No.26-271

In the Supreme Court of the United States

TITLEMAX OF SOUTH CAROLINA, INC.,
PETITIONER,
v.
WENDY 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

REPLY BRIEF FOR THE PETITIONER

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REPLY BRIEF FOR THE PETITIONER

The Secretary offers no meaningful response to the Petition's explanation that the Circuits are split over how to analyze *Younger*'s important-state-interest element. The Secretary does not dispute that the Third, Fifth, and Seventh Circuits employ a cursory analysis, without regard to federalism considerations. As to the Fourth Circuit's entirely different approach, the Secretary asks this Court to ignore what the Fourth Circuit said in both *Harper v. Public Service Commission of West Virginia*, 396 F.3d 348 (4th Cir. 2005), and its precedential decision below, falsely claiming that those decisions' analyses look so different because they secretly applied an exception to *Younger*. And because the Secretary pretends that the decision below was based upon this exception, she offers no defense for the Fourth Circuit's actual approach.

The Secretary similarly fails to refute the importance of the Question Presented, or the need to resolve that Question here. Although the Secretary tries to frame this case as one of several attempts by a nonexistent entity that she labels "TitleMax" to "intrude upon" Pennsylvania's right to regulate conduct "*within Pennsylvania*," BIO.1, that has nothing to do with this Petition. It is undisputed that Petitioner is a South Carolina company, which only made loans to consumers in South Carolina, a tiny fraction of whom happen to be from Pennsylvania. The Secretary's belief that entities related to

Petitioner engaged in conduct in Pennsylvania is irrelevant to this Petition, given the "long [ ] settled" principle of corporate separateness (which she has never rebutted). *Galette v. N.J. Transit Corp.*, 607 U.S. 509, 524 (2026) (citation omitted).

This Petition asks this Court to ensure that States can no longer use *Younger* to shield attempts to regulate out-of-state conduct by sweeping out-of-state companies into bureaucratic nightmares. The unconstitutional abuse that Pennsylvania has inflicted on Petitioner is a poster child for this problem. And, as explained below, this has gotten worse since the Petition, with no end in sight.

This Court should grant the Petition and reverse the Fourth Circuit.

I. The Secretary Cannot Explain Away The Circuit Split

A. The Circuits are divided over how to apply the important-state-interest element—the second factor from *Middlesex County Ethics Committee v. Garden State Bar Association*, 457 U.S. 423 (1982)—in *Younger* cases implicating multiple sovereigns' interests. Pet.14–22. On one side, the Third, Fifth, and Seventh Circuits employ a cursory inquiry that considers the State's asserted interests at the highest level of generality. Under that approach, a proceeding preventing "usury" or enforcing a State's "criminal laws" is enough, without considering

whether refusing jurisdiction would undermine *Younger*'s federalism underpinnings. Pet.19–22. In contrast, the Fourth and Tenth Circuits engage in detailed important-state-interest analyses that consider *Younger*'s federalism values. Pet.14–19. In *Harper*, the Fourth Circuit held that the presence of "an overwhelming federal interest" informs the State's asserted interest under *Younger*. 396 F.3d at 356; Pet.15–17. The Fourth Circuit refined its approach below to focus on binding dormant Commerce Clause cases only, while still recognizing that the inquiry must reflect "*Younger*'s concern with comity and respect for state functions," App.24a (citation omitted); Pet.17–18. In *Seneca-Cayuga Tribe of Oklahoma v. Oklahoma ex rel. Thompson*, 874 F.2d 709 (10th Cir. 1989), the Tenth Circuit similarly held that overriding federal interests can render a State's asserted interest insufficiently important, *id.* at 714; Pet.18–19.

B. The Secretary does not dispute Petitioner's account of the Third, Fifth, and Seventh Circuits' perfunctory approaches to the important-state-interest element, *see* BIO.17–18, but argues that these cases do not split with the Fourth Circuit because *Harper* (and the decision below) secretly analyzed *Younger*'s exception for flagrantly-and-patently-unconstitutional state laws instead. BIO.18–20. This is wrong. In *Younger v. Harris*, 401 U.S. 37 (1971), this Court suggested that a federal court could avoid abstention where "extraordinary circumstances" exist, including where a plaintiff

challenges a state statute that is "flagrantly and patently violative of express constitutional prohibitions." *Id.* at 53 (citations omitted). If a case falls within that "narrow exception[ ]," federal courts may "interven[e]" rather than abstain under *Younger*. *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 611 (1975).

But both *Harper* and the panel below made clear that their analyses focused upon *Middlesex*'s important-state-interest element. *Harper* explained that its abstention analysis "turn[ed] fundamentally on the second requirement" from *Middlesex*, which is "whether [the ongoing state proceeding] implicates important state interests," without mentioning the flagrantly-and-patently-unconstitutional exception. 396 F.3d at 352. The Fourth Circuit below likewise understood *Harper* to turn on the second *Middlesex* factor. App.26a–28a. In a section dedicated to "[t]he second *Middlesex* factor," the panel explained that *Harper* analyzed "the nature of the state's interest" to consider whether "abstention" was "justif[ied]." App.24a–30a. And although it later noted the existence of the flagrantly-and-patently-unconstitutional exception, App.34a, it did not analyze that exception or suggest that *Harper* had done so. So while a couple of district courts may have (mis)read *Harper* as the Secretary does, BIO.19–20, that is irrelevant, including because the Fourth Circuit correctly read *Harper* as analyzing *Middlesex*'s important-state-interest prong below, App.27a.

The Secretary also brushes aside the Tenth Circuit's decision in *Seneca-Cayuga*, claiming that it is not "analogous" because "Pennsylvania is not seeking to regulate in an area that is committed to the federal government." BIO.17, 20–22. That is a *non sequitur*. Federal courts must analyze a State's asserted interests under *Younger* within the context of "Our Federalism." Pet.14–19, 25. This requires deciding whether the asserted state interest comports with *both* the federal-versus-state balance *and* the state-versus-state balance. Pet.14–19, 25.

The Tenth Circuit (in *Seneca-Cayuga*) and the Fourth Circuit (in *Harper*) both employ this approach, Pet.14–19, which is why *Harper* approvingly cited *Seneca-Cayuga* on this point, 396 F.3d at 357 n.3. *Seneca-Cayuga* used this approach to consider whether abstention would upset the federal-versus-state balance, Pet.18–19, while *Harper* (and the panel here) used it to consider whether abstention would upset the state-versus-state balance, Pet.15–17. The Third, Fifth, and Seventh Circuits, in contrast, consider the State's asserted interest only at the highest level of generality, without factoring in *Younger*'s federalism underpinnings. Pet.19–22.

II. The Secretary Does Not Even Attempt To Defend The Fourth Circuit's Approach To The Question Presented

A. The Fourth Circuit's approach to *Younger*'s important-state-interest inquiry violates this Court's

case law by narrowly focusing on binding dormant Commerce Clause precedent in deciding whether the asserted interest is important enough within the context of *Younger*'s federalism-based balance. Pet.22–30. *Younger* is an exception to a federal court's obligation to exercise jurisdiction based on "the notion of 'comity'" and "Our Federalism," which demand "sensitivity to the legitimate interests of both State and National Governments[.]" Pet.23 (citation omitted). To justify abstention, the State's interests must be "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); Pet.25. While the Fourth Circuit correctly recognizes that the State's asserted interest must be viewed through the lens of "Our Federalism," it defines too narrowly the body of law that informs whether the State's interest is sufficiently important. Pet.28–30.

Had the Fourth Circuit not unduly narrowed its focus, it would have concluded that Pennsylvania's interest here is not sufficiently important to justify abstention. Pet.27. Principles of federalism make clear that a State cannot "impose its own legislation" or "enforce its own policy" within another State's borders. Pet.26–27 (citation omitted). Viewed through that lens, Pennsylvania's interest in dragging Petitioner into Pennsylvania to answer for loans made in South Carolina is not sufficiently important because it collides with South Carolina's stronger interest in regulating conduct within its own

borders. Pet.26–29; *see* Br. of *Amicus Curiae* State of S.C. in Supp. of Pet'rs at 1–2, *TitleMax of Va., Inc. v. Spicher*, No.25-1359 (U.S. July 8, 2026); *Amicus Curiae* Br. of State of S.C. in Supp. of Pl.-Appellant, *TitleMax of S.C., Inc. v. Spicher*, No.25-2027 (4th Cir. Oct. 21, 2025).

B. The Secretary makes no attempt to defend the Fourth Circuit's approach. Instead, she wrongly claims that the "Fourth Circuit faithfully applied th[is] Court's" *Younger* precedent, BIO.12 (formatting altered), by deciding this case under the flagrantly-and-patently-unconstitutional exception, BIO.14–15, 19–20. By mischaracterizing the Fourth Circuit's decision as something it is not, *see supra* pp.3–4, the Secretary forgoes any defense of what the Fourth Circuit actually did, Pet.26–30.

If anything, the Secretary's arguments based on *Fenner v. Boykin*, 271 U.S. 240 (1926), suggest that she believes the Fourth Circuit's approach is incorrect. BIO.22. In the Secretary's view, *Fenner* "rejected the contention that a Dormant Commerce Clause [claim] warrants *special consideration*." BIO.22 (emphasis added). Yet the Fourth Circuit concluded that a "state proceeding that affects interstate commerce . . . require[s] *special consideration* under *Younger*." App.25a–26a (emphasis added). Petitioner is not arguing that the *Younger* analysis requires "special consideration" of dormant Commerce Clause claims. Petitioner's point is that, under this Court's precedent, *Younger*'s

important-state-interest prong must be analyzed in the context of "Our Federalism." Pet.23–28. While federalism concerns can arise in dormant Commerce Clause cases, they are also relevant in other cases involving significant federalism interests, such as *Seneca-Cayuga*, *see supra* p.3, or those challenging a State's regulation of a party without minimum contacts with that State, like this one, Pet.8–9.

Having no defense for the Fourth Circuit's approach, the Secretary lobs misdirected criticisms at Petitioner's reading of this Court's precedent. BIO.16, 25. She argues that *New Orleans Public Service, Inc. v. Council of City of New Orleans*, 491 U.S. 350 (1989) ("*NOPSI*"), prohibits considering the merits of the underlying claim, but Petitioner does not "claim[ ] the Fourth Circuit should have" considered the merits. BIO.15–16; *see* Pet.26–29. The Secretary then asserts that deciding the important-state-interest element by looking to principles of federalism is too "amorphous," BIO.25, but this Court's approach is simple: Federal courts must evaluate a State's purported interest in the context of *Younger*'s federalism underpinnings, *see, e.g.*, *NOPSI*, 491 U.S. at 365 (analyzing whether Louisiana had a "substantial, legitimate interest in regulating *intrastate retail rates*" (emphasis added)). Far from "neglect[ing]" to consider that "administrative agencies are 'competent' forums," BIO.16, this approach requires consideration of both federal-versus-state and state-versus-state concerns as part of "Our Federalism," *see supra* p.5.

The Secretary offers no answer to Petitioner's core point that by myopically focusing on binding dormant Commerce Clause precedent, the Fourth Circuit ignored important principles of comity in contravention of this Court's precedent. Pet.26–28. Properly considering those principles, the Fourth Circuit should have concluded that Pennsylvania has no important state interest in dragging this out-of-state company into its bureaucratic morass. Petitioner operates "exclusively in South Carolina" under South Carolina's laws, JA020, giving South Carolina a significant interest in the underlying transactions. Pennsylvania's only claimed interest stems from Pennsylvania residents leaving the State to obtain loans from Petitioner or moving to Pennsylvania after having obtained loans in South Carolina. Pet.8–9. Yet, because the Fourth Circuit found no on-point binding dormant Commerce Clause precedent, it accepted Pennsylvania's purported interest and blocked Petitioner from federal review of its federal claims.

The Secretary's attempt to recast these facts by relying on *TitleMax of Delaware, Inc. v. Weissmann*, 24 F.4th 230 (3d Cir. 2022), fails, while also contradicting what the Secretary told this Court before. BIO.15–16. Petitioner was not a party to *Weissmann*, and so its facts do not relate to Petitioner. The Complaint—which must be accepted as true for purposes of a motion to dismiss on *Younger* grounds, *Kugler v. Helfant*, 421 U.S. 117, 126 & n.5 (1975)—explains that Petitioner has no Pennsylvania

contacts, JA020–23. Despite a two-year enforcement proceeding, Pennsylvania has produced no evidence tying Petitioner to Pennsylvania. Pet.30. Nor did *Weissmann* "already reject[ ] [Petitioner's] Dormant Commerce Clause claim." *Contra* BIO.15. That case involved Pennsylvania's ability to *investigate* out-of-state violations of Pennsylvania law and not whether it could *enforce* those laws against out-of-state loans. Pet.29. The Secretary successfully opposed this Court's review of *Weissmann* by assuring this Court that any claim about "Pennsylvania's ability to apply" its usury laws was "unripe." Br. in Opp'n at 8, 10–11, *TitleMax of Del., Inc. v. Vague*, No.21-1262 (U.S. May 23, 2022).

The Secretary also claims that the Fourth Circuit got the result correct because a nonexistent company that she labels "TitleMax" has allegedly taken actions in Pennsylvania, such as making "phone calls" and "send[ing] text messages" to Pennsylvania residents and "collect[ing] payments" sent from inside Pennsylvania. BIO.15; App.5a (noting that "TitleMax" is only "descriptive shorthand"). But the Secretary does not argue that *Petitioner* has done these things. BIO.15. And the Secretary does not dispute Petitioner's point that Petitioner is a "separate legal unit[ ] with distinct legal rights and obligations." *Galette*, 607 U.S. at 524; *see* Pet.35 n.4; JA625–27. The Secretary's decision to rest her litigation strategy on the label "TitleMax"—instead of pointing to evidence that would support veil-piercing or some other doctrine that would permit setting

aside Petitioner's corporate separateness—constitutes waiver of any contrary arguments. *See* Sup. Ct. R. 15.2; *Aetna Health Inc. v. Davila*, 542 U.S. 200, 212 n.2 (2004).

III. This Court Should Resolve The Circuit Split Now, And The Secretary's Attempt To Manufacture A Vehicle Problem Fails

A. This case presents the ideal vehicle to address whether a State's "generic" interest in regulating out-of-state transactions is sufficiently important to warrant *Younger* abstention. Pet.34–35. That question is squarely presented here. Pet.34–35. Pennsylvania's years-long, still-ongoing abuse of Petitioner is the poster child for the harms that a State can inflict when federal courts accept a State's asserted interest without fully considering *Younger*'s federalism underpinnings. Pet.34–35.

Things have gotten more Kafkaesque since the Petition. After Petitioner proved to the independent hearing examiner (whom the Secretary appointed) that there is no evidence that it conducted any activity in Pennsylvania or violated Pennsylvania law, the Department of Banking and Securities appealed to its own Commission, which went "as one might expect." *SEC v. Jarkesy*, 603 U.S. 109, 145 (2024) (Gorsuch, J., concurring). The Commission rejected the hearing examiner's forty-page dismissal recommendation and found Petitioner jointly and severally liable for nearly $47.3 million, in a

preordained decision, Pet.12, providing minimal explanation and ignoring unfavorable concessions from the Department's own witness, *see* Final Order, *Dep't of Banking & Secs. v. TitleMax of Del., Inc.*, No.240032 (BNK-OSC) (Sept. 24, 2026), available at https://tinyurl.com/558u4mjp. Remarkably, the attorney who prosecuted the enforcement action (and lost) is the supervisor of the attorney who counseled the Commission in making its reversal decision—in a closed executive session. *See* Pet. for Rev., *TitleMax of Del., Inc. v. Dep't of Banking & Secs.*, No.1659 C.D. 2026 (Pa. Commw. Ct. Oct. 26, 2026). There are three state-court cases challenging those actions—including the Department's own challenge seeking additional penalties. *See TitleMax of Del., Inc.*, No.1659 C.D. 2026 (Pa. Commw. Ct.); *CCFI Cos., LLC v. Geishauser*, No.389 M.D. 2026 (Pa. Commw. Ct.); *CCFI Cos., LLC v. Geishauser*, No.492 M.D. 2026 (Pa. Commw. Ct.). And all of this has occurred even though Pennsylvania does not have personal jurisdiction over Petitioner, among other federal-constitutional deficiencies. Pet.12, 30. But because of the Fourth Circuit's decision, Petitioner cannot come to federal court to vindicate its federal rights. Pet.12–13.

If the Fourth Circuit's decision is left unchecked, this scenario will replicate itself. States will drag out-of-state companies into protracted enforcement proceedings in far-flung jurisdictions, for doing business with the State's residents. Pet.31–32. That will lead to interstate warfare that harms not only the

targeted businesses but also the States where the conduct occurs, which will lose their sovereign authority to regulate commerce within their own borders. Pet.32.

B. The Secretary raises three "vehicle" objections, but these all fall flat. BIO.23–26.

First, the Secretary claims that "TitleMax" engaged in "forum shopping" or other alleged misconduct. BIO.23–25. But Pennsylvania brought its enforcement action against eight legally separate entities that perform distinct activities in various States. Pet.9–10. Each of those entities brought an action *in the home State where that specific entity does business*, which is why Petitioner filed this lawsuit in South Carolina. Pet.8–9. Again, the Secretary waived any argument rebutting Petitioner's corporate separateness. *See supra* pp.10–11.

Second, the Secretary contends that resolution of the Circuit split "would not benefit" Petitioner because all "Circuits came to the same conclusion" here. BIO.24–26. But, as explained, a faithful application of this Court's precedent would result in Petitioner prevailing on this outcome-determinative element. *See supra* pp.6–11.

Finally, the Secretary assures this Court that the "parade of horribles" that Petitioner has identified "will not come to pass." BIO.26. This Court need not look further than what happened here. Pennsylvania

has dragged Petitioner into a years-long enforcement proceeding because Pennsylvania's residents chose to obtain loans from Petitioner pursuant to South Carolina's laws, in South Carolina. Pet.28.

The Secretary claims that these evils could not spread to regulation of out-of-state businesses in other industries—such as fireworks retailers, Pet.32–33—because loans "have a longer lifespan," while "transactions in goods . . . end at the point of sale." BIO.26 (citations and brackets omitted). But the Secretary offers no *legal principle* that would limit other States' extraterritorial regulatory ambitions under the Fourth Circuit's approach. Rather, following the Secretary's lead, other States could decide that out-of-state transactions involving their residents that seemingly "end at the point of sale" have continuing negative effects within their borders—such as residents setting off out-of-state fireworks. Based on those allegedly negative effects, these States could hale any out-of-state business and its out-of-state affiliates into administrative proceedings for years. Absent binding dormant Commerce Clause precedent, these businesses could not receive federal-court review of their federal challenges under the Fourth Circuit's approach.

CONCLUSION

This Court should grant the Petition.

Respectfully submitted,

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