No. 24-986

In the Supreme Court of the United States

MENDOCINO RAILWAY,

Petitioner,

v.

KATE HUCKELBRIDGE, EXECUTIVE DIRECTOR, CALIFORNIA COASTAL COMMISSION, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION FOR THE STATE RESPONDENT

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QUESTIONS PRESENTED

Petitioner Mendocino Railway owns and operates a tourist excursion train in Northern California. The City of Fort Bragg, a respondent in this case, initiated a civil enforcement action against petitioner in state court, asserting that petitioner had failed to comply with applicable state and local laws and was liable for civil penalties. Petitioner unsuccessfully raised a federal preemption defense to that claim in its state-court demurrer. It then filed a lawsuit in federal court, seeking declaratory and injunctive relief and asserting the same federal preemption theory that the state court had rejected. The district court dismissed petitioner's complaint under the abstention doctrine recognized in *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976), and the court of appeals affirmed on that same ground. The questions presented are:

1. Whether the lower courts misapplied the *Colorado River* doctrine to the facts of this case.

2. Whether this Court should overrule *Colorado River*.

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STATEMENT

1. In 2004, petitioner Mendocino Railway purchased a tourist excursion train in Mendocino County, California, running for approximately 40 miles between the cities of Fort Bragg and Willits. C.A. Dkt. 9, E.R. 28, 109-110. Since 2016, however, when a tunnel collapse prevented any trains from running the full length of the line, petitioner has been running closed-loop sightseeing trips from Fort Bragg to Glen Blair Junction and back, approximately three and a half miles each way. *Id.* at 28. Petitioner owns approximately 300 acres of land and multiple structures in Fort Bragg, lying within California's coastal zone. *Id.* at 110; *see* Pet. App. 3a.

In 2017, a dispute arose between petitioner and respondent City of Fort Bragg regarding petitioner's failure to obtain certain permits for the use of its property, including a permit required under the California Coastal Act, Cal. Pub. Res. Code § 30000 *et seq*. Pet. App. 3a. The California Coastal Commission is the state agency responsible for implementation of the Coastal Act. Cal. Pub. Res. Code § 30330.[1] The Act generally requires any person or entity seeking to undertake development within the coastal zone to obtain a coastal development permit. *Id.* § 30600(a). For proposed developments located in the coastal zone within the city limits of Fort Bragg, the Commission shares permitting authority with the City. *See generally id.* §§ 30600(d), 30519(a); Pet. App. 3a. Petitioner refused to obtain any permits from the City or the Commission, arguing that the federal Interstate Commerce

[1] Pursuant to Supreme Court Rule 35.3, respondent Kate Huckelbridge, the current executive director of the Coastal Commission, is automatically substituted in place of former executive director Jack Ainsworth, who was a named party in the lower courts.

Commission Termination Act (ICCTA) preempted any state law permit requirement. Pet. App. 3a; *see* 49 U.S.C. § 10501(b).

2. In October 2021, the City sued petitioner in state court. Pet. App. 4a; *see City of Fort Bragg v. Mendocino Railway*, No. 21CV00850 (Cal. Super. Ct., Mendocino Cnty.). The City sought a judicial declaration that petitioner is subject to state and local regulation, as well as civil penalties and an injunction obligating petitioner to comply with applicable laws. Pet. App. 4a. Petitioner filed a demurrer, contending that it was subject to exclusive federal regulation under ICCTA. *Id.* The trial court overruled the demurrer, and petitioner unsuccessfully sought interlocutory review of that ruling in the California Court of Appeal and the California Supreme Court. *Id.* at 4a-5a. Petitioner also moved to disqualify the judge who had overruled its demurrer, but the court denied that motion. *Id.* at 6a. In June 2022, petitioner filed an answer to the City's complaint, in which it asserted federal preemption as an affirmative defense. *Id.* at 5a.

After the City requested that the Commission assume responsibility for enforcement of the Coastal Act against petitioner, the Commission sent petitioner a notice of violation in August 2022 regarding its failure to obtain a coastal development permit for its activities in Fort Bragg. Pet. App. 5a. The notice specified that petitioner could be liable for civil fines and administrative penalties for undertaking unpermitted development in violation of the Coastal Act. *Id.* The Commission also moved to intervene in the City's lawsuit. *Id.* at 6a.

In October 2022—approximately a year after the City filed the lawsuit and four months after petitioner

filed its answer—petitioner removed the case to federal district court, ostensibly on the basis of federal-question jurisdiction. Pet. App. 7a. The City and the Commission moved for remand to state court, and the district court granted that motion. *Id.* The court reasoned that petitioner's federal-preemption defense did not appear on the face of the complaint and that no exception to the well-pleaded complaint rule applied. *City of Fort Bragg v. Mendocino Railway*, No. 22-cv-6317-JST, 2023 WL 3578808, at *2-4 (N.D. Cal. May 11, 2023).

Following remand, litigation has continued in the state trial court. The parties are currently engaged in settlement discussions, and a trial date is set for December 2025.

3. a. In August 2022, petitioner filed this lawsuit in federal district court against the City and the executive director of the Commission. Pet. App. 5a-6a. Petitioner sought declaratory relief to the effect that its "activities are subject . . . to the exclusive jurisdiction" of the federal Surface Transportation Board and that it "has the right . . . to undertake any and all rail-related activities within the coastal zone without preclearance or approval from the Commission or the City." *Id.* at 6a (alterations omitted). Petitioner stated that it had no intention of seeking a permit from either the City or the Commission, and sought an injunction preventing the City and the Commission from imposing "any land-use permitting or other preclearance requirement." *Id.*

The City and the Commission moved to stay or dismiss petitioner's complaint on the basis of the abstention doctrines set forth in *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976), and *Younger v. Harris*, 401 U.S. 37 (1971). The

district court dismissed the action under *Colorado River* without reaching the *Younger* abstention question. Pet. App. 32a-33a. It acknowledged that dismissal under *Colorado River* is warranted only under "exceptional circumstances," *id.* at 25a, but found that such circumstances were present on the facts of this case.

The district court identified the eight factors relevant to a *Colorado River* analysis under precedents of this Court and the Ninth Circuit:

> (1) which court first assumed jurisdiction over any property at stake; (2) the inconvenience of the federal forum; (3) the desire to avoid piecemeal litigation; (4) the order in which the forums obtained jurisdiction; (5) whether federal law or state law provides the rule of decision on the merits; (6) whether the state court proceedings can adequately protect the rights of the federal litigants; (7) the desire to avoid forum shopping; and (8) whether the state court proceedings will resolve all issues before the federal court.

Pet. App. 26a (quoting *Seneca Ins. Co. v. Strange Land, Inc.*, 862 F.3d 835, 841 (9th Cir. 2017)).

The court concluded that the first two factors were irrelevant or neutral, Pet. App. 26a-27a, and that the fifth factor weighed against dismissal because federal law provided the rule of decision for petitioner's lawsuit, *id.* at 29a. But all the "remaining factors weigh in favor of dismissal." *Id.* at 32a. In particular, because both the state and federal action turned on the same basic question—whether ICCTA preempts state and local regulation of petitioner's activities—"permitting this suit to continue would undeniably result in

piecemeal litigation." *Id.* at 28a. Indeed, given that the federal preemption question was central to petitioner's defense in the state court action and was also "the sole issue" in petitioner's federal lawsuit, it was "difficult . . . to conceptualize" that lawsuit "as anything but a spinoff of the state court action." *Id.* at 32a. The district court also reasoned that the state litigation had been filed first and had progressed further, *id.*; that the state court could adjudicate the federal preemption question, *id.* at 29a-30a; and that it appeared petitioner was engaged in forum shopping after unsuccessfully pursuing an interlocutory appeal in state court and seeking to disqualify the trial judge, *id.* at 30a-31a.

The district court noted that "stay rather than dismissal" is generally appropriate in the context of *Colorado River* abstention, but concluded that dismissal was warranted here. Pet. App. 32a. The court explained that "the adjudication of the state court action will necessarily resolve the sole issue in this case and the state court proceedings can undoubtedly protect Mendocino Railway's rights," so it would serve no useful purpose for the federal court to retain jurisdiction. *Id.*

b. The court of appeals affirmed in a unanimous opinion authored by Judge Callahan. Pet. App. 2a, 20a. Like the district court, it recognized a "strong presumption against federal abstention." *Id.* at 8a; *accord id.* ("a stay of federal proceedings in favor of state proceedings 'is the exception, not the rule.'"). But, applying the same eight-factor framework the district court identified, *id.* at 9a, the court of appeals concluded that the district court did not abuse its discretion in dismissing petitioner's suit pursuant to the *Colorado River* doctrine, *id.* at 20a. Like the district

court, the court of appeals declined to reach respondents' alternative *Younger* abstention argument. *Id.* 20a n.7.

The court of appeals' analysis of the eight *Colorado River* factors largely paralleled that of the district court. It reasoned that "only the consideration that federal law provides the rule of decision weighs against dismissal" of the federal lawsuit, "but not substantially so given the state court has concurrent jurisdiction to adjudicate federal preemption issues." Pet. App. 20a. The first factor (property at stake) and second factor (inconvenience of the forum) were inapplicable and neutral, respectively. *Id.* at 10a. And several other factors—the order in which the suits were filed, their relative progress, the adequacy of the state forum, and the similarity of the issues in the two cases—supported abstention. *Id.* at 12a-13a, 15a-19a, 20a.

Most significantly, the court of appeals emphasized that the "forum shopping and piecemeal litigation considerations strongly favor dismissal." Pet. App. 20a. It agreed with the district court that petitioner's federal lawsuit is "premised entirely on the preemption argument rejected on demurrer." *Id.* at 14a (alterations omitted). In light of that fact and petitioner's subsequent efforts to disqualify the trial court judge and remove the case to federal court, the court of appeals "reasonably infer[red] that petitioner had become dissatisfied with the state court and sought a new forum." *Id.* at 15a (internal quotation marks and alterations omitted). And with respect to the piecemeal litigation prong, because both cases "squarely raise the ICCTA preemption issue which the respective courts will be required to address," there was "almost guaranteed" to be a "duplication of judicial

effort," as well as the "possibility of contradictory outcomes." *Id.* at 11a.

Petitioner filed a petition for rehearing en banc, which the court of appeals denied without any judge calling for a vote. Pet. App. 36a.

ARGUMENT

Respondents sued petitioner in state court for failing to comply with local and state laws. Petitioner's demurrer on federal preemption grounds was overruled, its interlocutory appeal failed, and its efforts to disqualify the trial judge and remove the case to federal court were rebuffed. So petitioner filed this federal court action seeking to press the same argument that the state courts had already rejected. Although *Colorado River* abstention is appropriate only in exceptional circumstances, the court of appeals below correctly held that this is such a case. There is no persuasive basis for further review of that holding. Petitioner identifies relatively minor variations among courts of appeals in their formulation and application of the doctrine, but there is no reason to believe those variations would have been dispositive in this case. And while petitioner invites this Court to "abrogate *Colorado River* abstention altogether," Pet. 32, it fails to establish a basis for departing from *stare decisis*, and this case would be a poor vehicle for taking up that question in any event.

1. Petitioner asserts that the court of appeals' decision in this case "sharply conflicts with" case law in other circuits and this Court's precedent, reflecting "deepening confusion and unpredictability" about the application of *Colorado River*. Pet. 19. But the court below followed settled law in affirming the district court's decision to dismiss petitioner's federal lawsuit,

and petitioner's arguments to the contrary do not withstand scrutiny.

a. Petitioner first complains that the Ninth Circuit relies on an "eight-factor balancing test" in conducting a *Colorado River* analysis, whereas other courts of appeals consider as few as six or as many as ten factors. Pet. 19-20. That formalistic factor-counting approach overlooks this Court's guidance—which all circuits must follow—that "the decision whether to dismiss a federal action" under *Colorado River* "does not rest on a mechanical checklist, but on a careful balancing of the important factors as they apply in a given case." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 16 (1983); *see also id.* at 15 (noting that the Court has "declined to prescribe a hard and fast rule for dismissals" under *Colorado River*). Consistent with that guidance, even circuits that apply six-factor tests have recognized that those factors "are not intended to be exhaustive." *Fed. Rural Elec. Ins. Corp. v. Ark. Elec. Coop., Inc.*, 48 F.3d 294, 297 (8th Cir. 1995).[2]

Petitioner offers no reason to believe that the difference between circuits regarding the number of factors in the analysis is likely to be outcome-determinative in this case—or any case. That is partly

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[2] The six factors are (1) "whether there is a res over which one court has established jurisdiction," (2) "the inconvenience of the federal forum," (3) "whether maintaining separate actions may result in piecemeal litigation," (4) "which case has priority" in terms of filing date and relative progress of the litigation, (5) "whether state or federal law controls," and (6) "the adequacy of the state forum to protect the federal plaintiff's rights." *Fed. Rural Elec. Ins. Corp.*, 48 F.3d at 297; *accord, e.g.*, *Am. Family Life Assur. Co. v. Biles*, 714 F.3d 887, 892 (5th Cir. 2013); *see Colorado River*, 424 U.S. at 818-820; *Moses H. Cone*, 460 U.S. at 19-26.

because the additional factors some courts (including the Ninth Circuit) have expressly incorporated into their *Colorado River* frameworks are closely related to the initial six factors and other considerations discussed in this Court's cases.

For example, in addition to the initial six factors, *see supra* p. 8 n.2, the Ninth Circuit considers "(7) the desire to avoid forum shopping" and "(8) whether the state court proceedings will resolve all issues before the federal court." Pet. App. 9a. As to forum shopping, this Court has recognized that there is "considerable merit" to the notion that "the vexatious or reactive nature of either the federal or the state litigation may influence the decision whether to defer to a parallel state litigation under *Colorado River*." *Moses H. Cone*, 460 U.S. at 17 n.20; *see also infra* pp. 15-17. And whether all "disputes will be resolved in state court" could readily be—and often is—considered under the piecemeal-litigation prong, *Moses H. Cone*, 460 U.S. at 20, or as pertaining to "wise judicial administration" and the "conservation of judicial resources," *Colorado River*, 424 U.S. at 818 (alteration omitted). Not surprisingly, then, even the courts that apply six-factor tests frequently consider these additional factors.[3]

To be sure, there arguably may be some differences in how circuits apply the *Colorado River* doctrine. For

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[3] *See, e.g.*, *Fed. Rural Elec. Ins. Corp.*, 48 F.3d at 299 (considering whether the "choice of a federal forum is motivated by forum-shopping"); *Allen v. La. State Bd. of Dentistry*, 835 F.2d 100, 105 (5th Cir. 1988) (considering whether the "federal litigation is 'vexatious and reactive'"); *Hoover v. U.S. Dep't of Interior*, 611 F.2d 1132, 1137 (5th Cir. 1980) (considering whether "the issues to be resolved" in the federal and state proceedings "are essentially the same," such that "to allow both suits to proceed would inevitably result in the waste of judicial resources").

instance, petitioner highlights a student note contending that the Second Circuit takes an unusually narrow view of the doctrine, while the Seventh Circuit takes an unusually broad view of it. Pet. 3 (citing Gallogly, Colorado River *Abstention: A Practical Reassessment*, 106 Va. L. Rev. 199, 213-233 (2020)). That argument might provide a possible basis for a future petitioner to seek certiorari in a case arising out of one of those circuits. But it provides no sound basis for doing so here, where the Ninth Circuit's analysis relied on factors that virtually all courts consider and that routinely provide grounds for *Colorado River* dismissal.

b. Petitioner next argues that the court of appeals improperly treated the first two factors in the analysis—the existence of a *res* and the convenience of the federal forum—as neutral factors rather than as weighing in favor of federal jurisdiction. Pet. 20-21. Petitioner asserts that the "Second, Fifth, and Seventh Circuits . . . weigh so-called 'neutral' factors as *defeating* abstention." *Id.* at 20. But each of those circuits has sometimes treated neutral factors as irrelevant or inapplicable, as the court below did here. *See, e.g.*, *Loughran v. Wells Fargo Bank, N.A.*, 2 F.4th 640, 649-650 (7th Cir. 2021) (describing certain factors as "neutral," "largely beside the point," and "neither favor[ing] nor disfavor[ing] abstention"); *Bank One, N.A. v. Boyd*, 288 F.3d 181, 185 (5th Cir. 2002) (describing factor as "not relevant to the present case"); *Arkwright-Boston Mfrs. Mut. Ins. Co. v. City of New York*, 762 F.2d 205, 210 (2d Cir. 1985) (describing factors as "not applicable to the present case").

Moreover, petitioner offers no reason to believe that the outcome in this case would have been different had the court of appeals analyzed the first two factors in the manner it proposes. Regardless of whether

these factors are properly characterized as neutral or favoring federal jurisdiction, the lower courts reasonably determined that they play a minor overall role in the *Colorado River* analysis here, given that "there is no specific property in dispute" and "the state and federal courthouses are less than 200 miles apart." Pet. App. 10a. That determination is consistent with this Court's instruction that "[t]he weight to be given to any one factor may vary greatly from case to case, depending on the particular setting of the case." *Moses H. Cone*, 460 U.S. at 16.

c. The third factor in the *Colorado River* analysis is "the desire to avoid piecemeal litigation." Pet. App. 9a; *see id.* at 10a-11a. Petitioner argues that the court below misinterpreted this factor "to mean 'duplication of judicial effort' and the risk of 'contradictory outcomes,'" which it asserts "are inherent in *all* parallel actions that are allowed to proceed." Pet. 21. Petitioner argues that if this case had been litigated in the Third, Fourth, or Fifth Circuit, "the 'piecemealing' factor would have weighed decisively *against* abstention." *Id.* at 22. That argument is unpersuasive.

The court of appeals below applied established circuit precedent holding that "the mere potential for piecemeal litigation is not sufficient on its own to warrant a stay." Pet. App. 11a. Rather, "there must be exceptional circumstances present that demonstrate that piecemeal litigation would be particularly problematic." *Id.* That demanding standard was met here in part because both the state and federal cases "squarely raise the ICCTA preemption issue," which both courts "will be required to address." *Id.*

That approach accords with precedent from other courts of appeals, including the Third, Fourth, and

Fifth Circuits. Whether analyzed under the piecemeal-litigation factor or a separate factor regarding the overlap between the issues in the two cases, *see infra* pp. 17-19, the risk of state and federal courts "duplicating efforts and possibly reaching different results" is a relevant consideration. *Gannett Co. v. Clark Constr. Grp., Inc.*, 286 F.3d 737, 744 (4th Cir. 2002); *see, e.g.*, *African Methodist Episcopal Church v. Lucien*, 756 F.3d 788, 799-800 (5th Cir. 2014); *Step-Saver Data Sys., Inc. v. Wyse Tech.*, 912 F.2d 643, 654 n.14 (3d Cir. 1990).[4] That is hardly surprising, given that the *Colorado River* doctrine "rest[s] on considerations of wise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation." 424 U.S. at 817.

While some risk of duplication of effort or inconsistent outcomes is present in all instances of parallel actions, the "weight to be given" to this factor "may vary greatly from case to case." *Moses H. Cone*, 460 U.S. at 16. The court of appeals' conclusion below—that there was a particularly acute risk of duplication of effort and inconsistent results, *see* Pet. App. 11a, 20a—was reasonable given that the state and federal actions here do not just overlap, but are functionally identical. The state action seeks a judicial declaration that petitioner is subject to state and local regulation; the federal action seeks a declaration saying the exact

[4] As petitioner recognizes (Pet. 22 n.4), several other circuits evaluate these considerations under the "piecemealing" factor, as the court of appeals did here. *See, e.g.*, *DeCisneros v. Younger*, 871 F.2d 305, 307 (2d Cir. 1989); *GeLab Cosmetics LLC v. Zhuhai Aobo Cosmetics Co.*, 99 F.4th 424, 430 (7th Cir. 2024); *Employers Ins. of Wausau v. Mo. Elec. Works, Inc.*, 23 F.3d 1372, 1375 (8th Cir. 1994).

opposite. *Id.* at 4a-6a. Indeed, "'it is difficult to conceptualize the federal action as anything other than a spinoff of the state action.'" *Id.* at 19a (alterations and capitalization omitted). Petitioner fails to establish that any other court of appeals would have come to a different conclusion on the facts of this case.

d. The fourth factor the court of appeals examined is "the order in which the forums obtained jurisdiction." Pet. App. 9a; *see id.* at 12a-13a. Petitioner does not dispute that the state court action was filed first and had progressed further than its federal case at the time of the district court's dismissal order. But it faults the court of appeals for supposedly not recognizing that "the state litigation did not even contain a federal claim . . . until after [petitioner] filed its federal action." Pet. 23.

That argument overlooks the key point that petitioner had unsuccessfully raised its federal preemption argument as a defense in the state action well before it filed its federal lawsuit—indeed, the failure of that argument in state court at the demurrer stage appears to be what prompted petitioner to seek a federal forum. *See* Pet. App. 4a-6a. And abstention doctrines apply not only where federal *claims* are raised in state court litigation, but where federal *issues* are or may be "raised . . . in the state courts, as a defense to the ongoing proceedings." *Juidice v. Vail*, 430 U.S. 327, 330 (1977).

Nor is petitioner correct in asserting (Pet. 23) that the decision below conflicts with a decision of the Fourth Circuit and an unpublished Sixth Circuit opinion. The Sixth Circuit's decision in *Preferred Care of Del., Inc. v. VanArsdale*, 676 F. App'x 388 (2017), fully accords with the decision below: it held that the fourth factor favored abstention because "the state court

ha[d] already disposed of the issue central to both the state and federal action." *Id.* at 395-396. And in *Chase Brexton Health Services, Inc. v. Maryland*, 411 F.3d 457 (4th Cir. 2005), the plaintiffs filed their federal lawsuit before filing state administrative appeals presenting similar issues; at the time of the district court's abstention order, those state appeals "had not even proceeded to a hearing." 411 F.3d at 466; *see id.* at 461. The circumstances here are not analogous.

e. The fifth factor in the analysis is "whether federal law or state law provides the rule of decision on the merits." Pet. App. 9a. The court of appeals recognized that this factor weighed against dismissal—the only factor to do so. *Id.* at 13a, 20a. Petitioner contends that the court of appeals "inexplicably" gave this factor "insubstantial weight." Pet. 23. But the court below explained that this factor did not weigh "substantially" against dismissal because "the state court has concurrent jurisdiction to adjudicate federal preemption issues." Pet. App. 20a. This Court said much the same thing in *Moses H. Cone*, reasoning that "the source-of-law factor ha[d] less significance" there than in other cases "since the federal courts' jurisdiction to enforce the Arbitration Act is concurrent with that of the state courts." 460 U.S. at 25.

It is true that the presence of a federal-law issue weighs against dismissal under *Colorado River*, but that consideration is not always dispositive. One need look no further than *Colorado River* itself, where the Court held that dismissal was warranted even though federal law provided the rule of decision on the merits. *See* 424 U.S. at 805-806, 820. Petitioner cites the views of the "dissenting Justices in *Colorado River*," Pet. 23; *see id.* at 23-24, but those views did not carry the day.

Petitioner is mistaken in asserting (Pet. 23) that the court of appeals' analysis of the source-of-law factor below conflicts with rulings of the Seventh and Eighth Circuits. Like the court of appeals here, *Spectra Communications Group, LLC v. City of Cameron*, 806 F.3d 1113 (8th Cir. 2015), reasoned that the district court properly abstained even though the source-of-law factor "weigh[ed] against abstention," in part because "the state court can resolve all of Spectra's federal claims." *Id.* at 1122. And while the source-of-law factor weighed against abstention in *Illinois Bell Telephone Co. v. Illinois Commerce Commission*, 740 F.2d 566 (7th Cir. 1984), other factors did as well—including, most significantly, "the relative progress of the state and federal suits." *Id.* at 570. Nothing in that decision suggests that the Seventh Circuit would reach a different outcome than the court below here on the facts of this case.

f. The seventh factor the court of appeals considered is "the desire to avoid forum shopping." Pet. App. 9a; *see id.* at 14a-15a.[5] Petitioner complains that "this Court has never explicitly endorsed" a forum-shopping factor. Pet. 24. But as petitioner acknowledges in a footnote, *id.* at 24 n.6, the Court observed in *Moses H. Cone* that "the vexatious or reactive nature of either the federal or the state litigation may influence the decision whether to defer to a parallel state litigation under *Colorado River*." 460 U.S. at 17 n.20. In light of that language, one can hardly fault courts for taking

[5] Petitioner does not take issue with the court of appeals' application of the sixth factor, "whether the state court proceedings can adequately protect the rights of the federal litigants." Pet. App. 9a. As "the Railway concedes," its "federal preemption claim can be adjudicated by the state court." *Id.* at 13a.

forum-shopping into consideration, which virtually all circuits have done.[6]

Notably, petitioner does not dispute that its federal lawsuit constitutes forum shopping. And petitioner offers no persuasive explanation for contending that forum shopping should play no role in the *Colorado River* analysis, which "rest[s] on considerations of wise judicial administration, . . . conservation of judicial resources[,] and comprehensive disposition of litigation." 424 U.S. at 817 (alterations and internal quotation marks omitted). It would not further those values to allow a litigant to bring those arguments to a federal court after unsuccessfully pressing the same arguments in state court, as petitioner seeks to do here.

There is no merit to petitioner's suggestion (Pet. 25) that the Seventh Circuit or the District Court for the District of Columbia would not have considered its forum shopping as a factor in the *Colorado River* analysis. The authorities petitioner cites concluded only that forum shopping was not relevant on the facts of particular cases. *See Ill. Bell*, 740 F.2d at 570; *Atkinson v. Grindstone Capital, LLC*, 12 F. Supp. 3d 156, 162 n.6 (D.D.C. 2014). They do not suggest that forum shopping is never a factor. And more recent Seventh Circuit case law expressly identifies forum shopping

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[6] *See, e.g.*, Pet. App. 9a, 14a-15a; *Villa Marina Yacht Sales, Inc. v. Hatteras Yachts*, 915 F.2d 7, 15 (1st Cir. 1990); *Telesco v. Telesco Fuel & Masons' Materials*, 765 F.2d 356, 363 (2d Cir. 1985); *Chambers v. Wells Fargo Bank*, 726 F. App'x 886, 889 (3d Cir. 2018); *Gannett Co.*, 286 F.3d at 748; *Allen*, 835 F.2d at 105; *Preston v. Eriksen*, 106 F.3d 401 (table), 1997 WL 14418, at *4 n.3 (6th Cir. Jan. 14, 1997); *Loughran*, 2 F.4th at 650-651; *Fed. Rural Elec. Ins. Corp.*, 48 F.3d at 299; *Wakaya Perfection, LLC v. Yougevity Int'l, Inc.*, 910 F.3d 1118, 1122 (10th Cir. 2018); *Taveras v. Bank of Am., N.A.*, 89 F.4th 1279, 1286 (11th Cir. 2024).

as a relevant consideration in certain instances. *See Loughran*, 2 F.4th at 651 (citing *Lumen Constr., Inc. v. Brant Constr. Co.*, 780 F.2d 691, 693 (7th Cir. 1985)); *GeLab Cosmetics LLC v. Zhuhai Aobo Cosmetics Co.*, 99 F.4th 424, 431 (7th Cir. 2024).

g. The eighth and final factor in the court of appeals' *Colorado River* analysis is "whether the state court proceedings will resolve all issues before the federal court." Pet. App. 9a; *see id.* at 15a-19a. Petitioner argues that this factor should not have weighed in favor of dismissal because there is a "theoretical possibility" that the state court case will not fully resolve all issues in the federal action. Pet. 26. But this Court has never suggested that dismissal under *Colorado River* depends on whether there is a "theoretical possibility" that the federal lawsuit contains some issue that might not be resolved in the state proceeding. Such a rule would be in sharp tension with the principle that the *Colorado River* factors are "to be applied in a pragmatic, flexible manner with a view to the realities of the case at hand." *Moses H. Cone*, 460 U.S. at 21. To take one example, dismissal was warranted in *Colorado River* itself even though it appears that the state proceeding would not have resolved all issues in the federal case. *See* 424 U.S. at 805-806.

The court of appeals properly viewed petitioner's theory that its federal lawsuit is broader than the state court action as "unpersuasive." Pet. App. 18a; *see id.* at 18a-19a. As the court noted, "[t]he Railway's federal complaint does not allege any other instances of an existing conflict with the City or the Commission outside of those being litigated in" state court. *Id.* at 19a. And petitioner's suggestion that the state litigation might not resolve the issue of the Commission's

authority under the federal Coastal Zone Management Act (CZMA), 16 U.S.C. § 1451 et seq., was "similarly unpersuasive" as an argument against abstention because petitioner's "federal complaint does not raise a CZMA claim" or "mention the CZMA even once." Pet. App. 19a.

Petitioner contends that the court of appeals' approach to this factor conflicts with a "line[] of cases" in the Ninth Circuit "led by" *Ernest Bock, LLC v. Steelman*, 76 F.4th 827 (9th Cir. 2023). Pet. 26. But this Court does not typically grant certiorari to resolve internal circuit conflicts, *see Wisniewski v. United States*, 353 U.S. 901, 902 (1957) (per curiam), and in any event no such conflict exists here. As the court below explained, "[t]he Railway overreads our decision in *Ernest Bock*," where "there was a realistic probability—bordering on certainty" that resolution of the issues would "require additional proceedings in federal court" following completion of the state litigation, which "is not the case here." Pet. App. 18a.

Nor is there any conflict with the Third or Seventh Circuit decisions petitioner cites in passing, Pet. 26. In *Ingersoll-Rand Financial Corp. v. Callison*, 844 F.2d 133 (3d Cir. 1988), the court held that *Colorado River* abstention was warranted, but a stay rather than dismissal of the district court action was appropriate because "under the unusual circumstances of [the] case," the federal plaintiff "may at some point still be entitled to a federal forum." *Id.* at 134. Petitioner here does not take issue with the district court's decision to dismiss the federal action as opposed to staying it. *See* Pet. App. 8a n.5. And as petitioner acknowledges, *see* Pet. 26, the Seventh Circuit's decision in *Loughran* aligns with the decision below in this case. *See* 2 F.4th at 649 ("the key inquiry" is "whether

the central legal issues remain the same in both cases" (alterations and internal quotation marks omitted)).

2. Petitioner also urges the Court to grant review to decide whether to "abrogate[]" *Colorado River*. Pet. 6. The Court should decline that invitation.

a. *Colorado River* is an established precedent of this Court entitled to respect under principles of *stare decisis*. "*Stare decisis* is the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Payne v. Tennessee*, 501 U.S. 808, 827 (1991). Petitioner argues that *Colorado River* was wrongly decided, *see* Pet. 27-31, but makes no real effort to establish that it should be overruled in light of the other factors the Court typically considers in a *stare decisis* analysis, including "the workability of the rule" established by the decision in question, "its consistency with other related decisions, [and] developments since the decision was handed down." *Janus v. Am. Fed'n of State, County, & Mun. Emps.*, 585 U.S. 878, 917 (2018).

Petitioner contends that "[t]he doctrine's instability has been glaringly reflected in circuit courts' divergent applications of it." Pet. 30. As just discussed, however, that divergence is significantly overstated and there is no indication that other circuits would have reached a different conclusion on the facts of this case. While some degree of case-to-case variation is inevitable with any "pragmatic, flexible," multi-factor test, *Moses H. Cone*, 460 U.S. at 21, *Colorado River* has not occasioned the kind of judicial criticism for unpredictability and inconsistency that led the Court to overrule other precedents. *See, e.g.*, *Janus*, 585 U.S.

at 921-922. Nor have subsequent "factual [or] legal" developments "eroded the decision's underpinnings." *Id.* at 924. On the contrary, the doctrine has remained remarkably stable over time. As petitioner acknowledges (Pet. 3), this Court's last "meaningful elaboration" of the doctrine came more than 40 years ago in *Moses H. Cone*, and the Court has recently denied multiple certiorari petitions in *Colorado River* cases presenting arguments similar to those petitioner advances here.[7]

Petitioner's arguments also fail to establish that *Colorado River* was wrongly decided, much less that it is so "grievously or egregiously wrong," *Ramos v. Louisiana*, 590 U.S. 83, 121 (2020) (Kavanaugh, J., concurring in part), as to warrant a departure from *stare decisis*. True, there is a scholarly debate about whether *Colorado River* and other abstention doctrines are consistent with the separation of powers and other constitutional principles. *Compare*, *e.g.*, Redish, *Abstention, Separation of Powers, and the Limitation of the Judicial Function*, 94 Yale L.J. 71 (1984), *with* Fallon, *Why Abstention Is Not Illegitimate*, 107 Nw. U. L. Rev. 847 (2013). But petitioner offers no substantive response to the scholars and jurists who have reasoned that the judicial "discretion" underlying abstention doctrines is "part of the common-law background against which the statutes conferring jurisdiction were enacted." *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans*, 491 U.S. 350, 359 (1989) (Scalia, J.); *see also, e.g.*, Shapiro, *Jurisdiction and Discretion*, 60 N.Y.U. L. Rev. 543, 545 (1985) (arguing that abstention is "wholly consistent with the

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[7] *See Steelman v. Ernest Bock LLC*, No. 23-308, 144 S. Ct. 554 (2024); *Antosh v. Village of Mount Pleasant*, No. 24-186, 145 S. Ct. 985 (2024).

Anglo-American legal tradition" and has "ancient and honorable roots at common law as well as in equity").

b. If accepted, petitioner's arguments would cast doubt on all this Court's abstention doctrines, not just *Colorado River*. Petitioner all but concedes as much. It asserts that "[b]etween 1941 and 1976 . . . this Court stitched together a crazy-quilt collection of abstention doctrines." Pet. 28.[8] And the scholarly critiques of abstention petitioner cites (*see id.* at 27-29) apply with equal if not greater force to abstention doctrines other than *Colorado River*. For example, petitioner asserts that the *Colorado River* doctrine has no "constitutional or statutory basis," *id.* at 29, but that same charge could be (and has been) leveled at the Court's other abstention doctrines. *See* Redish, *supra*, 94 Yale L.J. at 75-79; *see also id.* at 91-98.

Indeed, the implications of petitioner's arguments could well extend even outside the abstention context. A variety of other doctrines also lack an explicit constitutional or statutory basis, including *forum non conveniens*, prudential ripeness, and this Court's discretion not to exercise its original jurisdiction in disputes between States, among others. Those doctrines likewise generally permit courts to decline to reach the merits of cases otherwise within their jurisdiction. *See* Shapiro, *supra*, 60 N.Y.U. L. Rev. at 552-561. Yet petitioner's theory would seemingly leave federal courts no discretion to avoid reaching the merits of such a case in any circumstance—no matter how inefficient, imprudent, or disruptive of the federal-state balance continued federal litigation would be.

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[8] Citing *R.R. Comm'n v. Pullman*, 312 U.S. 496 (1941); *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943); *La. Power & Light Co. v. City of Thibodaux*, 360 U.S. 25 (1959); *Younger v. Harris*, 401 U.S. 37 (1971).

* * *

For all those reasons, the Court should not abrogate or cabin the *Colorado River* doctrine. And in any event, this case would be a poor vehicle for doing so. Whether or not that doctrine has proven "problematic" (Pet. 29) in some cases, the lower courts rightly concluded that abstention was appropriate here, given petitioner's transparent attempt at forum shopping and the fact that its federal lawsuit is functionally identical to the state court action. Pet. App. 20a; *see supra* pp. 6-7. What is more, even if *Colorado River* were overruled, petitioner's case still should not proceed in federal court: the state court action includes a nuisance claim and seeks civil penalties—precisely the kind of "quasi-criminal" state civil enforcement proceeding that independently justifies abstention under the *Younger* doctrine. C.A. Dkt. 18, Answering Br. at 34-45; *see Huffman v. Pursue, Ltd.*, 420 U.S. 592, 604 (1975).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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