping. *Ibid.*; *see e.g. TitleMax of Delaware,* 2024 WL 5187651 at *3 ("[T]he fact that TitleMax, in one corporate form or another, filed nearly identical lawsuits against [Secretary Spicher] in six different federal jurisdiction smells of forum shopping. In fact, it is not a stretch for this Court to view TitleMax's filing of six nearly identical actions in six different federal jurisdictions as forum shopping given that TitleMax had already received an unfavorable ruling from the Third Circuit in 2022"). Upon transfer, the Middle District of Pennsylvania consolidated the four actions. Appx. A at 16a. The Secretary moved to dismiss those actions based on *Younger* abstention, and that court granted the motion. Appx. B at 52a. The Northern District of Texas also granted the Secretary's motion to dismiss

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South Carolina, Inc. v. Spicher, No. 4:24-cv-04399-JD (D.S.C.); *TitleMax of Virginia, Inc. v. Spicher*, No. 7:24 cv-00532-PSB-CKM (W.D. Va.); *TMX Fin. LLC and Title Max Funding, Inc. v. Spicher*, No. 4:24-cv-00175-RSB-CLR (S.D. Ga.); *TitleMax of Delaware, Inc. v. Spicher*, No. 24-930-GBW (D. Del.); and *TMX Fin. Corp. Serv., Inc. v. Spicher*, No. 3:24-cv-02054-D (N.D. Tex.)

based on *Younger* abstention (and denied the Secretary's motion to transfer as moot). Appx. A at 16a. The District of South Carolina denied the motion to transfer as moot because, as explained below, it granted the motion to dismiss. Appx. B at 44a, 50a.

5b. The Secretary moved to dismiss the action in the District of South Carolina, also based on *Younger* abstention. Appx. B. at 51a. The District Court granted that relief. *Ibid*. That court held that TitleMax's claims were barred by issue preclusion because the Texas and Pennsylvania federal courts had already decided that *Younger* abstention applied. Appx. A at 17a. Independently, the District Court ruled that *Younger* required it to abstain. *Ibid.*

5c. TitleMax appealed the District Court's dismissal to the Fourth Circuit. Appx. A at 1a-2a. The Fourth Circuit affirmed. *Ibid.* at 18a-38a. On *Younger's* inquiry into the state interest at stake, that court explained that the administrative enforcement proceeding implicated "Pennsylvania's important interest in protecting its residents from usurious lending." *Ibid.* at 28a. A constitutional challenge to state action may call into question the legitimacy of the state's interest, but "'the mere assertion of a substantial constitutional challenge to state action will not alone compel the exercise of federal jurisdiction.'" *Ibid.* at 25a, quoting *New Orleans Pub. Serv., Inc. v. Council of the City of New Orleans (NOPSI)*, 491 U.S. 350, 365 (1989). "That is because constitutional questions 'generally can be resolved by state courts.'" *Ibid.*, quoting *Harper v. Pub. Serv. Comm'n of W. Va.*, 396 F.3d 348, 355 (4th Cir. 2005). Indeed, "'state courts are fully competent to decide issues of federal law.'" *Ibid.*, quoting *Harper* 396 F.3d at 355.

With respect to a Dormant Commerce Clause challenge, however, it "require[s] closer attention." *Ibid.*

But even then, that challenge must "'squarely implicate the Commerce Clause'" or "'by its very nature *** impede interstate commerce.'" *Ibid.* at 26a, quoting *Harper*, 396 F.3d at 355, 357. Pointing to its decision in *Harper*, the Fourth Circuit explained that there a West Virginia statute prohibited an out-of-state waste hauler from obtaining a certificate of necessity and convenience unless existing haulers were not "'adequately serving the same territory.'" *Ibid.*, quoting W.Va. Code Ann. § 24A-2-5(a) (2004). This statute "protected incumbent providers from competition and restricted market entry by out-of-state haulers.'" *Ibid.*, citing *Harper*, 396 F.3d at 350-51.

"Central" to the Fourth Circuit's decision in *Harper* was a decision it issued a dozen years earlier in *Medigen of Kentucky, Inc. v. Public Service Commission of West Virginia*, 985 F.2d 164 (4th Cir. 1993). There, the Fourth Circuit held that a "materially similar" statute regulating the hauling of infectious medical waste—prohibiting an out-of-state hauler from obtaining a certificate of convenience and necessity if the area was already being adequately serviced—violated the Dormant Commerce Clause. Appx. A at 27a. "[I]n light of" the decision in *Medigen*, West Virginia's interest "'could not be sufficiently strong to require abstention.'" *Ibid.*, quoting *Harper*, 396 F.3d at 357.

The Fourth Circuit emphasized that *Harper* does "not require courts to decide the merits of the underlying claim before applying *Younger*." *Ibid.* at 28a. Rather, a court "look[s] to the nature of the state's interest and to existing Commerce Clause precedent to determine whether the interest was important enough to justify abstention." *Ibid.*

Pennsylvania's interest in enforcing its usury laws does not "'by its very nature' impede interstate commerce.'" *Ibid.* at 29a. Those laws apply "evenhandedly

to in-state and out-of-state lenders transacting with Pennsylvania borrowers." *Ibid.* Pennsylvania does not seek to regulate commerce occurring wholly outside its borders. *Ibid.* Rather, the administrative enforcement proceeding concerns lending activity connected to "Pennsylvania borrowers, Pennsylvania vehicle collateral, Pennsylvania liens, payments from Pennsylvania, and repossessions in Pennsylvania." *Ibid.*

Further, no existing Fourth Circuit precedent rendered Pennsylvania's interest insufficient. *Ibid.* at 29a. Indeed, the Third Circuit had already rejected TitleMax's Dormant Commerce Clause claim. *Ibid.*, citing *TitleMax of Delaware*, 24 F.4th at 239-41. Accordingly, the Fourth Circuit held, the District Court correctly abstained from enjoining the administrative enforcement proceeding. *Ibid.* at 38a.

5d. Meanwhile, both the Third Circuit and Fifth Circuit affirmed the dismissals of the Middle District of Pennsylvania and the Northern District of Texas based on *Younger* abstention. No. 25-1359, Appx. A at 2a-11a; No. 26-23, Appx. A at 1a-7a.

The Third Circuit, when addressing the importance of the state interest, turned back to its prior decision in *TitleMax of Delaware*: "'Pennsylvania has a strong interest in prohibiting usury'; that 'any burden on interstate commerce from doing so is, at most, incidental'; and that 'Pennsylvania may therefore investigate and apply its usury laws to TitleMax without violating the Commerce Clause.'" No. 25-1359, Appx. A at 7a, citing *TitleMax of Delaware*, 24 F.4th at 241. The Third Circuit rejected TitleMax's argument that none of its entities negotiated or made loans in Pennsylvania. *Ibid.* at 7a-8a. This argument sought to delve into the merits, but a court does "'not consider the merits" when inquiring "into the substantiality of the State's interest in its proceedings.'" *Ibid.* at 8a, quoting *PDX North, Inc. v.*

N.J. Dep't of Labor & Workforce Dev., 978 F.3d 871, 885 (3d Cir. 2020). Instead, a court considers "'the importance of the generic proceedings to the State.'" *Ibid.*, quoting *PDX*, 978 F.3d at 885. "Viewed generically, the enforcement of usury laws is important to Pennsylvania." *Ibid.*

The Third Circuit denied TitleMax's petition for rehearing en banc or panel rehearing. No. 25-1359, Appx. C at 50a.

As for the Fifth Circuit, it rejected TitleMax's argument that the Dormant Commerce Clause outweighs Pennsylvania's interest in enforcing its usury laws.[5] No. 26-23, Appx. A at 6a. TitleMax did "not identify any federal interest that could plausibly override the potent federalism justifications for abstention in this case." *Ibid.* TitleMax did "not assert that the law was facially discriminatory." *Id.* Therefore, TitleMax had to satisfy *Pike* balancing, but TitleMax had not met its burden. *Ibid.*

The Fifth Circuit denied TitleMax's petition for rehearing en banc or panel rehearing. No. 26-23, Appx. C at 18a.

6. The administrative enforcement proceeding advanced to a three-day hearing. Dep't of Banking v. TitleMax of Delaware, Docket No. 240032 (BNK-OSC), *available at* https://tinyurl.com/558u4mjp. The Pennsylvania Banking and Securities Commission found that TitleMax made 4,239 loans in violation of Pennsylvania's usury laws. *Ibid.* at 5. Some of these loans had monthly interest rates as high as 60%. *Ibid.* at 14.

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[5] TMX Finance Corporate Services, a parent company or related entity of TitleMax, sued in the Northern District of Texas. JA54-55. To avoid any confusion, the Secretary refers to TMX as TitleMax here.

The Commission imposed a $10,000 fine for each violation, for a total fine of $42,390,000. *Ibid* at 5. The Commission also ordered TitleMax to pay $4,881,616.79 in restitution. *Ibid.*

REASONS FOR DENYING THE PETITION

I. The Fourth Circuit Faithfully Applied the Court's Precedents on *Younger* Abstention.

Younger abstention holds that federal courts may not use their equity powers to enjoin proceedings in state court or administrative agencies that implicate important state interests merely because the person seeking an injunction has a federal defense to the state proceeding. *See Ohio Civil Rights Comm'n v. Dayton Christian Sch., Inc.*, 477 U.S. 619, 626-27 (1986); *Middlesex Cty. Ethics Comm. v. Garden State Bar Assoc.*, 457 U.S. 423, 432 (1982); *Midwestern Gas Transmission Co v. McCarty*, 270 F.3d 536, 537 (7th Cir. 2007) (C.J., Posner). This doctrine prohibits defendants in state court or administrative proceedings "who, seeking to delay and if possible derail those proceedings in midcourse, run to a federal court for an injunction against the continuation of the proceeding." *McCarty*, 270 F.3d at 537; *see Younger*, 401 U.S. at 45. When a federal court is faced with these circumstances, "the normal thing to do" is to abstain. *Younger*, 401 U.S. at 44. Abstention is based on two "vital consideration[s]": to "avoid a duplication of legal proceedings" and, more importantly, "the notion of comity, that is, a proper respect for state functions." *Younger*, 401 U.S. at 44. Comity "is a recognition of the fact that the entire country is made up of a Union of separate state governments," and it is "a continuance of the belief 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." *Ibid.*

A federal court is to abstain from enjoining three categories of proceedings: (1) ongoing state criminal prosecutions; (2) ongoing state-initiated civil enforcement proceedings akin to criminal prosecutions; and (3) ongoing state civil proceedings that involve the ability of courts to perform judicial function. *See Sprint Comm., Inc. v. Jacobs*, 571 U.S 69, 78 (2013). If such a state proceeding is ongoing, then a court applies the *Middlesex* factors. *See Middlesex*, 457 U.S. at 432. *Middlesex* counsels against the exercise of federal jurisdiction when (1) state proceedings are pending; (2) the proceedings implicate an important state interest; and (3) the state proceedings afford an adequate opportunity to raise constitutional issues. *Ibid.* at 432. When these factors are present, a federal court should abstain from exercising jurisdiction unless there are "exceptional circumstances," such as "bad faith," "harassment," or a state statute that "is patently and flagrantly violative of express constitutional prohibitions." *Ibid.* at 437; *Younger*, 401 U.S. at 54.

Although the *Younger* inquiry is multifaceted, this petition concerns only the second *Middlesex* factor. "Proceedings necessary for the vindication of important state policies or for the functioning of the state judicial system . . . evidence the state's substantial interest in the litigation." *Middlesex*, 457 U.S. at 432. When a federal court inquires into the substantiality of a State's interest in its proceedings, that court does "not look narrowly to its interest in the *outcome* of the particular case—which could arguably be offset by a substantial federal interest in the opposite outcome." *NOPSI*, 491 U.S. at 365 (emphasis in original). Rather, a court looks "to the importance of the *generic* proceedings to the State." *Ibid.* (emphasis added).

Thus, for example, in *Ohio Civil Rights Commission*, the Court looked not to "Ohio's specific concern" with a Christian school's firing of an employee but to Ohio's "more general interest in preventing employers from engaging in sex discrimination." *NOPSI*, 491 U.S. at 365, citing *Ohio Civil Rights Commission*, 477 U.S. at 628 ("We have no doubt that the elimination of prohibited sex discrimination is a sufficiently important state interest ****").

Here, Pennsylvania undoubtedly has a substantial interest in enforcing its usury laws through an administrative enforcement proceeding. *See California v. ARC America Corp.*, 490 U.S. 93, 101 (1989); *Alfred L. Snapp & Son, Inc. v. Puerto Rico*, 458 U.S. 592, 602, 606, 609 (1982); *Energy Reserves Grp., Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 416-17 (1983). Indeed, as the Third Circuit recognized when TitleMax first challenged the Department's investigative subpoena, "Pennsylvania has a strong interest in prohibiting usury." *TitleMax of Delaware*, 24 F.4th at 241. This prohibition has "been a feature of Pennsylvania law for more than 150 years." *Cash America Net of Nevada, LLC v. Commonwealth*, 978 A.2d 1028, 1035 (Pa Cmwlth. 2009), *aff'd* 8 A.3d 282 (Pa. 2010). These laws "protect Pennsylvania residents *** against extortionate interest charges for loans of comparatively small amounts, since the business of making such loans profoundly affects the social life of the community." *Ibid.* at 1035-36 (citation omitted).

And yet, TitleMax maintains that the Fourth Circuit's approach, although preferable to the approach of other circuits, is still inconsistent with this Court's precedents. Petition at 22. TitleMax maintains that the Fourth Circuit focused too narrowly on whether any binding Dormant Commerce Clause precedent renders the State's asserted interest constitutionally invalid.

Ibid. Instead, according to TitleMax, the Fourth Circuit should have considered Pennsylvania's "interest in regulating the transactions that out-of-state companies enter into with [Pennsylvania] residents within other States" in light of "other States' much stronger interest in deciding the rules that apply to companies operating within their borders." *Ibid.* at 22, 26. TitleMax's argument is wrong on several accounts.

First, TitleMax mischaracterizes Pennsylvania's interest. Indeed, TitleMax's entire argument hinges on this mischaracterization. The Department is not regulating an activity "occurring wholly in other States." Petition at 27. The Third Circuit has already rejected TitleMax's Dormant Commerce Clause claim on the merits, and this Court declined to review that determination. The Third Circuit held that "TitleMax's transactions with Pennsylvanians . . . do not occur 'wholly outside' of Pennsylvania." *TitleMax of Delaware*, 24 F.4th at 239. TitleMax makes phone calls or sends text messages to borrowers residing in Pennsylvania, collects payments from them while they are physically present in Pennsylvania, record liens on the vehicles that secure the debt with the Pennsylvania Department of Transportation, and repossess those vehicles when the borrower defaults. *See ibid.*; JA54-55. Pennsylvania, thus, does not enforce its usury laws extraterritorially. *See TitleMax of Delaware*, 24 F.4th at 240. The Third Circuit's holding is res judicata. *See e.g. Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 398 (1981). TitleMax cannot now claim to the contrary.

Second, the Fourth Circuit correctly recited and applied this Court's rule that when inquiring into the substantiality of the State's interest, a court does not look to "the *outcome* of the particular case," that is, a court does not "decide the merits of the underlying claim be-

fore applying *Younger*." *NOPSI*, 491 U.S. at 365 (emphasis in original); Appx. at 5a; *cf*. Sup Ct. Rule 10(c). Rather, a court looks "to the importance of the *generic* proceedings to the State." *NOPSI*, 491 U.S. at 365 (emphasis added). But examining the merits is exactly what TitleMax claims the Fourth Circuit should have done. Petition at 27.

This Court rejected that argument in *NOPSI*. There, NOPSI (a producer, wholesaler, and retailer of electricity), claimed that *Younger* abstention was unwarranted because it raised a "substantial" federal preemption claim. *Ibid.* at 364. And, yet, "the mere assertion of a substantial constitutional challenge to state action will not alone compel the exercise of federal jurisdiction." *Ibid.* at 364-65 (rejecting argument that the Court "should take a quick look at the merits"). The only exception to this is when the federal plaintiff presents a "facially conclusive" claim (discussed below). *See ibid.* at 367; *Younger*, 401 U.S. at 53 (federal jurisdiction is appropriately exercised when the state "flagrantly and patently" violates an express constitutional prohibition).

Third, although TitleMax invokes the notion of "Our Federalism," *see Younger*, 401 U.S. at 44, Petition at 25, it neglects a fundamental aspect of it. As this Court has "repeatedly and emphatically" stressed, state courts and administrative agencies are "competent" forums for adjudicating federal constitutional claims. *See Moore v. Sims*, 442 U.S. 415, 430 (1979); *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 604, 610-11 (1975); *Harper*, 396 F.3d at 355. TitleMax can raise its Dormant Commerce Clause claim with the Department (to the extent the rejection of its claim is not res judicata); appeal, as of right, the Department's determination of that claim to the Commonwealth Court; and it may seek further appellate review from the

Pennsylvania Supreme Court and, ultimately, this Court. *See* 7 Pa.C.S. § 6138(e); 2 Pa.C.S. § 702; 42 Pa.C.S. §§ 724, 763; 28 U.S.C. § 1257. "[C]omity, that is, proper respect for state functions," includes the expectation that state courts and agencies will faithfully apply the "supreme Law of the Land." U.S. CONST., Art. VI, Cl. 2; *see Huffman*, 420 U.S. at 611 (rejecting "that state judges will not be faithful to their constitutional responsibilities"); David Mason, *Slogan or Substance? Understanding 'Our Federalism' and Younger Abstention*, 73 CORNELL L. REV. 852, 868 (1988) ("Our Federalism rests on the belief that state courts will properly vindicate constitutional rights, as the Supremacy Clause binds them to do"). And, it is because of state adjudicators' faithful adherence to the Constitution, that a federal court will not delve into the merits of a federal claim as a basis for exercising federal jurisdiction.

II. There is No Split Among the Circuits on the Important State Interest Factor.

TitleMax further argues that there is a split among the Circuits (between the Third, Fifth, and Seventh Circuits on one side, and the Fourth and Tenth Circuits on the other) when evaluating the important state interest against "the *Younger* federalism justifications." Petition at 14-22. But TitleMax misreads the Fourth Circuit's precedent. *See Harper*, 396 F.3d at 355-57. Properly read, the Fourth Circuit applies an exception to *Younger* abstention, well-grounded in this Court's precedents and widely followed by other Circuits—whether the state is "flagrantly and patently" violating "express constitutional prohibitions." *See Younger*, 401 U.S. at 53. As for the Tenth Circuit, the case TitleMax cites is materially distinguishable, as the state did not have an important interest at stake there. *See Seneca-*

Cayuga Tribe of Okla. v. State of Okla. ex rel. Thompson, 874 F.2d 709, 711-14 (10th Cir. 1989). So, contrary to TitleMax's contention, there is no difference among the Circuits in how they apply *Younger*.

1. In *Harper*, an Ohio-based solid waste disposal service sought to enjoin the West Virginia Public Service Commission from enforcing a state law that restricted the Ohio company's access to the West Virginia market. 396 F.3d at 350-51. Specifically, that law prohibited the Public Service Commission from issuing a certificate of convenience and necessity unless the applicant showed that those already certified are not "'adequately serving the same territory.'" *Ibid.* at 350, quoting W.Va. Code Ann. § 24-A-2-5(a). Thus, it was "undisputed" that pre-existing waste haulers had "a monopoly over a given geographic area." *Ibid.* Consequently, West Virginia's interest was "one that *by its very nature* serve[d] to impede interstate commerce." *Ibid.* at 355 (emphasis in original). This was all the more obvious because of the Fourth Circuit's decision in *Medigen* a dozen years earlier. *Ibid.* at 357.

In *Medigen*, the Fourth Circuit held that a statute prohibiting an out-of-state medical waste hauler from obtaining a certificate of convenience and necessity if the area was already being adequately serviced violated the Dormant Commerce Clause. *See Medigen*, 985 F.2d at 167.

As the statute in *Harper* squarely implicated the Commerce Clause, "in light of" the Fourth Circuit's decision in *Medigen*, West Virginia's interest was not sufficiently strong to warrant abstention. *Harper*, 396 F.3d at 357. In other words, the decision in *Medigen*, should have put West Virginia "on notice." *Ibid.* Accordingly, while the Fourth Circuit emphasized that it did "not reach the merits" of the Dormant Commerce

Clause claim, the interest West Virginia advanced was insufficient to warrant abstention. *Ibid.* at 355.

Although the Fourth Circuit did not use the term "flagrant and patent" constitutional violation, that is the standard it applied in *Harper*.[6] The Dormant Commerce Clause violation was "flagrant and patent" because there was already existing precedent (*Medigen*) that had struck down a similar statute as violating the Dormant Commerce Clause. In other words, as other Circuits have put it when addressing this exception, the constitutional claim did not require a "detailed analysis." *Minnesota Living Assistance*, 899 F.3d at 555 (rejecting argument that preemption claim was "readily apparent" or "facially conclusive" because there was "no binding precedent"); *Woodfeathers, Inc. v. Washington Cty.*, 180 F.3d 1017, 1021 (9th Cir. 1999) (preemption claim "readily apparent" where "the Supreme Court had previously decided the issue"). To require anything more would make abstention hinge on the merits, which "would render *Younger* a nullity" and contravene this Court's precedent. *See NOPSI*, 491 U.S. at 364-65; *Woodfeathers,*180 F.3d at 1021.

Indeed, other courts "have read *Harper* consistent with the flagrantly-violative exception, and have declined to extend it to stand more broadly for a separate, stricter framework for Commerce Clause cases." *Weststar Relocation, Inc. v. Becerra*, 2021 WL 5828016,

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[6] Other courts have referred to the "patent and flagrant" constitutional violation exception to the *Younger* doctrine by other names. For example, a constitutional violation that is "facially conclusive" or "readily apparent." *See NOPSI*, 491 U.S. at 367; *Leonard v. Alabama State Bd. of Pharmacy*, 61 F.4th 902, 913 (11th Cir. 2024); *Minnesota Living Assistance, Inc. v. Peterson*, 899 F.3d 548, 554-555 (8th Cir. 2018)

*5 (C.D. Cal. 2021), citing *Stroman Realty, Inc. v. Martinez*, 505 F.3d 658, 663 (7th Cir. 2007). "[A]t bottom, the statute in *Harper* was one that the court found on its face plainly violated the Commerce Clause." *Ibid.*; *see Marathon Petroleum Co. LLC v. Stumbo*, 528 F.Supp. 2d 639, 647 (E.D. Ky. 2007) (stating that although the Fourth Circuit in *Harper* "never expressly found" the patent and flagrant constitutional violation exception appliable, "it is clear that *** that the statute at issue qualified for this exception"); *see also Hartford Enterprises, Inc. v. Coty*, 529 F.Supp.2d 95, 99 n.4 (D. Me. 2008) (suggesting that "perhaps," *Harper* should be read as dealing with a statute that "by its very nature" violated the Dormant Commerce Clause).

Contrary to TitleMax's contention, the Fourth Circuit did not modify its approach from *Harper* in this case. Petition at 17. The Fourth Circuit effectively recognized that in the absence of controlling precedent, TitleMax's constitutional claim was not facially conclusive. Moreover, as the Fourth Circuit emphasized, there was already (persuasive) precedent from the Third Circuit "reject[ing] TitleMax's Dormant Commerce Clause challenge." Appx. A. at 29a-30a, citing *TitleMax of Delaware*, 24 F.4th at 240-41. TitleMax's attempt to distinguish *TitleMax of Delaware* because it involved an investigative subpoena and this case involves an administrative enforcement proceeding falls flat. Petition at 29. Both cases concern the same usurious conduct. As the Third Circuit put it, "it makes no difference that *Younger* abstention was not on the table [in *TitleMax of Delaware*]. We substantively answered the important-state-interest inquiry of *Middlesex* factor two." No. 25-1359, Appx. A at 7a.

2. As for *Seneca-Cayuga Tribe*, that dealt with Oklahoma's attempt to enforce its gambling laws against Indian Tribes that were operating high-stakes bingo

games on Indian land. 874 F.2d at 710. The federal District Court refused to abstain from exercising its jurisdiction over a suit seeking to enjoin state actions against the Tribes, and the Tenth Circuit affirmed. *Ibid.* at 710-11. The Tenth Circuit explained that the state did not have an important interest at stake. *Ibid.* at 712-14. "[F]ederal law, federal policy, and federal authority are paramount in the conduct of Indian affairs in Indian country." *Ibid.* at 713. Further, the question of whether the State had jurisdiction, meaning the authority to regulate Indian bingo, was also "a matter of federal law," which turned on whether federal law had not preempted state authority or state regulation would not infringe on tribal self-government. *Ibid.* at 714. Finally, because the Tribes were entitled to sovereign immunity as sovereign entities, the Oklahoma courts lacked jurisdiction to hear the State's case. *Ibid.* at 715-16. The Tenth Circuit concluded that the federal nature of the law and the issues to be decided, combined with the state courts' lack of jurisdiction, left Oklahoma without an interest in the state litigation. *Ibid.* at 716.

The decision in *Seneca-Cayuga Tribe* is not remotely analogous to this case. Pennsylvania is not seeking to regulate in an area that is committed to the federal government. Rather, Pennsylvania's regulation of usury is a "'a traditional area of state concern.'" *Seneca-Cayuga Tribe*, 874 F.2d at 713, quoting *Moore*, 442 U.S. at 439. Indeed, this case does not implicate any federal interest at all, for the ruling that there is no Dormant Commerce Clause violation is res judicata.

3. The approach of the Circuits is the same. They do not look at the merits when "inquir[ing] into the substantiality of the State's interest in its proceedings." *NOPSI*, 491 U.S. at 365; *see* No. 25-1359, Appx. A at 8a (courts "do not consider the merits" when analyzing the

second *Middlesex* factor"); No. 26-271, Appx. A at 28a (stating that a court does not "decide the merits of the underlying claim before applying *Younger*"); *Harper*, 396 F.3d at 355 ("we do not reach the merits"). Rather, consistent with this Court's precedents, they look to the "importance of the generic proceedings to the State." *NOPSI*, 491 U.S. at 365. The exception to this rule is when the federal plaintiff presents a "facially conclusive" claim, that is, a constitutional claim that does not require a "detailed analysis" because existing precedent on that claim is dispositive *See ibid.* at 367; *Younger*, 401 U.S. at 53; *Minnesota Living Assistance*, 899 F.3d at 555; *Harper*, 396 F.3d at 357; Appx. A at 28a.

Finally, this Court has already rejected the contention that a Dormant Commerce Clause warrants special consideration. *Younger* itself cited *Fenner v. Boykin*, 271 U.S. 240 (1926) favorably, where the plaintiffs sought to enjoin Georgia from enforcing a law they claimed "interfered with the free flow of commerce between the states." *Fenner*, 271 U.S. at 243; *see Younger*, 401 U.S. at 45. The Court stressed that the federal courts should not interfere except "under extraordinary circumstances." *Ibid.* Instead, the accused should present his defenses in state court, knowing that he could ultimately seek review in this Court of any federal questions. *Ibid.* at 244. This Court added, it would be "[a]n intolerable condition" if the accused was "permitted freely to contest" the validity of a state statute "by an original proceeding in some federal court." *Ibid.*

III. This Case is a Poor Vehicle to Review the Question Presented.

This case is a poor vehicle to resolve the question presented because the supposed circuit-split is the result of TitleMax's unabashed forum-shopping, and resolving the supposed split would not benefit TitleMax.

First, forum shopping. Again, faced with the state proceeding, TitleMax filed *six* federal lawsuits in six different federal jurisdictions. Several of the federal district courts recognized TitleMax's actions for what they were—forum shopping. *See TitleMax of Delaware,* 2024 WL 5187651 at *3. As one federal district court observed, the reason why TitleMax "filed multiple lawsuits in multiple forums" was "to get as many bites at the apple as possible outside of Pennsylvania, having already received an unfavorable ruling from the Third Circuit in 2022." *CCFI Co., LLC v. Spicher*, 2024 WL 5077766, *3 (S.D. Ohio 2024). That plan, of course, backfired, because even the courts that did not transfer to the Middle District of Pennsylvania, all ultimately ruled that *Younger* abstention applied.

These kinds of litigation tactics are emblematic of how TitleMax runs its business. Pennsylvania is not the only sovereign that has sanctioned TitleMax for engaging in illegal lending practices. The Consumer Financial Protection Bureau fined TitleMax $10 million for violating the Military Lending Act by charging military families nearly three times more than the 36% annual interest cap. Consumer Financial Protection Bureau, *CFFB Orders TitleMax to Pay $10 Million Penalty for Unlawful Title Loans and Overcharging Military Families*, *available* at https://tinyurl.com/3zysftcx (last visited Oct. 16, 2026).

Private parties have also obtained relief against TitleMax for its illegal loans. For example, North Carolina consumers have obtained arbitration awards against TitleMax for violating North Carolina usury laws by charging interest rates between 143% and 204% per annum. *See Frazier v. TitleMax of Virginia, Inc.*, 931 S.E.2d 498, 500 (N.C. Ct. of Appeals 2026); *see also Ray v. TitleMax of Virginia, Inc.*, 925 S.E.2d 324, *1 (N.C. Ct. of Appeals. 2026) (noting that 12 mass actions, involving 1,320 consumers, had been brought against TitleMax for usurious loans). Although these plaintiffs traveled to other states to obtain a loan, TitleMax had "significant contacts" with North Carolina, by recording liens with the North Carolina Department of Motor Vehicles and repossessing vehicles in North Carolina. *Frazier*, 931 S.E.2d at 500-501.

Second, resolving this supposed Circuit split would not benefit TitleMax. Although the Court decides questions of public importance, it does so in the "context of meaningful litigation." *The Monrosa v. Carbon Black Export, Inc.*, 359 U.S. 180, 184 (1959). Thus, it is a cornerstone principle of certiorari jurisprudence that this Court will decline to review an issue when "it is not clear that [its] resolution of [that issue] will make any difference" to the petitioner. *Ticor Title Ins. Co. v. Brown*, 511 U.S. 117, 122 (1994); *Goins v. United States*, 306 U.S. 622 (1939) (dismissing petition where supposed error "could not have prejudiced the petitioner"); *see* S. Shapiro, K. Geller, T. Bishop, E. Hartnett, & D. Himmelfarb, SUPREME COURT PRACTICE § 4.4(f), p.249 (10th ed. 2013) (noting that if the resolution of a conflict is irrelevant to the ultimate outcome of the case before the Court, then the Court should deny certiorari). All three Circuits came to the same conclusion—abstention under *Younger* was required

because Pennsylvania has an important interest in enforcing its usury laws, and TitleMax's Dormant Commerce Clause claim did not overcome that interest. Even if the Fourth Circuit took a different approach to that question—TitleMax still cannot prevail.

In TitleMax's other petitions it argues that this Court should follow the Fourth Circuit's approach. *See* No. 26-23 and 25-1359 (arguing that the Fourth and Tenth Circuits have taken an approach that is "more faithful to this Court's case law"). Now, though, with the Fourth Circuit also having abstained, TitleMax claims that the Fourth Circuit's approach is also wrong. Perhaps TitleMax's change in position is because it realizes that if it cannot prevail under either supposedly different approach, then there is no basis for granting its writ. But that aside, the Fourth Circuit's ruling was consistent with *Harper* and other Circuits that recognize that if existing precedent had already established a constitutional violation under similar circumstances, then abstention is inappropriate. A state does not have an important interest in enforcing a law that "flagrantly and patently" violates the Constitution. *See Younger*, 401 U.S. at 53; *Minnesota Living Assistance*, 899 F.3d at 555; *Becerra*, 2021 WL 5828016 at *5. Here, however, the Third Circuit has already held that Pennsylvania can apply its usury laws to TitleMax without violating the Dormant Commerce Clause.

Moreover, the rule TitleMax proposes—analyzing a State's interests in its parallel state proceedings by evaluating the ends that those proceedings advance from the point of view of "Our Federalism" —is an amorphous one. *See* Petition at 23; Martin H. Redish, *Doctrine of Younger v. Harris: Deference in Search of a Rationale*, 63 CORNELL L. REV. 463, 464-65 (1978). The

Court has put "meat on the bones" of that phrase, culminating in *NOPSI*. 491 U.S. at 365-67. The Court should not go backwards.

Finally, the parade of horribles TitleMax imagines from the Fourth's Circuit's adherence to this Court's precedents will not come to pass. Petition at 33. TitleMax posits, for example, a State could ban the sale of fireworks to any of its residents. *Ibid*. Then, if a citizen of that State travels to another State to purchase fireworks, the first State can commence an administrative enforcement proceeding against the fireworks seller. TitleMax, however, misses a crucial distinction between the fireworks seller and its business, one that the Third Circuit has already explained to TitleMax. TitleMax's loan agreements "have a longer lifespan" than transactions in goods (like fireworks), which "end[] at the point of sale." *TitleMax of Delaware*, 24 F.4th at 239. TitleMax's business "involves later payments and permits a physical taking (repossession) from inside another state." *Ibid.* That is why Pennsylvania's important interest in enforcing its usury laws does not violate the Dormant Commerce Clause.

CONCLUSION

The Court should deny the petition for a writ of certiorari.

Respectfully submitted,

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