

No. 21-900

In the Supreme Court of the United States

CITY OF CINCINNATI, OHIO, ET AL.,
PETITIONERS,

v.

LAMAR ADVANTAGE GP COMPANY, LLC, ET AL.,
RESPONDENTS.

*ON PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF OHIO*

**SUPPLEMENTAL BRIEF FOR THE
PETITIONERS**

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SUPPLEMENTAL BRIEF FOR THE PETITIONERS

This Court’s decision in *City of Austin v. Reagan National Advertising*, No. 20-1029 (Apr. 21, 2022), does not resolve the question presented in this case and certiorari continues to be warranted. Respondents’ supplemental brief acknowledges that, “[i]f anything, the Court’s decision underscores the need for further review on that question.” Supp. Br. 1. That is correct. Cincinnati enacted a content-neutral excise tax on those engaged in the business of leasing billboards, and the Ohio Supreme Court nevertheless held that the tax triggers heightened First Amendment scrutiny and is invalid for that reason. This Court should settle the conflict between the highest courts of Ohio and Maryland on the constitutionality of that taxing scheme. *See* Pet. 8-9, 13-18; Pet’r Reply Br. 1-2.

This case presents the best vehicle for the Court to address that question. The only First Amendment claim in this case is the billboard industry’s challenge to Cincinnati’s context-neutral taxing scheme based on the line of cases beginning with *Grosjean v. American Press Co.*, 297 U.S. 233 (1936). In *Clear Channel Outdoor, Inc. v. Director, Department of Finance*, No. 21-219, the billboard industry sought review of the Baltimore billboard tax scheme on the theory that it trained on a speech platform and targeted a small group of speakers (*i.e.*, the *Grosjean* issue) *and* that it discriminated on the basis of content because of an on-/off-premises distinction. *See* Resp. Supp. Br. 2. *City of Austin* holds that an on-/off-premises distinction *is* facially content neutral under *Reed v. Town of Gilbert*, 576 U.S. 155 (2015). But

members of this Court took different positions on that issue. *Compare City of Austin*, slip op. 6-13 *with id.* at 3-4 (Alito, J., concurring in the judgment in part and dissenting in part) *and id.* at 4-21 (Thomas, joined by Gorsuch and Barrett, JJ.). This case does not even arguably present an issue of content neutrality.

Accordingly, granting the petition here—which all parties urge the Court to do—will allow this Court to resolve the conflict between the highest courts of Maryland and Ohio by focusing on the pure and dispositive *Grosjean* issue.

* * *

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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