No. 24-881

IN THE

Supreme Court of the United States

GEORGIA ASSOCIATION OF
CLUB EXECUTIVES, INC.,

Petitioner,

v.

STATE OF GEORGIA, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether a State can impose a one percent tax on an entire industry—here, adult entertainment establishments like strip clubs, erotic massage parlors, and lingerie modeling studios—where that industry engages in some expressive activity.

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INTRODUCTION

The State of Georgia enacted a small (1%) tax on adult entertainment establishments to raise funds to address a problem often exacerbated by this industry: the sex trafficking of minors. The tax defines strip clubs as (1) commercial establishments (2) that serve alcohol, (3) where the entertainment includes "nude or substantially nude . . . dancing." O.C.G.A. § 15-21-201(1)(A). Petitioner here, an association of strip clubs, challenged the tax as somehow violating the First Amendment by burdening nude dancing. It failed and now seeks this Court's review. But only three or four courts—including zero federal circuit courts—have even addressed a question like this and they *all* agree that these taxes are valid. There is no split of authority or anything else for this Court to resolve.

The Georgia Supreme Court held that the tax easily satisfies intermediate scrutiny, reasoning that it is a content-neutral rule that addresses the negative secondary effects of strip clubs. *See, e.g.*, *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 47, 50 (1986); *see also United States v. O'Brien*, 391 U.S. 367, 376–77 (1968) (content-neutral rules that incidentally affect symbolic speech subject to intermediate scrutiny). That, of course, makes perfect sense. This Court has long emphasized that governments must be given wide latitude to "experiment with solutions to [the] admittedly serious problems" caused by these businesses. *Young v. Am. Mini Theatres, Inc.*, 427 U.S. 50, 71 (1976) (lead op.). And under this Court's precedents, nude dancing is barely protected by the First Amendment at all: it "falls only within the outer ambit of the First Amendment's protection." *City of Erie v. Pap's A.M.*, 529 U.S. 277, 289 (2000) (lead op.).

The strip clubs ask this Court to intervene and mandate strict scrutiny, but they hardly even try to identify a split of authority. There are very few cases involving taxes on strip clubs, and they all come out the same way. *See Deja Vu Showgirls v. Nev. Dep't of Tax'n*, 334 P.3d 392 (Nev. 2014); *Combs v. Tex. Ent. Ass'n, Inc.*, 347 S.W.3d 277 (Tex. 2011); *Bushco v. Utah State Tax Comm'n*, 225 P.3d 153 (Utah 2009). The strip clubs argue this Court should clarify whether the secondary effects doctrine survived *Reed v. Town of Gilbert*, 576 U.S. 155 (2015), but *Reed* does not even mention the doctrine, let alone question its validity. And lower courts have not struggled to account for *Reed* in the context of adult businesses—the petition does not identify a single court that has relied on *Reed* to apply something more stringent than intermediate scrutiny.

Likewise, the strip clubs' obsession with *Hill v. Colorado*, 530 U.S. 703 (2000), is hard to understand. There, this Court upheld an arguably content-based abortion clinic buffer-zone law partly on the ground that it was justified without reference to protected speech. *Id.* at 708. The petition mentions *Hill* no less than 29 times, so the reader could be forgiven for assuming that this case somehow implicates abortion. It does not. The tax at issue here is targeted at the negative secondary effects of strip clubs, a subject on which this Court's precedents are clear, settled, and have nothing to do with *Hill*. If strip clubs want to overrule *Hill*, they should file a brief in a case involving *Hill*.

Not only is there no split, there are also enormous vehicle problems with Petitioner's request. To start, this case need not address the secondary effects doctrine *at*

all because Georgia's tax does not implicate the First Amendment in the first place. Georgia imposed a *tax* on an *industry*, which States have plenary power to do. Industry-specific taxes—even those that discriminate between speakers—do not trigger First Amendment scrutiny, except in rare circumstances, such as taxes that single out the press or taxes that discriminate based on ideas. *Leathers v. Medlock*, 499 U.S. 439, 444 (1991). Just as Georgia could, if it wanted, tax movie theaters (even though they engage in protected expression), it can tax strip clubs (even if they engage in expression). The Georgia Supreme Court assumed the First Amendment applied and correctly held the tax satisfies intermediate scrutiny, but if this Court were to grant the petition, the antecedent and primary argument would be that the First Amendment simply does not apply, meaning the Court would have no need even to *reach* any question about secondary effects.

And that isn't the only vehicle problem. Assume, for instance, that the Court treated this tax as a regulation. The Court has clarified, post-*Reed*, that a regulation is content based only if it "target[s] speech based on its communicative content," meaning it "applies to particular speech because of the topic discussed or the idea or message expressed." *City of Austin v. Reagan Nat'l Advert. of Austin, LLC*, 596 U.S. 61, 69 (2022) (quoting *Reed*, 576 U.S. at 163). But the Georgia tax does not target or even contemplate any *ideas* expressed by nude dancing (whatever those may be). It references nude dancing as one of three factors that identify *strip clubs*—charging money, serving alcohol, and presenting nude or semi-nude entertainment. O.C.G.A. § 15-21-201(1)(A). The tax is the same sort of "content-agnostic . . . distinction" (e.g.,

does the sign refer to an on-site or off-site business) that is content neutral under *City of Austin*. 596 U.S. at 76. So here again, the Court would not even need to touch secondary effects doctrine if, for some reason, it granted the petition.

On top of those problems, the Georgia Supreme Court was correct insofar as it *did* apply the secondary effects doctrine. The tax is expressly dedicated to mitigating a known secondary effect of the businesses to which it applies (underage sex trafficking), meaning it is subject to intermediate scrutiny. It satisfies that standard because the State could reasonably believe that imposing a modest tax on these businesses would further its important governmental interest in protecting victims of child sex exploitation, and the Assessment's incidental, barely-there burden on expression promotes the State's interest in a way that would be achieved less effectively absent the tax.

The Court should deny the petition.

STATEMENT

I. Statutory Background

In 2015, the Georgia General Assembly passed the Safe Harbor/Rachel's Law Act, a suite of laws meant to combat child sex trafficking. As relevant here, the Act established the "Safe Harbor for Sexually Exploited Children Fund," 2015 Ga. Laws 675, 680, § 3-1, which is funded directly by a new annual "state operation assessment" on "adult entertainment establishment[s]," *id.* at 683.

The statute defines an "adult entertainment establishment" as "any place of business or commercial establishment where alcoholic beverages of any kind are sold, possessed, or consumed" and any of the following three categories of adult entertainment occurs:

> (A) The entertainment or activity therein consists of nude or substantially nude persons dancing with or without music or engaged in movements of a sexual nature or movements simulating sexual intercourse, oral copulation, sodomy, or masturbation;
>
> (B) The patron directly or indirectly is charged a fee or required to make a purchase in order to view entertainment or activity which consists of persons exhibiting or modeling lingerie or similar undergarments; or
>
> (C) The patron directly or indirectly is charged a fee to engage in personal contact by employees, devices, or equipment, or by personnel provided by the establishment.

O.C.G.A. § 15-21-201(1); *see also id.* § 15-21-201(7) (defining "substantially nude"). Colloquially, these categories generally describe strip clubs, lingerie modeling studios, and massage parlors, respectively. Health- and fitness-related facilities are excluded. *Id.* § 15-21-201(1).

Under the Act, each covered business must pay annually "a state operation assessment equal to the greater of 1 percent of the previous calendar year's gross revenue or $5,000.00." O.C.G.A. § 15-21-209(a). This money

is disbursed for sex-trafficking prevention and awareness efforts and for "providing care, rehabilitative services, residential housing, health services, and social services . . . to sexually exploited children." *Id.* § 15-21-202(c).

The General Assembly made specific findings in the bill codifying the Act, including that:

> The purpose of this Act is to protect a child from further victimization after he or she is discovered to be a sexually exploited child by ensuring that a child protective response is in place in this state. The purpose and intended effect of this Act in imposing assessments and regulations on adult entertainment establishments is not to impose a restriction on the content or reasonable access to any materials or performances protected by the First Amendment of the United States Constitution. . . .

2015 Ga. Laws 675, 677, § 1-2.

II. Proceedings Below

The Georgia Association of Club Executives is group of strip clubs that are "adult entertainment establishments" as defined by O.C.G.A. § 15-21-201. Pet.App.3a. The Association first challenged the Assessment in 2017, asserting that it was a "content-based" tax that violated the First Amendment. *Id.* at 7a–8a. The trial court largely rejected the Association's arguments, but the Georgia Supreme Court vacated that order and declared the case moot without reaching the merits because the only named

defendant was sued in her individual capacity but was no longer the commissioner of the Georgia Department of Revenue. *Riley v. Ga. Ass'n of Club Execs.*, 313 Ga. 364, 367–68 (2022).

On remand, the Association filed a pair of substantively identical suits repeating the First Amendment arguments and adding a claim that the Assessment was unconstitutionally overbroad. Pet.App.8a–9a. The state trial court granted summary judgment for the State. *Id.* at 10a. The court held that the Assessment was subject to, and satisfied, intermediate scrutiny, reasoning that it "further[s] an important governmental interest in reducing sex trafficking and the exploitation of minors; [its] express purpose is unrelated to the suppression of speech; and any incidental restriction of the expressive 'speech' of nude dancing is no greater than essential to further the important governmental interest." *Id.* (quotation omitted). The court also held that the Assessment was not overbroad. *Id.*

The Georgia Supreme Court affirmed. The court rejected the Association's argument for strict scrutiny. The court determined that the Assessment was content neutral because it was "justified without reference to the content of the regulated speech." *Id.* at 14a–15a (quoting *Renton*, 475 U.S. at 48) (emphasis removed). It noted that the legislature had made clear that the purpose of targeting adult entertainment establishments was not to restrict any performances, but instead to "address the deleterious secondary effects . . . associated with adult entertainment establishments that allow the sale, possession, or consumption of alcohol" by funding a "protective response" through taxes on the industry

responsible for those secondary effects. *Id.* at 16a (quoting 2015 Ga. Laws 675, 677, § 1-2). The court acknowledged the State's argument that rational basis should apply under *Leathers* and its progeny, but it declined to rule on that question. *Id.* at 17a. It opted instead to "assume without deciding that intermediate scrutiny applies." *Id.* at 16a.

Applying that standard, the court held that "the State has an important interest in remedying the secondary effects caused by adult entertainment establishments, and it furthered that interest by creating a fund to support sexually exploited children." *Id.* at 20a. The court reasoned that the extensive body of studies and testimony before the legislature were "more than sufficient" to "demonstrate a connection between adult entertainment establishments and child sexual exploitation." *Id.* at 24a.

The court also concluded that the Assessment was narrowly tailored because it "promotes a substantial government interest that would be achieved less effectively absent the regulation." *Id.* at 28a (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 798–99 (1989) (clarifying that fourth *O'Brien* prong does not impose a "least restrictive or least intrusive means" test)). The Assessment served the State's interest "in a direct and effective" way by "requiring the industry that tends to be the focal point of negative effects to fund the remedy for the harm it creates," and focuses exclusively on the State's goals by using 100% of the funds collected to fund anti-trafficking efforts. *Id.* at 33a–34a (quotations omitted). Moreover, the court noted, "any burdens on protected expression are relatively de minimis," given that the Assessment "does not prohibit nude dancing, regulate the content of nude dancing, restrict the time, place, or

manner of nude dancing, or prohibit the combination of nude dancing and alcohol." *Id.* at 37a.

The court rejected the Association's argument that a general tax would be less restrictive as "simply an effort to smuggle the least restrictive means requirement from strict scrutiny into intermediate scrutiny." *Id.* at 34a–35a. In any event, the Court noted, the "State's interest is *not* merely a general interest in raising revenue to combat a particular harm," and "the Assessment also furthers the State's interest in ensuring that the industry responsible for that harm, i.e., adult entertainment establishments that serve alcohol, rather than the general public, pays for the remedy." *Id.* at 36a.

Thus, "like the dozens of other laws, regulations, and ordinances restricting the combination of nudity and alcohol upheld by this Court and the United States Supreme Court," the court held that Assessment did not violate the First Amendment. *Id.* at 39a.

REASONS FOR DENYING THE PETITION

This case does not warrant further review. *First*, the question presented (the validity of taxes on adult entertainment establishments) does not arise often, and when it does, the handful of courts that have addressed it have uniformly rejected arguments that the taxes are subject to strict scrutiny. They have upheld the taxes under rational-basis or intermediate scrutiny. Nor is there a split on the applicability of the secondary effects test to regulations of adult businesses more generally. Both this Court and lower courts have uniformly applied lesser scrutiny to uphold both content-neutral and content-based regulations of all sorts in this context.

Second, this case would be a poor vehicle for considering the question presented. The Assessment is a tax; it does not actually *regulate* anything. And taxes can constitutionally discriminate among speakers so long as they do not single out the press, target a small group of speakers, or discriminate based on the ideas expressed. *Leathers*, 499 U.S. at 444–47. The Assessment does none of those things, so the First Amendment should not apply at all. If the Court were to grant this petition, *that* is the primary argument it would be addressing, which Petitioner barely even mentions.

Moreover, even if the Assessment is viewed as a regulation rather than a tax, it would not implicate the secondary effects doctrine, which concerns only *content-based* regulations of adult businesses. A regulation is content based if it "target[s] speech based on its communicative content," meaning it "applies to particular speech because of the topic discussed or the idea or message expressed." *City of Austin*, 596 U.S. at 69 (quoting *Reed*, 576 U.S. at 163). The Assessment does not focus in any way on the communicative content of nude dancing; it simply references nude dancing to identify the covered business—just the sort of "content-agnostic . . . distinction" that is content neutral under *City of Austin*. *Id.* at 76. The scope of the secondary effects doctrine thus is irrelevant to the outcome here.

Third, the Georgia Supreme Court's decision was correct. Viewing this as a secondary effects case, the Assessment is content neutral because it targets the secondary effects of adult entertainment establishments and does not draw distinctions based on the content of any speech. And it is narrowly tailored because it only

minimally burdens speech (businesses can avoid the tax simply by not serving alcohol) and focuses on the industry most clearly associated with prostitution (including underage prostitution).

I. There is no split of authority on any question implicated here.

The petition hardly tries to identify a split of authority, and for good reason. In the few cases involving taxes on adult businesses, *all of them* upheld the taxes, applying intermediate scrutiny or less. And the petition's attempt to gin up "confusion" by pointing to *Reed* and *Hill* make no sense. This case is not about sign ordinances or abortion buffer zones, and courts are not confused about any of this.

A. In the few cases that have arisen, courts have unanimously rejected arguments that strict scrutiny should apply to taxes on adult entertainment establishments.

The question presented here—the constitutionality of taxes on adult entertainment establishments—does not come up very often. Federal appellate courts do not appear to have addressed it at all. *See* Pet.App.12a ("[W]e have not found . . . any federal appellate decision (much less from the Supreme Court) considering a First Amendment challenge to a tax on adult entertainment establishments like the one at issue here."). And the "handful" of state supreme courts to address the issue, *id.* at 13a, have uniformly rejected challengers' arguments for strict scrutiny and upheld the taxes under either intermediate or rational-basis scrutiny.

Bushco v. Utah State Tax Commission involved a tax on "sexually explicit businesses," defined as any business where a "nude or partially denuded" employee performs services for at least 30 days within a calendar year. 225 P.3d 153, 158 (Utah 2009). The Utah Supreme Court held that the tax was facially content neutral because it was triggered by a type of conduct (nudity), and not any particular expression. *Id.* at 161. The court then held that the tax satisfied intermediate scrutiny. *Id.* at 163. It furthered a substantial state interest of providing treatment to sex offenders, and the tax was narrowly tailored because it left open alternative means of conveying erotic messages: the tax "neither prohibit[ed] public nudity nor impose[d] criminal penalties—it simply impose[d] an additional cost on the commercial use of nudity as a method of expression." *Id.* at 168.

Combs v. Texas Entertainment Association, Inc. involved a challenge to a statewide $5-per-customer fee imposed on "sexually oriented businesses," defined as establishments that provide "live nude entertainment or live nude performances" and that allowed on-premises consumption of alcoholic beverages. 347 S.W.3d 277, 278 (Tex. 2011). The proceeds were to be used primarily to fund programs for sexual-assault victims. *Id.* at 279. The Texas Supreme Court rejected the plaintiffs' calls for strict scrutiny because the tax was content neutral: "The fee is not a tax on unpopular speech but a restriction on combining nude dancing, which unquestionably has secondary effects, with the aggravating influence of alcohol consumption." *Id.* at 287. The court then held that the tax satisfied intermediate scrutiny. It furthered the government's interest because it "provide[d] some disincentive to present live nude entertainment where

alcohol is consumed," and the "[l]egislature could reasonably infer that the alternative of non-alcoholic venues was sufficient so as not to work a suppression of expression in nude dancing." *Id.* at 288. The court also held that the tax was narrowly tailored because "[t]he $5 fee is a minimal restriction on the businesses, so small that respondents argue it is ineffective," and businesses could avoid the fee by presenting the nude entertainment without alcohol. *Id.*

Finally, *Deja Vu Showgirls v. Nevada Department of Taxation* involved a challenge to Nevada's 10% excise tax on admission, food, refreshment, and merchandise provided at live-entertainment facilities with maximum occupancies of less than 7,500. 334 P.3d 392, 395 (Nev. 2014). A group of strip clubs argued that the tax was subject to strict scrutiny as a "differential tax of speakers protected under the First Amendment that ... discriminates on the basis of the content of taxpayer speech [by exempting many types of family-oriented live entertainment], targets a small group of speakers [strip clubs], and threatens to suppress speech." *Id.* at 399. The Nevada Supreme Court rejected this argument, noting that the case did not fit any of the categories of taxes identified in *Leathers* as implicating the First Amendment. *Id.* at 401. It did not target a small group of speakers, because it applied to over 90 facilities including raceways, nightclubs, performing arts centers, and sporting events. *Id.* Nor did the legislature's decision to exempt certain businesses from an otherwise broadly applicable test "suggest an intention to suppress any ideas." *Id.* (citing *Leathers*, 499 U.S. at 452–53). Because the tax did not implicate any of the factors discussed in *Leathers*, the court concluded that heightened scrutiny did not apply and went on to apply rational-basis review, which the tax easily satisfied. *Id.*

The Association's attempt to demonstrate a split of authority on this point is half-hearted at best. Its only supposed example of disagreement on this point is *9000 Airport LLC v. Hegar*, in which a federal district court held at the preliminary injunction stage that a challenger to the same Texas tax upheld in *Combs* could show a likelihood of success on its First Amendment claim. No. 4:23-CV-03131, 2023 WL 7414581, at *4–7 (S.D. Tex. Nov. 9, 2023). But the Fifth Circuit recently reversed that decision on res judicata grounds. *9000 Airport LLC v. Hegar*, No. 23-20568, 2025 WL 1024951, at *1–4 (5th Cir. Apr. 7, 2025) (not reported).

At bottom, then, Petitioners ask this Court to weigh in on an issue that has been addressed by at most four state supreme courts (and zero federal appellate courts), where all of those courts have agreed that the sort of taxes at issue are subject to (at most) intermediate scrutiny. And all of the taxes at issue easily passed constitutional muster.

To be sure, more States or local governments might enact taxes like Georgia's in the future. But if courts begin to disagree about how to handle challenges to these statutes, the Court can step in *then*. There is no reason to step in *now*, with few cases and no disagreement.

B. There is no split of authority on the separate question of whether the secondary effects doctrine continues in force.

Without a split of authority on the question presented, the Association contends that there has "been confusion among lower courts about the fate of *City of Renton* after *Reed*," with some courts going so far as to abrogate "some of their pre-*Reed* case law that relied on *City of Renton*."

Pet. at 5. In addition to urging the Court to "resolve this confusion," *id.*, the Association attempts to position this case as an opportunity to overturn *Hill*, the abortion-clinic-buffer-zone case, going so far as to rechristen secondary effects the *Renton/Hill* doctrine. *Id.* at 4, 5, 6, 7, 12, 18, 21, 31. All of this is wrong.

1. For nearly fifty years, this Court has consistently held that regulations of physical adult entertainment establishments are subject to intermediate scrutiny. That holds true even if the regulation in question is facially content based. *See*, *e.g.*, *Young*, 427 U.S. at 53 (ordinance applied to "adult" theaters, as determined by sexual content of films presented). As long as these sorts of regulations are "aimed not at the *content*" of adult entertainment, but "rather at the *secondary effects* of" establishments that feature this sort of entertainment, then they are subject to the same analysis as content-neutral time, place, and manner restrictions—i.e., intermediate scrutiny. *Renton*, 475 U.S. at 47–49. A secondary-effects-targeted regulation will be upheld if it "is designed to serve a substantial governmental interest and allows for reasonable alternative avenues of communication." *Id.* at 50. The Court has applied this standard to uphold substantial restrictions on adult businesses, *Young*, 427 U.S. at 71–73 & n.34 (lead op.) (restrictive zoning); *Renton*, 475 U.S. at 47–48 (same); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560, 570–71 (1991) (lead op.) (nudity ban); *Pap's A.M.*, 529 U.S. at 300–01 (lead op.) (same); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425, 429, 438–39 (2002) (lead op.) (restrictions on clustering of adult businesses), stopping short only for an outright ban on "live entertainment," *Schad v. Borough of Mount Ephraim*, 452 U.S. 61, 76–77 (1981).

This flexible approach towards regulations of sexually oriented businesses follows from the Court's repeated admonitions that any expressive conduct involved "falls only within the outer ambit of the First Amendment's protection." *Pap's A.M.*, 529 U.S. at 289. "[I]t is manifest that society's interest in protecting this type of expression is of a wholly different, and lesser, magnitude than the interest in untrammeled political debate." *Young*, 427 U.S. at 70 (lead op.); *see also Barnes*, 501 U.S. at 566 (lead op.).

Lower courts have applied these principles to routinely uphold a wide variety of adult business regulations. In addition to the sorts of location and nudity limitations discussed in this Court's cases, courts have upheld regulations restricting contact between dancers and customers, *Sensations, Inc. v. City of Grand Rapids*, 526 F.3d 291, 299 (6th Cir. 2008); mandating minimum stage height and buffer zones, *G.M. Enters. v. Town of St. Joseph*, 350 F.3d 631, 634, 638–39 (7th Cir. 2003), *cert. denied*, 543 U.S. 812 (2004); prescribing hours of operation, *Ass'n of Club Execs. of Dallas, Inc. v. City of Dallas*, 83 F.4th 958, 961, 969 (5th Cir. 2023), *cert. denied*, 144 S. Ct. 1064 (2024); and limiting signage, *Excalibur Grp., Inc. v. City of Minneapolis*, 116 F.3d 1216, 1223 (8th Cir. 1997). In particular, courts routinely uphold regulations on the combination of alcohol and adult entertainment, including outright bans on the pairing. *See*, *e.g.*, *Maxim Cabaret, Inc. v. City of Sandy Springs*, 816 S.E.2d 31, 34 (Ga. 2018); *Curves, LLC v. Spalding County*, 685 F.3d 1284, 1289-90 (11th Cir. 2012) (upholding city ordinance prohibiting nude dancing on licensed premises); *City of Chi. v. Pooh Bah Enters.*, 865 N.E.2d 133, 139–40, 161 (Ill. 2006) (same), *cert. denied*, 552 U.S. 941 (2007); *181 South Inc. v. Fisher*, 454 F.3d 228, 230, 233–34 (3d Cir.

2006) (upholding regulation that banned "any lewdness or immoral activity" on licensed premises).

2. The Association's attempts to manufacture a split in the face of this consistency fall flat. For one, there is no meaningful "confusion among lower courts about the fate of *City of Renton* after *Reed*." Pet. at 5. *Reed* addressed a sign code that treated directional, ideological, and political signs differently. 576 U.S. at 159–61. The Court explained that "a law is content based on its face" and subject to strict scrutiny, if it "draws distinctions based on the message a speaker conveys," even if the law had a "benign motive" or "content-neutral justification." *Id.* at 163, 165, 166. The Court held the ordinance was facially content based because, among other things, it treated ideological messages more favorably than political messages. *Id.* at 164, 169. The Court did not mention the secondary effects doctrine, let alone overrule it.

Later, in *City of Austin*, the Court rejected as "too extreme" the argument that a regulation requiring "*any* examination of speech or expression inherently triggers heightened First Amendment concern." 596 U.S. at 69, 73. The Court instead clarified that its precedents "have consistently recognized that restrictions on speech may require some evaluation of the speech and nonetheless remain content neutral." *Id.* at 72. Based on that principle, the Court deemed the on-site/off-site sign distinction at issue facially content neutral because it drew only location-based distinctions and had no illicit purpose. *Id.* at 71. The Court also emphasized that a strict reading of *Reed* would "contravene numerous precedents" upon which "*Reed* did not purport to cast doubt." *Id.* at 74–75. *City of Austin*, in short, "dispelled" any notion that *Reed* silently overturned

decades of this Court's secondary effects precedents. *Club Execs. of Dallas*, 83 F.4th at 964.

No surprise, then, that all the Association's purported examples of this confusion predate *City of Austin*. *See* Pet at 21–22 (citing cases). *Free Speech Coalition, Inc. v. Attorney General* was a challenge to age-verification and recordkeeping requirements for producers of pornography. 825 F.3d 149, 154–56 (3d Cir. 2016). The court of appeals applied strict scrutiny, noting that this Court had limited its application of the secondary effects doctrine to "brick-and-mortar purveyors of adult sexually explicit content," and declined to extend the doctrine beyond that realm in light of *Reed*. *Id.* at 163. *Cahaly v. Larosa* dealt with an anti-robocall statute and explained that the circuit's past cases applying intermediate scrutiny to content-based sign and solicitation ordinances were abrogated by *Reed*. 796 F.3d 399, 404–05 (4th Cir. 2015). The court did not mention the secondary effects doctrine. *International Outdoor Corp. v. City of Troy* concerned a content-based sign ordinance that exempted "political" and other categories of signs from permitting requirements. 974 F.3d 690, 707 (6th Cir. 2020). The court of appeals held that strict scrutiny applied in light of *Reed*, but similarly made no reference to the secondary effects doctrine. *See id.* at 702–08. And the Fifth Circuit's decision in *Reagan National Advertising of Austin, Inc. v. City of Austin*, which dealt with a restriction on off-premises signs, 972 F.3d 696, 699 (5th Cir. 2020), was reversed by this Court as a misunderstanding of *Reed*, 596 U.S. at 73–76. In fact, the court of appeals later clarified that "[a]ny shadow cast on the secondary effects doctrine by our *Reagan I* opinion has been dispelled by *City of Austin*." *Club Execs. of Dallas*, 83 F.4th at 964–65 (applying *Renton* to uphold regulation of adult businesses).

Tellingly, in the Association's only examples of lower courts *actually considering* challenges to regulations of adult entertainment establishments, those courts uniformly held that *Reed* did *not* displace the secondary effects doctrine. *See BBL, Inc. v. City of Angola*, 809 F.3d 317, 326 n.1 (7th Cir. 2015) ("We don't think *Reed* upends established doctrine for evaluating regulation of businesses that offer sexually explicit entertainment, a category the Court has said occupies the outer fringes of First Amendment protection."); *Maxim Cabaret*, 816 S.E.2d at 36 n.4 (rejecting argument for strict scrutiny, noting that "*Reed* did not involve secondary-effects legislation" or "mention, much less overrule," this Court's secondary effects precedents); *Flanigan's Enters. of Ga. v. City of Sandy Springs*, 703 F. App'x 929, 935 (11th Cir. 2017) (per curiam) ("[W]e cannot read *Reed* as abrogating either the Supreme Court's or this Circuit's secondary-effects precedents."). *See also* Leslie Gielow Jacobs, *Making Sense of Secondary Effects Analysis After Reed v. Town of Gilbert*, 57 Santa Clara L. Rev. 385, 414 (2017) ("[N]o court has read *Reed* to do away with Secondary Effects Analysis.").[1]

1. In *Wacko's Too, Inc., v. City of Jacksonville*, the court of appeals applied the secondary effects doctrine to uphold an ordinance prohibiting dancers under 21 from performing in strip clubs. 134 F.4th 1178, 1188 (11th Cir. 2025). Judge Newsom, concurring, suggested there is tension between *Reed* and the secondary effects doctrine. *Id.* at 1196. In doing so, Judge Newsom highlighted the underlying doctrinal error the entire secondary effects framework aims to account for: this Court's designation of erotic dancing as constitutionally protected expression. *See id.* at 1198 ("*So long as* the Supreme Court continues to hold that erotic dancing and the like are protected by the First Amendment . . . " (emphasis added)). Though Judge Newsom overstated any supposed tension between *Reed* and *Renton* (especially in the light of *City of Austin*), if there

So whatever "confusion" the Association's lower-court cases demonstrate, it has nothing to do with the secondary effects doctrine. Lower courts have continued to apply intermediate scrutiny to regulations of adult entertainment businesses, just as they did prior to *Reed*. They have no reason to do otherwise, given that *Reed* did not even hint at overruling the Court's decades of secondary effects precedents from *Young* to *Alameda Books*.

3. The Association's other attempts to demonstrate "confusion" also fail. It contends, for instance, that the Court has sometimes "applied strict scrutiny in an adult-entertainment context," implying a lack of clear guidance for how to assess such regulations. Pet. at 4. The Association cites *United States v. Playboy Entertainment Group* for this point, *id.*, but *Playboy* involved a statute that required television stations featuring erotic entertainment to scramble their programs or limit broadcasts to certain hours, 529 U.S. 803, 806 (2009). The Court declined the government's invitation to apply intermediate scrutiny because "[t]he overriding justification for the regulation is concern for the effect . . . on young viewers," and it "focuse[d] *only* on the content of the speech and the direct impact that speech ha[d] on its listeners," which is the "essence of content-based regulation." *Id.* at 811–12.

That is unsurprising: the distinction between primary effects (i.e., the impact of speech on its listener) and

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were tension, the appropriate course would be to correct the original sin and overrule decisions holding that stripping is constitutionally protected expression. Regardless, the Court should not grant review here to address that question, which would not be necessary to the outcome.

secondary effects (crime and blight outside a strip club) is the key conceptual underpinning of the *secondary effects* doctrine. As the Court explained in *Boos v. Barry*, "[t]he content of the films being shown inside the theaters [in *Renton*] was irrelevant and was not the target of the regulation." 485 U.S. 312, 320 (1988) (lead op.). Rather, "the ordinance was aimed at the *secondary effects* of such theaters in the surrounding community" such as "prevention of crime, maintenance of property values, and protection of residential neighborhoods." *Id.* (quotation omitted). The *Boos* Court clarified that if the ordinance in *Renton* had been "justified by the city's desire to prevent the psychological damage it felt was associated with viewing adult movies," i.e., the primary effects, then it would be subject to strict scrutiny. *Id.* at 321.

The Court has consistently followed this principle in applying strict scrutiny to regulations of primary speech, regardless of the context. *See*, *e.g.*, *id.* at 316, 321 (strict scrutiny applied to limitation on signs that could bring foreign governments into "public disrepute" because it targeted "primary impact" of the speech); *Sable Commc'ns of Cal. v. FCC*, 492 U.S. 115, 126, 130–31 (1989) (applying strict scrutiny to ban on "dial-a-porn" messages under the same reasoning); *Reno v. ACLU*, 521 U.S. 844, 867–68 (1997) (applying strict scrutiny where restrictions were meant "to protect children from the primary effects of 'indecent' and 'patently offensive' speech, rather than any 'secondary' effect of such speech").

Next, the Association's citation of *Boos* and other cases for the proposition that "this Court has assumed the validity of the content-neutral justification rule in even more areas" than regulation of adult businesses is misleading at best. *See* Pet. at 3–4. The Court discussed

the secondary effects doctrine in those cases only in rejecting the government's arguments for its application, or in highlighting that the regulation in question truly was targeted at the content of the restricted speech. *See Boos*, 485 U.S. at 320–21 (lead op.) (rejecting argument to apply intermediate scrutiny because "[l]isteners' reactions to speech are not the type of 'secondary effects' we referred to in *Renton*"); *R.A.V. v. City of St. Paul*, 505 U.S. 377, 380, 394 (1992) (applying strict scrutiny to ordinance banning racially inflammatory symbols because it was "not directed to secondary effects within the meaning of *Renton*"); *City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 430 (1993) (noting that city's reliance on *Renton* was misplaced because there were "no secondary effects attributable" to prohibited commercial newsracks).

Nor, for that matter, does *Ward v. Rock Against Racism*, 491 U.S. 781 (1989), demonstrate an expansion of the secondary effects doctrine. *See* Pet. at 3, 20, 23, 26, 29. *Ward* involved a New York City regulation requiring performers in a Central Park concert venue to use a city-owned sound system and independent sound technician in order to control volume levels of concerts. 491 U.S. at 787. The Court referenced *Renton* for the principal that "[a] regulation that serves purposes unrelated to the content of expression is deemed neutral, even if it has an incidental effect on some speakers or messages but not others." *Id.* at 791. But the Court did not actually apply a secondary effects analysis; it instead applied the standard for content-neutral time, place, or manner restrictions. *Id.* at 791, 796 (quoting *Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288, 293 (1984)). That was appropriate, because as even the Association concedes here, the regulation, which did not refer to content in any way,

"would have been content neutral under any standard." Pet. at 23.

Nothing about these decisions shows the Court tacitly approving of extending the secondary effects doctrine to new contexts. To the contrary, as the Court noted in *Boos*, the secondary effects analysis implicates concerns that were "almost unique to theatres featuring sexually explicit films." 485 U.S. at 320 (lead op.).

4. Finally, *Hill v. Colorado*, which the Association cites throughout its petition, does not somehow warrant the Court's review here. *See* Pet. at 3, 4, 5, 6, 7, 12, 18, 20, 21, 23, 26, 31, 32. *Hill* was a challenge to a statute that made it illegal to "knowingly approach" someone within 100 feet of the entrance of any healthcare facility "for the purpose of passing a leaflet or handbill to, displaying a sign to, or engaging in oral protest, education, or counseling" with that person. 530 U.S. at 707 (quotation omitted). The Court held that the statute was content neutral because it (a) was a regulation of where speech can occur, not the speech itself, (b) was not adopted "because of disagreement with the message it conveys," and (c) "the State's interests in protecting access and privacy, and providing police with clear guidelines, are unrelated to the content of the demonstrators' speech." *Id.* at 719–20 (quotation omitted).

Even assuming *Hill* was wrongly decided, it has nothing to do with this case. *Hill* says nothing about the secondary effects doctrine—the decision does not even mention those words. It certainly has no bearing on the taxing or regulation of adult businesses, and thus played

no role in the decision below, which was instead guided by this Court's well-established secondary effects caselaw. So even if the Court were inclined to revisit *Hill*, it should do so in a case that has something to do with *Hill*.

* * *

In sum, the Association invites the Court to engage in a wide-ranging reassessment of its First Amendment doctrine absent any sort of split or even "confusion" among the lower courts about the actual questions presented here. That may be an appropriate subject for academic discourse, but it is not a reasonable basis for certiorari.

II. This case is a poor vehicle to address the issues raised in the petition.

Even if the Court were inclined to reassess the contours of the secondary effects doctrine for the first time in decades, this case presents an exceptionally poor vehicle for doing so. The secondary effects doctrine is used to assess facially content-based regulations of adult businesses. But here, the Assessment is neither a *regulation* nor *content based*. It is a flat 1% tax that does not regulate protected expression in any way. It does not implicate anything more than rational-basis review. *Leathers*, 499 U.S. at 447. And even if one assumed it were a regulation, it is content neutral, because it references expression (nude dancing) only as a means of identifying one of the types of businesses subject to the tax, and not because of any "communicative content." *City of Austin*, 596 U.S. at 69 (quotation omitted). Accordingly, if the Court were to grant review, these arguments, not any argument about secondary effects, would dominate the dispute.

A. The Assessment is a tax on an entire industry and does not implicate the First Amendment at all under *Leathers*.

The Georgia Supreme Court assumed without deciding that intermediate scrutiny applied because the Assessment satisfies it. Pet.App.16a. But this sort of tax need not satisfy intermediate scrutiny at all. Intermediate scrutiny typically applies to regulations that either indirectly impact expressive conduct, *O'Brien*, 391 U.S. at 377, or combat the secondary effects of an adult business that presents some expressive activity, *Renton*, 475 U.S. at 49. The Assessment, by contrast, "regulates" nothing. It is a minimal (1%) tax on an entire industry, only part of which (strip clubs) features *some* expression falling on the margins of First Amendment protection. If this Court were to grant, *this* would be the primary issue, not the secondary effects doctrine.

Duly enacted taxation schemes enjoy a "strong presumption" of constitutionality. *Leathers*, 499 U.S. at 451. "[E]ven more than in other fields," States "have especially broad latitude in creating classifications and distinctions in tax statutes." *Id.* (quoting *Regan v. Tax'n with Representation of Wash.*, 461 U.S. 540, 547 (1983)). The presumption of constitutionality for taxes is so strong that "differential taxation of speakers, even members of the press, does not implicate the First Amendment unless the tax is directed at, or presents the danger of suppressing, particular ideas." *Id.* at 453.

The upshot is that taxes are constitutionally suspect only if they fall into certain narrow categories that demonstrate an intent to suppress particular ideas. *See*

id. at 447. This Court has identified three narrow (and overlapping) categories of taxes that fit this description. The first are taxes that single out the press, because "a tax limited to the press raises concerns about censorship of critical information and opinion." *Id.* at 447. Second, a tax is constitutionally suspect if it targets only a "small group of speakers," typically within the press itself. *Id.* These sorts of taxes pose censorship risks because they will likely affect "only a limited range of views" and thus "distort the market for ideas." *Id.* at 448. Third, a tax raises constitutional concerns if it discriminates based on the content of taxpayer speech. *Id.* at 447.

The Assessment does not fall into the narrow categories of taxes that warrant heightened First Amendment scrutiny. No one argues that it targets the press or otherwise implicates traditional First Amendment concerns such as political speech. Nor does the Assessment target a small handful of speakers in a way likely to censor certain viewpoints. The Assessment is more like the tax this Court upheld in *Leathers*, which applied "uniformly to the approximately 100 cable systems then operating in the State," 499 U.S. at 448, than the one in *Arkansas Writers' Project, Inc. v. Ragland*, 481 U.S. 221, 229 n.4 (1987) (*A.W.P.*), which "f[ell] on a limited group of [three] publishers." The Assessment, in other words, "hardly resembles a 'penalty for a few'" that threatens to "distort the market for ideas." *Leathers*, 499 U.S. at 448 (citing *Minneapolis Star and Tribune Co. v. Minn. Comm'r of Revenue*, 460 U.S. 575, 592 (1983), and *A.W.P.*, 481 U.S. at 229 & n.4)).

Finally, the Assessment does not fall in the third category of taxes that "discriminate[] on the basis of the

content of taxpayer speech." *Id.* at 447. The Association's constitutional challenge is premised on the notion that the statute facially targets protected speech because it mentions "nude or substantially nude persons dancing." Pet. at 15; O.C.G.A. § 15-21-201(1)(A). But a law is content based only "if it targets speech based on its communicative content—that is, if it applies to particular speech because of the topic discussed or the idea or message expressed." *City of Austin*, 596 U.S. at 69 (quotation omitted). And the statute here does nothing of the sort. It refers to nude dancing not to single out any particular message, but rather just to *describe* strip clubs.

The Act's text and structure make this clear. Each of the subparts of the definition of "adult entertainment establishment" describes an identifiable type of establishment in the industry. Lingerie modeling studios "charge[] [patrons] a fee" or "require[] [them] to make a purchase" in order to view "persons exhibiting or modeling lingerie or similar undergarments." O.C.G.A. § 15-21-201(1)(B). Erotic massage parlors charge patrons a "fee to engage in personal contact by employees, devices, or equipment, or by personnel provided by the establishment." *Id.* § 15-21-201(1)(C). And while the strip-club definition refers to nude dancing "with or without music," its applicability does not turn only on the presence of nude dance; establishments also fall within the definition if they feature "nude or substantially nude persons . . . engaged in movements of a sexual nature or movements simulating sexual intercourse, oral copulation, sodomy, or masturbation." *Id.* § 15-21-201(1)(A). And on top of that, they have to serve alcohol. *Id.* § 15-21-201(1).

The statute demonstrates that the State went out of its way to avoid targeting any protected expression for

taxation. The Assessment applies not to nude dancing per se, but to the combination of nude dancing with "business[es] or commercial establishment[s] where alcoholic beverages of any kind are sold, possessed, or consumed." *Id.* Anyone remains free to engage in or view nude dancing in a non-commercial setting without being subject to the tax. And even commercial establishments featuring nude dancing will not be subject to the tax as long as they do not allow alcohol on the premises. The Assessment, in other words, is not "directed at" any expressive conduct, and does not "present[] the danger of suppressing" any club's "particular ideas." *Leathers*, 499 U.S. at 453. *See also Deja Vu*, 334 P.2d at 399.

Because the Assessment does not implicate the First Amendment, it is subject only to rational-basis review, which it easily satisfies. *See Regan*, 461 U.S. at 547. Targeted taxes are commonplace and serve a variety of legitimate purposes, including raising revenue to offset a particular industry's negative societal impacts—or just raising revenue, period. So just as Georgia may reasonably tax hotels to fund stadium construction, O.C.G.A. § 48-13-51(a)(5), or tax rental cars to promote "industry, trade, commerce, and tourism," *id.* § 48-13-90, it was plainly rational for the State to tax this industry to raise revenue for any number of legitimate ends, especially combatting the deleterious effects of that industry.

The Association argues that even if governments have wide latitude to regulate the speech associated with adult businesses without triggering strict scrutiny, something special about taxes means that they necessarily come in for strict scrutiny. Pet. at 24. But none of the Association's

purported authority for this novel point helps it. Its tax cases are inapposite because they involved targeted, content-based taxation of speech falling within the core of First Amendment protection, whether freedom of assembly, *see Forsyth Cnty. v. Nationalist Movement*, 505 U.S. 123, 134 (1992) (fees for parade permits based on message conveyed and expected public response), or the press, *see Grosjean v. Am. Press Co.*, 297 U.S. 233, 250 (1936) (punitive tax on newspapers critical of the government); *Minneapolis Star*, 460 U.S. at 591 (tax targeting only large newspapers); *A.W.P.*, 481 U.S. at 229 (tax distinguished between general interest and publications covering religion or sports). As discussed above, the only courts that have considered First Amendment challenges to taxes that reference nude dancing have squarely rejected arguments for strict scrutiny. *Combs*, 347 S.W.3d at 286; *Bushco*, 225 P.3d at 160–62.

The Assessment, in short, does not implicate the First Amendment at all. But even if one disagreed with the above analysis, *this* is the relevant issue the Court would have to address here. There is no reason to grant the petition to address a (splitless) question when even that question would be preempted by a separate (splitless) question.

B. The Assessment is facially content neutral and thus does not require application of the secondary effects doctrine to avoid strict scrutiny.

Even if the Assessment were viewed as a regulation rather than a tax, it still would not require the secondary

effects doctrine because it is facially content neutral. The Association has contended throughout this litigation that laws that refer on their face to a certain type of protected expression are invariably content based and thus subject to strict scrutiny. Pet.App.14a. That argument derives from *Reed*, which held that strict scrutiny applied whenever "a regulation of speech on its face draws distinctions based on the message a speaker conveys," even if the law had a "benign motive" or "content-neutral justification." 576 U.S. at 163, 165 (quotation omitted).

But in *City of Austin* this Court characterized the Association's view of *Reed* as "too extreme," and "reject[ed] . . . the view that *any* examination of speech or expression inherently triggers heightened First Amendment concern." *City of Austin*, 596 U.S. at 69, 73. The Court instead clarified that its pre-*Reed* precedents, which remain undisturbed, "have consistently recognized that restrictions on speech may require some evaluation of the speech and nonetheless remain content neutral." *Id.* at 72. Based on that principle, it held that a sign ordinance that drew location-based distinctions was content neutral even though one had to examine the content to determine whether a sign was compliant. *Id.* at 69. That laid to rest any notion that *Reed* abrogated or qualified precedents like *Renton* or *Leathers*.

The Assessment is content neutral under *Reed* and *City of Austin* for the reasons discussed above. *See supra* 26–27. True, the government must examine the expression at issue to determine whether the performer is engaged in "nude or substantially nude" dancing. O.C.G.A. § 15-21-201(1)(A). But the content-neutrality analysis does not reduce to "ask[ing]: who is the speaker and what is the

speaker saying." *City of Austin*, 596 U.S. at 69; *see also id.* at 75 (rejecting the "read-the-sign rule adopted by the" lower court in that case). The key factor is instead whether the regulation "targets speech based on its communicative content," meaning it "applies to particular speech because of the topic discussed or the idea or message expressed." *Id.* (quoting *Reed*, 576 U.S. at 163). The Assessment does nothing of the sort. It references nude dancing solely as one of several factors that identify *strip clubs*: commercial establishment + nude dancing + serves alcohol. O.C.G.A. § 15-21-201(1)(A).

Unlike the *Reed* ordinance, which singled out "political" and other types of signs for particular treatment, 576 U.S. at 159–61 the Assessment does not apply because of any "topic," "idea," or "message," *id.* at 163. How could it? Dancing is simply a medium through which the dancer can convey any number of messages, or none at all. Removing the dancer's clothing does not change that. Nude dancing can certainly convey a "message of eroticism," *see Barnes*, 501 U.S. at 565, but it can also convey any number of other ideas from disgust to satire.

The Assessment does not favor one of those ideas over another. It does not speak to ideas or messages at all. It just applies a tax to a certain type of business. In that way it is much less like the ordinance in *Reed*, which required the reader to determine "is this designed to influence the outcome of an election?", *see id.* at 160, or the one in *Police Department of Chicago v. Mosley*, which required asking "is this picketing *labor* picketing?", 408 U.S. 92, 95 (1980), and more like the regulation in *City of Austin*, which simply asked "does this refer to a business here or somewhere else?", *see* 596 U.S. at 71. The Assessment

examines speech only to answer the question, "is this a strip club or some other type of business?" That is fundamentally a "location-based and content-agnostic . . . distinction [that] does not, on its face, 'single out a specific subject matter for differential treatment.'" *Id.* at 76 (quoting *Reed*, 576 U.S. at 163).

Because the Assessment's strip-club definition is facially content neutral, there was no need for the court below to engage in a secondary effects analysis, which applies only to content-*based* regulations of speech. *See Renton*, 475 U.S. at 47. The question presented, in short, is unnecessary for resolution of this case.

III. The ruling below was correct.

On top of everything else, the Georgia Supreme Court was correct that the Assessment, viewed as secondary effects regulation, satisfies intermediate scrutiny. To recap, even a facially content-based regulation of adult businesses is treated as content neutral if it is meant to address their secondary effects. *Renton*, 475 U.S. at 49. Here, the Assessment is plainly targeted at the secondary effects of adult establishments like strip clubs, rather than the content of the expression itself. The Georgia General Assembly made clear that purpose of the Act was "not to impose a restriction on the content or reasonable access to any materials or performances protected by the First Amendment," but instead to "address the deleterious secondary effects . . . associated with adult entertainment establishments that allow the sale, possession, or consumption of alcohol" by funding a "protective response" through assessments imposed on the industry responsible for those secondary effects. Ga. L. 2015, p. 675, § 1-2. That

fits squarely within the definition of a secondary effects regulation. *See Renton*, 475 U.S. at 49.

The Assessment also easily satisfies intermediate scrutiny. It was undisputedly within the State's power to enact, and the Association does not dispute that the State has a compelling interest in combatting child sexual exploitation. Pet.App.19a, 21a–22a. The legislature relied on abundant evidence that the Assessment would advance this interest, including studies showing a strong spatial correlation between prostitution (including underage prostitution) and these businesses, as well as testimony from women who were trafficked in or around these establishments when they were underage. *Id.* at 24a–25a.

The Assessment's incidental burden on expression "promotes a substantial government interest that would be achieved less effectively absent the regulation." *Ward*, 491 U.S. at 799. The proceeds of the Assessment all go to funding the response to secondary effects, Pet. App.34a, and the one percent tax is considerably less restrictive than bans on nudity or outright prohibitions of the combination of nude dancing and alcohol, both of which have been repeatedly upheld as constitutional, *id.* at 37a–38a. Moreover, a targeted tax furthers the State's interest more than a general tax by "ensuring that the industry responsible for that harm, i.e., adult entertainment establishments that serve alcohol, rather than the general public, pays for the remedy." *Id.* at 36a.

The Assessment does not violate the First Amendment.

CONCLUSION

For the reasons set out above, this Court should deny the petition.

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