No. 21-348

IN THE

Supreme Court of the United States

JOHNSON & JOHNSON AND JOHNSON & JOHNSON CONSUMER COMPANIES, INC.,

Petitioners,

v.

LYNN FITCH, ATTORNEY GENERAL OF THE STATE OF MISSISSIPPI, EX REL. THE STATE OF MISSISSIPPI,

Respondent.

On Petition for a Writ of Certiorari to the Mississippi Supreme Court

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. The Mississippi Supreme Court concluded that the "unambiguous," "plain language" of the express-preemption provision at issue did not bar the state-law claim brought in this case. Should this Court grant review to address a "presumption against preemption" that the Mississippi Supreme Court did not apply?

2. The Mississippi Supreme Court concluded that the Food and Drug Administration did not create "a requirement specifically applicable to a particular cosmetic" that would preempt state law when the FDA denied two citizen petitions requesting that a warning requirement be imposed for petitioners' talc products. 21 U.S.C. § 379s(a). In concluding that the FDA's denial did not create "a requirement" under the express-preemption provision, the court invoked the FDA's own policy providing that the FDA's actions bind the public only when (with exceptions not relevant here) the FDA acts through the notice-and-comment process—a process not used in denying the petitions. Should this Court grant review to decide whether the only agency actions, by *any* agency, that can preempt state law are regulations that undergo notice-and-comment procedures—an issue the Mississippi Supreme Court did not address?

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The Mississippi Supreme Court's opinion (Petition Appendix (App.) 1a-17a) is reported at 315 So. 3d 1017. The Chancery Court of Hinds County's order denying summary judgment (App.18a-22a) is not reported.

JURISDICTION

The Mississippi Supreme Court's judgment was entered on April 1, 2021. App.2a. The petition was filed on August 30, 2021. This Court's jurisdiction is invoked under 28 U.S.C. § 1257.

STATEMENT

1. The Food, Drug and Cosmetic Act, 21 U.S.C. § 301 *et seq.* (Act), authorizes the Food and Drug Administration (FDA) to regulate cosmetics to ensure that they are not misbranded. *Id.* § 362. A cosmetic is misbranded if "its labeling is false or misleading in any particular." *Id.* § 362(a). In regulating cosmetic labeling, the FDA requires manufacturers and distributors to disclose specific information and to display labeling in ways to aid consumers. 21 C.F.R. §§ 701.3, 701.10. The Act contains an express-preemption provision, which says that a State may not establish "any requirement for labeling or packaging of a cosmetic that is different from or in addition to, or that is otherwise not identical with, a requirement specifically applicable to a particular cosmetic or class of cosmetics." 21 U.S.C. § 379s(a).

FDA regulations require labels to bear a warning statement "whenever necessary or appropriate to prevent a health hazard that may be associated with the product." 21 C.F.R. § 740.1(a). But the FDA generally

leaves it to the manufacturer or distributor to self-police and label appropriately. FDA, Cosmetics Labeling Regulations, https://bit.ly/3Cs7eEb (last visited—like all cited websites—on Nov. 2, 2021) ("FDA does not have the resources or authority under the law for premarket approval of cosmetic product labeling. It is the manufacturer's and/or distributor's responsibility to ensure that products are labeled properly."). That approach aligns with the FDA's treatment of cosmetics in general. The agency explains: "Companies and individuals who manufacture or market cosmetics have a legal responsibility to ensure the safety of their products." FDA, FDA Authority Over Cosmetics: How Cosmetics Are Not FDA-Approved, but Are FDA-Regulated, https://bit.ly/3BBmWvd. "Neither the law nor FDA regulations require specific tests to demonstrate the safety of individual products or ingredients. The law also does not require cosmetic companies to share their safety information with FDA." *Ibid.*

The self-policing approach the FDA takes with cosmetics is different from the approach it takes with other items covered by the Act. Unlike cosmetics, new drugs must be approved by the FDA before they are introduced into interstate commerce, and the FDA must pre-approve any label. 21 U.S.C. §§ 355(a), 355(b)(1)(A)(vi); 21 C.F.R. § 314.50(c)(2)(i). Changes to any drug label must be reported to the FDA. Major changes require the FDA's pre-approval. 21 C.F.R. § 314.70(b)(2)(v); *see also* FDA, FDA Authority Over Cosmetics: How Cosmetics Are Not FDA-Approved, but Are FDA-Regulated, https://bit.ly/2Zum0LU ("FDA's legal authority over cosmetics is different from our authority over other products we regulate, such as drugs, biologics, and medical devices.").

To help ensure that manufacturers and distributors are policing themselves, the FDA solicits help from the public. An interested citizen may submit a petition asking the FDA to "establish or amend ... a regulation prescribing a warning for a cosmetic." 21 C.F.R. § 740.1(b); *see also id.* § 10.25(a) ("An interested person may petition the Commissioner to issue, amend, or revoke a regulation or order, or to take or refrain from taking any other form of administrative action."). If the petition contains reasonable grounds to support the proposed warning regulation, it will be published for comment. *Id.* § 740.1(b). Whether or not the FDA decides to publish a requested warning for comment, its decision is a final agency action on the petition, which permits "review[ ] in the courts under 5 U.S.C. 701 *et seq*. and, where appropriate, 28 U.S.C. 2201." 21 C.F.R. § 10.45(d). The statute does not say that such an agency action preempts state law.

2. In 1994 and again in 2008, the Cancer Prevention Coalition submitted citizen petitions to the FDA asking it to issue warnings about talcum power. Miss. S. Ct. Appendix (App'x) 96, 101. The petitions cited studies indicating that talcum powder had been found to cause cancer in lab animals, and that frequent application of it in the female genital area (perineal use) increases the risk of ovarian cancer. *Ibid.*

In April 2014, the FDA sent a letter denying the request to require a warning. App'x 88. The FDA said that it "did not find that the data submitted presented conclusive evidence of a link between talc use in the perineal area and ovarian cancer." *Ibid.*; *see also* Lisa Girion & Chad Terhune, FDA bowed to industry for decades as alarms were sounded over talc, Reuters (Dec. 3, 2019), https://reut.rs/3BvEvwK (discussing denial of citizen petitions).

3. In August 2014, the Mississippi Attorney General brought this suit against petitioners for violating Mississippi's Consumer Protection Act by committing "unfair or deceptive trade practices." Miss. Code Ann. § 75-24-5. That statute prohibits representations that a good has "characteristics," "uses," "benefits," "qualities," or "standards" that it does not have. *Id.* § 75-24-5(2)(e), (f). The complaint alleges that petitioners "fail[ed] to warn of a dangerous and potentially lethal health risk associated with the use of their Talc Products, namely that women using these products on their genital areas ... are at an increased risk of ovarian cancer." App'x 6. The complaint alleges that "for over 30 years" petitioners knew that their talc products significantly increased the risk of ovarian cancer because, among other things, they were informed "by their talc supplier, consultants, employees, and through industry and governmental agencies" that "there is a significant link between the use of talcum powders and an increased risk of ovarian cancer." App'x 12. The complaint points to several studies, including some published after the citizen petitions were submitted. App'x 14-33; *cf. Ingham v. Johnson & Johnson*, 608 S.W.3d 663, 724-25 (Mo. Ct. App. 2020) (upholding award to plaintiffs diagnosed with ovarian cancer after using petitioners' products), *cert. denied*, No. 20-1223, 141 S. Ct. 2716 (2021).

Four years after the case began, petitioners moved for summary judgment, including on the ground that the Act preempts this suit. App'x 40. The trial court denied summary judgment. App.22a.

On interlocutory review, the Mississippi Supreme Court unanimously affirmed. App.17a. As relevant here, the court concluded that "[b]y its plain language," the Act's express-preemption provision for

cosmetics, 21 U.S.C. § 379s, does not preempt the State's claim because that provision "only applies if the [FDA] adopts 'a requirement specifically applicable' to a given cosmetic." App.16a. The court emphasized that because the Act's express-preemption provision is "unambiguous, the Court must apply the statute according to its plain meaning, refraining from principles of statutory construction." *Ibid.* (internal quotation and citation omitted). The court determined that, in denying the two citizen petitions, the FDA had not adopted a "requirement specifically applicable" to a cosmetic. *Ibid.* To adopt such a "requirement," the court explained, the FDA would have had to use the notice-and-comment-rulemaking process because, according to the FDA, it is only through that process that the agency intends to bind the public. App.15a (citing FDA, The Food and Drug Administration's Development, Issuance, and Use of Guidance Documents, 62 Fed. Reg. 8961 (Feb. 27, 1997)).

The Mississippi Supreme Court denied petitioners' motion to stay the mandate pending disposition of their petition for certiorari, calling the request "not well-taken." Order 2, No. 2019-IA-00033-SCT (Miss. S. Ct. May 10, 2021). Petitioners did not ask this Court to stay or recall that mandate, and did not seek to accelerate this Court's consideration of their petition for certiorari. Petitioners waited nearly their full five months after the state supreme court entered judgment before filing their petition for certiorari.

When the Mississippi Supreme Court's mandate issued, the case was remanded to the state trial court. With trial potentially nearing, on October 18, 2021, petitioners filed in this Court (and in state trial court) a "Notice of Bankruptcy Filing and Stay of Proceedings" (Bankruptcy Notice). Petitioners claim that,

upon the filing of a voluntary petition for bankruptcy, "the automatic stay imposed by section 362 of the Bankruptcy Code ... became immediately effective and, as a result, all claims asserted ... in [this action] are stayed." Bankruptcy Notice 1. The Bankruptcy Notice does not refer to 11 U.S.C. § 362(b)(4), which says that filing a voluntary petition "does not operate as a stay ... of an action or proceeding by a governmental unit ... to enforce [its] police and regulatory power." Petitioners apparently take the position that the bankruptcy filing stays proceedings in this Court indefinitely.

REASONS FOR DENYING THE PETITION

The Mississippi Supreme Court concluded that, "[b]y its plain language," the Act does not expressly preempt this lawsuit because the relevant preemption provision "only applies if the [FDA] adopts 'a requirement specifically applicable' to a given cosmetic" and "the [FDA's] decision not to act cannot be deemed to be a requirement for purposes of" that provision. App.16a. Petitioners do not seek review of that question, do not claim that it is the subject of a lower-court conflict, and do not argue that it is important. They instead seek review of two other questions that are not presented and that the state supreme court did not address. Because this case is not a vehicle for resolving those questions, petitioners' arguments—on alleged lower-court division, the importance of those questions, and more—are misplaced. Petitioners' attempts to delay this case as trial approaches also counsel against this Court's intervention. The petition should be denied.

1. The preemption provision at issue says that "no State ... may establish or continue in effect any

requirement for labeling or packaging of a cosmetic that is different from or in addition to, or that is otherwise not identical with, a requirement specifically applicable to a particular cosmetic or class of cosmetics under this chapter." 21 U.S.C. § 379s(a). Petitioners argued below that this provision preempts the State's lawsuit for failure to warn about talcum powder's dangers because the FDA considered and denied two citizen petitions asking it to "require a cancer warning on cosmetic talc products." App.4a.

The Mississippi Supreme Court correctly rejected that argument. "By its plain language," that court explained, the preemption provision "only applies if the [FDA] adopts 'a requirement specifically applicable' to a given cosmetic." App.16a. The court reasoned that the FDA had not adopted "a requirement specifically applicable" to talc products when it denied the two citizen petitions because, in denying those petitions, the FDA had decided "not to act," which "cannot be deemed to be a requirement for purposes of § 379s(a)." *Ibid*. The court explained further that for an action it takes "to be binding on the public, the [FDA] must follow the notice and comment rule making process." App.15a. The court cited the FDA's guidance, which says that "[t]he only binding requirements are those set forth in the statute and FDA's regulations," and that, "to bind the public, FDA must (with limited exceptions) follow the notice and comment rulemaking process." FDA, The Food and Drug Administration's Development, Issuance, and Use of Guidance Documents, 62 Fed. Reg. 8961, 8963 (Feb. 27, 1997).

In ruling, the Mississippi Supreme Court noted its obligation to "apply the statute according to its plain meaning" "[w]here [the] statute is unambiguous." App.16a. It recognized that it must "refrain[ ] from

[using] principles of statutory construction." *Ibid.* And it noted that "[t]here is no need to guess what Congress' goal was when § 379s(a) was enacted": "[t]he statute clearly prohibits states from having a requirement that is different from or in addition to a requirement that is already in place by the [FDA]." App.17a. The court emphasized that it was rejecting preemption "because of the lack of any specific requirement by the [FDA]" for talc labeling. *Ibid.*

Petitioners do not seek review of the state supreme court's holding that the denial of two citizen petitions falls outside the preemption provision's plain text. They do not claim that that ruling is the subject of a lower-court division of authority. And they do not claim that the issue is important or recurring. The petition mentions the actual basis for the Mississippi Supreme Court's preemption decision only briefly, asserting without elaboration that the FDA's denial of citizen petitions created a talc labeling requirement. Pet. 38.

2. Rather than seek review of the Mississippi Supreme Court's actual express-preemption ruling, petitioners seek review of two other questions. They claim that the decision below "deepened two entrenched splits" on federal preemption. Pet. 2. But just reading the Mississippi Supreme Court's opinion (particularly App.15a-17a) shows that neither question that petitioners identify is presented. No matter what might be said about those questions—about any lower-court division they might concern or about their claimed importance—this case is not a vehicle for resolving them. The petition should be denied.

a. First, petitioners ask this Court to resolve the question whether the Mississippi Supreme Court

"err[ed] in narrowly construing an express preemption clause on the ground that a presumption against pre-emption applies." Pet. i. That question is not presented. The state supreme court did not apply any presumption against preemption and did not "narrowly" construe the statute at issue. As explained above, the court's decision rested on the "plain language" of the preemption provision. App.16a. In harmony with *Puerto Rico v. Franklin California Tax-Free Trust*, 136 S. Ct. 1938 (2016), the court below "focus[ed] on the plain wording of the clause, which necessarily contains the best evidence of Congress' preemptive intent." *Id.* at 1946; *contra* Pet. 32 (claiming that decision below is "incompatible" with *Franklin*).

In trying to shoehorn this case into its claimed lower-court conflict, petitioners latch onto two sentences from the state supreme court's opinion. First, the court noted that preemption analysis "start[s] with the assumption that the historic police powers of the States [are] not to be superseded by ... Federal Act unless that [is] the clear and manifest purpose of Congress." App.11a (quoting *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 516 (1992)). But this statement merely recognizes that preemption exists when Congress says so. One way that "Congress may show [such] preemptive intent [is] through a statute's express language." App.12a (internal quotation marks omitted). Indeed, the court below proceeded to apply the preemption provision without using any "assumption" or "presumption." App.12a-13a, 16a-17a.

Second, the court stated that "[a]dditionally, the United States Supreme Court has held that courts 'have a duty to accept the reading that disfavors preemption.'" App.15a (quoting *Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 449 (2005)). This statement

simply acknowledges that—even if there were any ambiguity—there would be support for the court's reading. But the court rightly found no ambiguity. As it said: "There is no need to guess what Congress' goal was when § 379s(a) was enacted." App.17a. The rest of the opinion shows that the presumption had no bearing on the court's conclusion. It held that § 379s is "unambiguous" and rejected preemption based on the statute's "plain language." App.16a.

Petitioners thus ask this Court to address a holding that the lower court did not make, and to do what the lower court already did: rely on the "plain" language of the Act. *E.g.*, Pet. 2, 14, 24, 25 (emphasizing need for "plain text," "plain language," and "plain wording" readings of preemption provisions). Petitioners' claim of a lower-court division on when a presumption against preemption should apply, Pet. 14-19, is thus misplaced, because the decision below did not answer that question. Granting review here also would not affect the outcome below, where the court applied the statute as written.

Last, petitioners suggest that this Court hold their petition pending the Court's disposition of the petition for certiorari in *Monsanto Co. v. Hardeman*, No. 21-241, hold the petition in *Hardeman* pending the Court's disposition here, or hear the cases together. Pet. 17 n.6. That request has no basis. *Hardeman* does not ask the Court to address whether a presumption against preemption should have been applied, but rather asks whether the Federal Insecticide, Fungicide, and Rodenticide Act preempts a state-law failure-to-warn claim where "the warning cannot be added to a product without EPA approval." Pet. i, *Monsanto*, No. 21-241. The two cases do not present the same issue or any issue warranting a hold, and

petitioners' footnote raising the possibility of a hold provides no sound reason to link them.

b. Second, petitioners ask this Court to resolve the question whether the Mississippi Supreme Court "err[ed] in holding that only notice-and-comment rulemaking can pre-empt state law." Pet. i. This case does not present that question.

As explained above, the Mississippi Supreme Court applied the relevant preemption provision, which preempts only a state requirement that conflicts with an FDA "requirement specifically applicable to a particular cosmetic," and concluded that there is no "specific requirement" here. App.16a, 17a. Petitioners' argument for preemption was that the FDA's denial of the citizen petitions created a requirement. App.4a, 15a-16a. But the Mississippi Supreme Court ruled that, by denying the petitions, the FDA had "declined to make a requirement regarding cancer warnings for cosmetic products that contain talc." App.15a-16a. Thus, the court's ruling recognized that the FDA had not created any talc labeling requirement, independent of the process of issuing those denials.

The Mississippi Supreme Court also turned to the FDA's own guidance on the actions the agency deems to bind the public. App.15a. That guidance explains that "[t]he only binding requirements are those set forth in the statute and FDA's regulations," and that "to bind the public, FDA must (with limited exceptions) follow the notice and comment rulemaking process." FDA, The Food and Drug Administration's Development, Issuance, and Use of Guidance Documents, 62 Fed. Reg. 8961, 8963 (Feb. 27, 1997). The state supreme court recognized that the FDA's denial of the two citizen petitions did not create a

requirement because, for its actions "to be binding on the public, the [FDA] must follow the notice and comment rule making process." App.15a. The court did not address other types of agency actions or how other federal agencies might choose to create binding requirements or take preemptive actions.

Petitioners latch onto the court's suggestion that, to bind the public, the FDA "must follow the notice and comment rule making process." App.15a. Petitioners suggest that this statement deepens an "entrenched ... split" on "what types of agency actions are capable of pre-empting state law," and argue that the court's decision "effectively limit[s] agencies to notice-and-comment rulemaking if they want their decisions enforced nationwide." Pet. 3, 28. But the Mississippi Supreme Court did not hold that only notice-and-comment rulemaking, by any agency, could carry preemptive effect, and it made no other similarly sweeping ruling. The court pointed to the FDA's *own* guidance about how *that* agency chooses to create binding requirements. App.15a. The opinion accords with Justice Breyer's suggestion, quoted by the petition, that courts recognize agencies' "leeway to determine which rules, regulations, or other administrative actions will have pre-emptive effect." Pet. 35 (quoting *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 505 (1996) (Breyer, J., concurring in part and in judgment)).

The Mississippi Supreme Court's reliance on *Fellner v. Tri-Union Seafoods, LLC*, 539 F.3d 237 (3d Cir. 2008), confirms this. App.15a ("In a similar case, a letter written by the commissioner of the Food and Drug Administration was deemed inaction," and the Third Circuit "held, 'the FDA has not acted to regulate it in a manner that could preempt [the plaintiff's] claims.'") (citing *Fellner,* 539 F.3d at 253)). In *Fellner,*

as here, the court considered a letter in which the FDA communicated that it would not be issuing a warning. The Third Circuit ruled that "[a] mere decision by the FDA not to adopt a federal warnings requirement certainly does not alone preclude states from imposing a duty to warn." 539 F.3d at 253. The Third Circuit so ruled even as it recognized that "in appropriate circumstances, federal agency action taken pursuant to statutorily granted authority short of formal, notice and comment rulemaking may also have preemptive effect over state law." *Id.* at 244. Like the Third Circuit, the Mississippi Supreme Court here did not rule that notice-and-comment rulemaking is the only agency action that can carry preemptive effect; it simply honored the FDA's own expression of when its actions carry preemptive effect.

These points are fortified by the FDA's regulation providing that "[t]he Commissioner of Food and Drugs, either on his own initiative or on behalf of any interested person who has submitted a petition, may publish a proposal to establish or amend, under subpart B of this part, a regulation prescribing a warning for a cosmetic." 21 C.F.R. § 740.1(b). Thus, even if the Commissioner decides to act on a citizen petition as opposed to denying it, the Commissioner must still publish a proposed regulation for comment. The lower court's acknowledgment that, "to be binding on the public," the FDA "must follow the notice and comment rule making process," App.15a, reflects what the FDA itself has set as the procedure for creating a warning requirement following a citizen petitioner's request.

For these reasons, this case does not present any question about the types of agency action overall that can carry preemptive force. So petitioners' claims of lower-court division on such a broader question, not

decided below, are unavailing. Pet. 19-23. Petitioners' other suggestions—that the lower court's decision would lessen the preemptive effect of adjudicatory decisions, pre-market approval of medical devices, or Federal Energy Regulatory Commission orders—fail for the same reason. Pet. 28-29.

Last, petitioners suggest that "several" courts have given preemptive effect to the denial of a citizen petition. Pet. 23. But the cases they cite concerned conflict preemption and the impossibility of complying with both federal and state law. None addresses the issue ruled on below—that the denial did not, in the circumstances, fall within the Act's express-preemption provision. And each involves drugs, where—unlike with cosmetics—major label changes must be pre-approved by the FDA. *Compare* 21 C.F.R. § 314.70(b)(2)(v)(A) (requiring FDA pre-approval for major changes to a drug label), *with* FDA, Cosmetics Labeling Regulations, https://bit.ly/3Cs7eEb (FDA lacks "the resources or authority" "for pre-market approval of cosmetic product labeling," and "[i]t is the manufacturer's and/or distributor's responsibility to ensure that products are labeled properly").

Because of this difference, the cited cases all dealt with conflicts between state and federal law where the FDA had suggested that it would not approve a specific warning request and where, unlike with cosmetics, the FDA would *need* to pre-approve a warning. *Dowhal v. SmithKline Beecham Consumer Healthcare*, 88 P.3d 1, 9 (Cal. 2004) ("The apparent conflict arises from the FDA's insistence that defendants must use the warning it has promulgated unless they have data to support a different warning."); *Robinson v. McNeil Consumer Healthcare*, 615 F.3d 861, 873 (7th Cir. 2010) ("[A] court cannot order a drug

company to place on a label a warning if there is 'clear evidence' that the FDA would not approve it."); *Cerveny v. Aventis, Inc.*, 855 F.3d 1091, 1098 (10th Cir. 2017) (recognizing that case presented a question of "conflict preemption" and whether it was impossible to comply with both state and federal labeling requirements); *In re Zofran (Ondansetron Products Liability Litigation)*, — F. Supp. 3d —, 2021 WL 2209871, at *33 (D. Mass. June 1, 2021) ("[T]here is 'clear evidence' that the FDA would not approve changing the Zofran label to include the warning that plaintiffs contend is required by state law."); *In re Incretin-Based Therapies Products Liability Litigation*, 524 F. Supp. 3d 1007, 1016 (S.D. Cal. 2021) (state-law claim for failure to warn is preempted "if there is 'clear evidence' that the FDA would not have approved a change to the drug's label"). Petitioners do not contend that it would be impossible to comply with both federal and state law. Indeed, some companies voluntarily added a label to their talc products warning of potential increased risk of ovarian cancer. Jen Christensen, Does talcum powder cause cancer? A legal and scientific battle rages, CNN (Apr. 11, 2018), https://cnn.it/3BtZRdM ("[a] handful of talcum powder companies" have voluntarily done so).

3. This Court's intervention is unwarranted for another reason. The State brought this case in 2014. Seven years later it has only just passed the summary-judgment stage. Petitioners now, at this late stage, have repeatedly tried to delay the case from proceeding to trial. They asked the Mississippi Supreme Court to stay its mandate, a request the court rejected and described as "not well-taken." Order 2, No. 2019-IA-00033-SCT (Miss. S. Ct. May 10, 2021). Petitioners then took five months to ask this Court for

interlocutory review of two questions that are not presented. Petitioners even ask this Court to hold this case for another case that presents a different issue. Pet. 17 n.6.

Petitioners most recently have sought delay by claiming that a voluntary petition for bankruptcy relief has stayed proceedings in this Court. Bankruptcy Notice 1. Petitioners apparently take the position that that bankruptcy-court filing means that their petition for certiorari can remain pending for years. But the Bankruptcy Code's stay provision exempts cases like this one that are "action[s] or proceeding[s] by a governmental unit ... to enforce" its "police and regulatory power." 11 U.S.C. § 362(b)(4); *see*, *e.g.*, *In re Kupperstein*, 994 F.3d 673, 677-81 (1st Cir. 2021) (automatic stay did not apply where government's primary purpose was protecting public safety and welfare), *cert. denied sub nom. Kupperstein v. Schall*, No. 20-1812, 2021 WL 4507877 (Oct. 4, 2021). Petitioners do not even cite that exemption provision. This Court should not condone petitioners' effort for further delay. It should deny review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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