

Nos. 20-1199 & 21-707

In the Supreme Court of the United States

STUDENTS FOR FAIR ADMISSIONS, INC., *Petitioner*,

v.

PRESIDENT AND FELLOWS OF HARVARD UNIVERSITY,
Respondent.

STUDENTS FOR FAIR ADMISSIONS, INC., *Petitioner*,

v.

UNIVERSITY OF NORTH CAROLINA, *et al.*, *Respondents*.

**On Writs of Certiorari to the United States Courts of
Appeals for the First and Fourth Circuits**

**BRIEF OF GEORGETOWN UNIVERSITY, BOSTON
COLLEGE, THE CATHOLIC UNIVERSITY OF
AMERICA, COLLEGE OF THE HOLY CROSS,
DEPAUL UNIVERSITY, FORDHAM UNIVERSITY,
MARQUETTE UNIVERSITY, UNIVERSITY OF
NOTRE DAME, VILLANOVA UNIVERSITY AND
48 ADDITIONAL CATHOLIC COLLEGES AND
UNIVERSITIES AS *AMICI CURIAE* IN SUPPORT OF
RESPONDENTS:**

(caption continued on inside cover)

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INTEREST OF *AMICI CURIAE*¹

Amici curiae are Catholic colleges and universities. *Amici* are dedicated to ensuring that the students who matriculate at Catholic colleges and universities receive an education that provides academic rigor and is animated by Catholic values. Those values include a commitment to personal and professional integrity, dedication to serving others, and a life of faith in action. As an integral part of their educational mission, *amici* are committed to encouraging students to test ideas and challenge assumptions through exposure to, and dialogue with, classmates whose backgrounds may be geographically, religiously, culturally, socio-economically, racially or otherwise different from their own. Through consideration of a variety of factors in admissions, *amici* seek to build student bodies whose diversity deepens student learning on campus and helps prepare graduates for leadership in an increasingly competitive, multicultural world.

Amici respectfully submit this brief to provide the Court with their unique perspective as to why both their academic and religious missions require discretion to consider applicants' racial identities alongside a variety of other factors in admissions decisions. *Amici's* experience demonstrates that

¹ Pursuant to Supreme Court Rule 37.6, *amici* state that no counsel for a party authored this brief in whole or in part, and no one other than *amici* or their counsel made a monetary contribution intended to fund the preparation or submission of this brief. All parties have consented in writing to the filing of this brief.

racial diversity in student admissions improves educational outcomes and fosters the spiritual development of *amici*'s students consistent with their Catholic values. Accordingly, *amici* respectfully urge the Court to affirm the judgment below.

Amici represent a broad spectrum of Catholic institutions of higher education across the country, some founded as far back as the 18th and 19th centuries. They are guided by various Catholic orders including the Jesuit, Augustinian, Benedictine, Lasallian, and Vincentian orders, the Congregation of the Holy Cross, and numerous Congregations of Sisters. They vary in size, ranging from large research universities to small liberal arts colleges. They are located in various settings ranging from urban centers to rural towns to America's heartland. Specifically, *amici* are the following:

Georgetown University: Founded in 1789 in Washington, D.C., Georgetown is the oldest Catholic and Jesuit university in the Nation. Georgetown was "founded on the principle that serious and sustained discourse among people of different faiths, cultures, and beliefs promotes intellectual, ethical and spiritual understanding." This principle is embodied in the "diversity of [its] students."² As Father General Arturo Sosa, S.J. (Superior General of the Society of Jesus) has stated, Georgetown's

² *University Mission Statement*, GEORGETOWN UNIV. (last visited July 27, 2022) ("*Georgetown Mission Statement*"), <https://governance.georgetown.edu/mission-statement>.

mission “involves recognizing diversity as a constitutive dimension of a full human life.”³

Boston College: Founded in 1863 by the Society of Jesus (the Jesuits), Boston College believes that a diverse student body is crucial to the fulfillment of its mission. Boston College is “rooted in a world view that calls us to learn, to search for truth, and to live in service to others. To fulfill that mission, we welcome and embrace the contributions of a diverse student body from many faith traditions.”⁴

The Catholic University of America: Located in Washington, D.C., Catholic University was established in 1887 and is the national university of the Bishops of the Catholic Church in the United States. Catholic University believes that differences on campus are opportunities to enact solidarity and that diversity is a mutually-enriching value.

College of the Holy Cross: Founded in 1843 in Worcester, Massachusetts, Holy Cross seeks to achieve diversity within each entering class, and is guided by a “longstanding dedication of the Society of

³ *Spirit of Georgetown*, GEORGETOWN UNIV. OFFICE OF MISSION & MINISTRY (last visited July 27, 2022) (“*Spirit of Georgetown*”), <https://missionandministry.georgetown.edu/mission/spirit-of-georgetown>.

⁴ *Mission & History*, BOSTON COLL. (last visited July 27, 2022), <https://www.bc.edu/content/bc-web/about/mission.html>; *History*, BOSTON COLL. OFFICE FOR INSTITUTIONAL DIVERSITY (last visited July 27, 2022), <https://www.bc.edu/content/bc-web/offices/human-resources/sites/oid/About-Us/History.html>.

Jesus to the intellectual life and its commitment to the service of faith and promotion of justice.”⁵

DePaul University: A Vincentian university in Chicago, Illinois, DePaul was established in 1898. To ennoble the dignity of all people, DePaul “recognize[s] the intrinsic connection between dignity and diversity as a natural and necessary context for human flourishing.”⁶

Fordham University: Established in 1841, Fordham University is a Jesuit institution located in New York City. Fordham is committed to diversity in all dimensions and believes understanding and respecting that which makes each of us unique is an essential part of a Catholic and Jesuit education.

Marquette University: Located in Milwaukee, Wisconsin, Marquette University is a Jesuit university founded in 1881. Marquette strives to enroll and graduate individuals who will live as servant leaders with a commitment to the Jesuit tradition and Catholic social teaching for all people, beliefs, and faith traditions.

University of Notre Dame: Founded in 1842 in South Bend, Indiana, Notre Dame has a Mission Statement affirming that: “The intellectual

⁵ *Mission Statement*, COLL. OF THE HOLY CROSS (last visited July 27, 2022), <https://www.holycross.edu/about-us/mission-statement>.

⁶ *University Mission Statement*, DEPAUL UNIV. (last visited July 27, 2022) (“*DePaul Mission Statement*”), <https://offices.depaul.edu/mission-ministry/about/Pages/mission.aspx>.

interchange essential to a university requires, and is enriched by, the presence and voices of diverse scholars and students.”⁷

Villanova University: Founded in Villanova, Pennsylvania in 1842 by the Order of St. Augustine, Villanova is “committed to cultivating an academic environment that is marked by genuine curiosity about different perspectives, ardent receptivity to knowledge generated through intercultural connections, and a genuine sensitivity to the variety of human experiences.”⁸

Albertus Magnus College: Founded in 1925 by the Dominican Sisters of Saint Mary of the Springs, Albertus Magnus College is located in New Haven, Connecticut.

Bellarmino University: Founded in 1950, Bellarmine is a Catholic university in Louisville, Kentucky.

Cabrini University: Founded in 1957, Cabrini University located in Radnor, Pennsylvania draws its values from Saint Frances Xavier Cabrini and the Catholic educational tradition.

Caldwell University: Established in 1939 by the Sisters of St. Dominic, Caldwell University is a

⁷ *Mission*, UNIV. OF NOTRE DAME (last visited July 27, 2022) (“*Notre Dame Mission*”), <https://www.nd.edu/about/mission/>.

⁸ *Our Philosophy*, VILLANOVA UNIV. OFFICE OF DIVERSITY, EQUITY & INCLUSION, (last visited July 27, 2022) (“*Villanova: Our Philosophy*”), <https://www.villanova.edu/content/university/diversity-inclusion.html>.

Catholic Dominican institution located in Caldwell, New Jersey.

Canisius College: Canisius College is a Jesuit institution founded in 1870 in Buffalo, New York.

Christian Brothers University: Founded in 1871, Christian Brothers University is located in Memphis, Tennessee and educates students in the Lasallian tradition.

Clarke University: Clarke University is a Catholic school in Dubuque, Iowa, founded in 1843 by Mary Frances Clarke, founder of the Sisters of Charity of the Blessed Virgin Mary.

DeSales University: A Catholic, Salesian university established in 1964, DeSales University is located in Center Valley, Pennsylvania.

Fontbonne University: Fontbonne University is a Catholic University in Clayton, Missouri, founded in 1923.

Franciscan School of Theology: Franciscan is a Catholic graduate institution located in San Diego that provides theological training.

Holy Family University: Holy Family was founded in Philadelphia in 1954 by the Congregation of the Sisters of the Holy Family of Nazareth.

King's College: Founded in 1946 and located in Wilkes-Barre, Pennsylvania, King's College is a Catholic college guided by the Congregation of Holy Cross.

Le Moyne College: Located in Syracuse, New York, Le Moyne was founded in 1946 and was the first co-educational Jesuit college in the United States.

Lewis University: Lewis University is a Catholic and Lasallian university founded in Romeoville, Illinois in 1932.

Lourdes University: Founded in 1958, Lourdes University is a Franciscan university located in Sylvania, Ohio.

Loyola University of Chicago: Loyola University of Chicago is a Jesuit research university founded in 1870.

Loyola University Maryland: Located in Baltimore, Loyola University Maryland is a Jesuit university founded in 1852.

Loyola University New Orleans: Founded in 1904, Loyola University New Orleans is a Jesuit University.

Marian University: Founded in 1851 by the Sisters of St. Francis, Oldenburg, Marian University moved to Indianapolis, Indiana in 1937.

Marymount University: Marymount University, located in Arlington, Virginia, was founded in 1950 by the Religious of the Sacred Heart of Mary.

Marywood University: Established in 1915 and located in Scranton, Pennsylvania, Marywood University was founded by the Sisters, Servants of the Immaculate Heart of Mary.

Mexican American Catholic College: MACC was founded in San Antonio, Texas in 1972 by the Archdiocese of San Antonio and the Texas Catholic Conference as the Mexican American Cultural Center for pastoral formation and language study.

Mount Mary University: Founded in 1913 by the School Sisters of Notre Dame, Mount Mary University is a Catholic women's university located in Milwaukee, Wisconsin.

Mount St. Joseph University: Mount St. Joseph University is a Catholic university in Delhi, Ohio founded by the Sisters of Charity of Cincinnati in 1920.

Mount St. Mary's University: Mount St. Mary's University is a liberal arts, Catholic university near Emmitsburg, Maryland.

Mount Saint Mary's University, Los Angeles: A Catholic university primarily for women, MSMU was founded in 1925 by the Sisters of St. Joseph of Carondelet.

Niagara University: Established in 1856, Niagara is a Catholic university located in Lewiston, New York that follows in the Vincentian tradition.

Notre Dame de Namur University: Located in Belmont, California, Notre Dame de Namur University was founded by the Sisters of Notre Dame de Namur in 1851.

Ohio Dominican University: Founded in 1911, Ohio Dominican is a liberal arts university located in Columbus, Ohio.

Saint Anselm College: Saint Anselm College is a Benedictine liberal arts college in Manchester, New Hampshire, founded in 1889.

Saint Louis University: Located in St. Louis, Missouri and founded in 1818, Saint Louis University is a Jesuit university.

Santa Clara University: The oldest operating institution of higher learning in California, Santa Clara University is a Jesuit school founded in 1851.

Seton Hall University: Founded in 1856, and located in South Orange, New Jersey, Seton Hall is named after Elizabeth Ann Seton, the first American-born saint.

Seton Hill University: Chartered in 1918, Seton Hill University is a Catholic liberal arts university founded by the Sisters of Charity located in southwestern Pennsylvania.

Siena Heights University: A Catholic institution founded by the Adrian Dominican Sisters in 1919, Siena Heights University is located in Adrian, Michigan.

St. Catherine University: Founded in 1905, by the Sisters of St. Joseph of Carondelet, St. Catherine University is a Catholic liberal arts university located in St. Paul, Minnesota.

St. Edward's University: Founded in 1885, St. Edwards is a Holy Cross university located in Austin, Texas.

St. John's University: A Catholic and Vincentian university, St. John's was founded in 1870 and is located in Queens, New York.

St. Thomas Aquinas College: Founded by the Dominican Sisters, St. Thomas Aquinas College is a liberal arts college located in Sparkill, New York.

Thomas More University: Thomas More is a Catholic university located in Crestview Hills, Kentucky, founded in 1921 by the Benedictine Sisters.

Trinity Washington University: Founded in 1897 in Washington, D.C. by the Sisters of Notre Dame de Namur, Trinity Washington University was the Nation's first Catholic liberal arts college for women and is a Predominantly Black and Hispanic-Serving Institution.

Trocaire College: The Sisters of Mercy founded Trocaire College in Buffalo, New York in 1958.

University of Dayton: Founded in 1850 by the Society of Mary, the University of Dayton is a Catholic institution located in Dayton, Ohio.

University of the Incarnate Word: Founded in 1881 by the Sisters of Charity of the Incarnate Word, the University of the Incarnate Word is a Catholic university in San Antonio, Texas.

University of Portland: Founded in 1901 and located in Portland, Oregon, the University of Portland is affiliated with the Congregation of Holy Cross.

University of Providence: The University of Providence is a Catholic university in Great Falls, Montana established in 1932 by the Sisters of Providence.

University of St. Thomas: Founded in 1885, the University of St. Thomas is a Catholic university in St. Paul, Minnesota.

Xavier University of Louisiana: A historically Black college, Xavier University of Louisiana was founded in 1925 and is located in New Orleans.

INTRODUCTION AND SUMMARY OF ARGUMENT

Catholic colleges and universities play a large and vital role in the Nation's system of higher education. There are over 250 Catholic colleges and universities nationwide. They together educate over 850,000 students annually in undergraduate and graduate programs. Catholic colleges and universities also participate in federal funding programs on an equal footing with secular institutions, subject to Title VI of the Civil Rights Act of 1964.

Like many secular institutions of higher learning, Catholic colleges and universities consider a variety of factors in student admissions, including academic and extracurricular achievements, geographic, cultural and religious backgrounds, socioeconomic status, and racial identities. Like many secular colleges and universities, many Catholic colleges and universities consider race as one factor in their individualized review of student applications. They do so in order to advance their academic mission by exposing students to diverse backgrounds in their classes and extracurricular activities and by producing diverse classes of graduates to serve as future leaders in the Nation's government, business, nonprofit and education sectors. Unlike their secular counterparts, they also do so in order to advance their religious mission, including their commitments to social justice, the common good, and service to others.

Catholic colleges and universities seek diversity in their student bodies, including racial diversity, not only to serve their academic mission but also to

advance their religious mission. Catholic teachings emphasize the dignity of each individual and the importance of service to the underrepresented. Diversity creates a learning environment that furthers the pedagogical goals of Catholic colleges and universities, including rigorous thinking, understanding of and empathy toward people of different backgrounds, concern for the poor and underserved, and leadership in service to others. The education that students receive in a diverse environment, including a racially diverse environment, serves Catholic values of respect for universal human dignity and divine creation, and in turn creates alumni equipped to contribute to Catholic goals of leadership in service. Without a diverse student body, including a racially diverse student body, *amici* would not be able to offer the same high-quality education to future leaders—an education animated by Catholic values of social justice and the promotion of the common good.

This Court has long recognized that racial diversity in college and university admissions serves a compelling societal interest. *Amici* respectfully submit that such a compelling interest is not merely abstract or judicially implied, but is rather deeply rooted in constitutional principles. As to all colleges and universities, racial diversity in admissions serves a compelling interest in academic freedom that is grounded in the First Amendment's Free Speech Clause. And as to Catholic colleges and universities in particular, racial diversity in admissions additionally serves a compelling interest in freedom of religious practice and expression that is grounded in the First Amendment's Free Exercise Clause.

For all these reasons, *amici* respectfully urge affirmance of the judgments below and the continued allowance of the use of race as one factor among others in college and university admissions policies.

ARGUMENT

I. DIVERSITY IN ADMISSIONS, INCLUDING RACIAL DIVERSITY, FURTHERS BOTH THE ACADEMIC AND RELIGIOUS MISSIONS OF CATHOLIC COLLEGES AND UNIVERSITIES

A. Catholic Colleges And Universities Play A Vital Role In Higher Education

Catholic colleges and universities have played a vital role in the Nation’s system of higher education since their inception, beginning with Georgetown’s founding in 1789.⁹ As of 2019, there were over 250 Catholic colleges and universities in the United States, educating more than 850,000 students annually nationwide.¹⁰ These institutions not only

⁹ See M. Rizzi, *We’ve Been Here Before: A Brief History of Catholic Higher Education in America*, 37:2 J. CATHOLIC HIGHER EDUC. 153, 155-157 (2018) (noting that American Catholic colleges in the late 18th and first half of the 19th centuries “filled a niche similar to that of community colleges today, primarily offering access to education and serving poor, first-generation undergraduates from their immediate neighborhoods” and that “the purpose of most Catholic colleges was to educate an otherwise underserved population”).

¹⁰ *Catholic Higher Education FAQs*, ASS’N OF CATHOLIC COLLS. & UNIVS. (last visited July 27, 2022) (“ACCU FAQ”), <https://www.accunet.org/Catholic-Higher-Ed-FAQs> (2018-2019, (footnote continued)

provide distinguished undergraduate education, but also offer some of the Nation's most prominent graduate and professional education programs, including law schools, medical schools, nursing schools, engineering schools, schools of education, and more.¹¹

Graduates of Catholic colleges and universities have gone on to storied careers in a wide variety of fields, including as government officials (President William J. Clinton, Georgetown; Governor Pedro Rosselló, Notre Dame; Secretary of State Condoleezza Rice, Notre Dame; Chair Martin R. Castro, U.S. Commission on Civil Rights, DePaul), business leaders (Chairman and CEO of McDonald's Corp. Jack Greenberg, DePaul; General Manager of the New York Yankees Brian Cashman, Catholic University), religious leaders (Sister Thea Bowman, Catholic University), judges (Chief Justice of the Supreme Court of Puerto Rico Maite Oronoz Rodríguez, Georgetown), astronauts (NASA Shuttle Commander Andrew Allen, Villanova), entertainers (The Tonight Show host Ed McMahon, Catholic University), writers (Academy Award-winner Tarell Alvin McCraney, DePaul), lawyers (leader of the D.C. public defender's office Cheryl Long, Georgetown), and military leaders (Marine Infantry Commander

citing U.S. DEP'T OF EDUC., INTEGRATED POSTSECONDARY EDUC. DATA SYSTEM).

¹¹ See, e.g., *Distinctive Academic Programs*, ASS'N OF CATHOLIC COLLS. & UNIVS. (last visited July 27, 2022), <https://www.accunet.org/About-Catholic-Higher-Ed-Distinctive-Academic-Programs> (estimating more than 200 Catholic institutions of higher education award graduate degrees).

and Secretary of the Air Force Jerome G. Cooper, Notre Dame), among many others, including Justices of this Court. Fully twenty-eight current members of Congress are Georgetown alumni.¹²

As this list illustrates, alumni from Catholic colleges and universities make profound contributions to the Nation's government, business, education and nonprofit sectors. When graduates of Catholic universities rise to leadership positions across all such areas of human endeavor, they educate and inspire future generations.

Catholic colleges and universities depend on federal funding so that they may continue to educate their students. In the 2018-2019 academic year, 226 Catholic institutions of higher education participated in federal student financial aid programs.¹³ An average of 94% of their students received some form of financial aid, with 38% receiving federal Pell Grants.¹⁴

Catholic institutions of higher learning also hold a prominent role in preparing students to engage in community service and advance the common good. In a survey of over 500 current students or recent graduates of Catholic colleges and universities, 50% reported having participated “in an organization or

¹² *More than 20 Georgetown Alumni Serving in the 117th Congress*, GEORGETOWN UNIV. (Dec. 28, 2020) <https://www.georgetown.edu/news/more-than-20-georgetown-alumni-serving-in-the-117th-congress/>.

¹³ *ACCU FAQ*, *supra* note 10 (2018-2019, citing U.S. DEP'T OF EDUC., INTEGRATED POSTSECONDARY EDUC. DATA SYSTEM).

¹⁴ *ACCU FAQ*, *supra* note 10 (2017-2018, citing U.S. DEP'T OF EDUC., INTEGRATED POSTSECONDARY EDUC. DATA SYSTEM).

program devoted to community service, alleviating human suffering, or otherwise concerned with social justice.”¹⁵ DePaul, for example, offers “alternative break” programs in which students spend academic breaks performing direct service in communities throughout the United States and Latin America.¹⁶ Eighty-two percent of undergraduates recently reported participating in volunteer work during their time at Boston College.¹⁷

B. Racial Diversity In Admissions Furtheres The Academic Mission Of Catholic Colleges And Universities

This Court “has long recognized that ‘education ... is the very foundation of good citizenship.’” *Grutter v. Bollinger*, 539 U.S. 306, 331 (2003) (quoting *Brown v. Board of Ed.*, 347 U.S. 483, 493 (1954)). And as this Court has long recognized, “part of the business of a university is to provide that atmosphere which is

¹⁵ S. Wagner, *Behaviors and Beliefs of Current and Recent Students at U.S. Catholic Colls.*, CTR. FOR STUDY OF CATHOLIC HIGHER EDUC. (Oct. 1, 2008), <https://newmansociety.org/wp-content/uploads/SICHE-October-2008-Wagner-11-03-081.pdf>.

In contrast, only about 26% of all college students volunteer in some form. B. Paynter, *College kids want to save the world, just don't ask them to volunteer*, FASTCOMPANY (May 25, 2018), <https://www.fastcompany.com/40575356/college-kids-want-to-save-the-world-just-dont-ask-them-to-volunteer>.

¹⁶ *Alternative Break Service Immersions*, DEPAUL UNIV. DIV. OF MISSION & MINISTRY (last visited July 27, 2022), <https://offices.depaul.edu/mission-ministry/community-service/break-service-immersions/Pages/default.aspx>.

¹⁷ *Boston College Undergraduate Admission Viewbook*, BOSTON COLL. (Oct. 4, 2021), https://issuu.com/bcua/docs/boston_college_viewbook.

most conducive to speculation, experiment, and creation, and this in turn leads to the question of who may be admitted to study.” *Fisher v. Univ. of Tex. at Austin*, 570 U.S. 297, 308 (2013).

Accordingly, the Court has long upheld against constitutional and statutory challenge the consideration of race in college and university admissions. The Court has recognized that, “[j]ust as growing up in a particular region or having particular professional experiences is likely to affect an individual’s views, so too is one’s own, unique experience of being a racial minority in a society, like our own, in which race unfortunately still matters.” *Grutter*, 539 U.S. at 333. The Court has reasoned that, “[i]n seeking the right to select those students who will contribute the most to the ‘robust exchange of ideas,’ a university ‘seek[s] to achieve a goal that is of paramount importance to the fulfillment of its mission.’” *Id.* at 329 (quoting *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 313 (1978)); *see also Fisher*, 570 U.S. at 308.

Catholic colleges and universities, like their secular counterparts, seek to create such an atmosphere of robust exchange by building dynamic, engaging, and inclusive environments that foster exposure to new ways of thinking and perspectives on the world—in classrooms, over meals, on athletic fields, after rehearsals, and in campus faith groups and other student communities.

Moreover, Catholic colleges and universities, again like their secular counterparts, are devoted to “preparing students for work and citizenship” after their graduation, and thus to training “our Nation’s leaders” for success and contribution to the public

good in an increasingly multicultural society and globalized world. *Grutter*, 539 U.S. at 330-31; *see id.* at 330 (“student body diversity promotes learning outcomes, and better prepares students for an increasingly diverse workforce and society, and better prepares them as professionals”) (quotations omitted); *id.* (“The skills needed in today’s increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas and viewpoints.”).

As a crucial component of their efforts to foster such dynamic learning environments and graduate such accomplished alumni, Catholic colleges and universities strive to admit and educate racially diverse student bodies. Like many secular colleges and universities, they employ a holistic admissions process that examines all aspects of an individual’s application for contribution to the school community and beyond. This may include a student’s academic record, community service and interests, life experience, extracurricular achievements, geographic, socio-economic, cultural and religious backgrounds, and racial identities.¹⁸

¹⁸ *See, e.g., Applying to Georgetown*, GEORGETOWN UNIV. OFFICE OF UNDERGRADUATE ADMISSIONS (last visited July 27, 2022), <https://uadmissions.georgetown.edu/> (“We believe you will find Georgetown’s application process highly personalized.... While a candidate’s academic performance is the most important criteria under consideration, accomplishments outside of the classroom, demonstrated commitment to the broader community, and personal qualities such as resiliency, motivation and ambition are certainly considered. It is these qualities that make you an individual and someone who will uniquely add to – and benefit from – the
(footnote continued)

C. Racial Diversity In Admissions Serves The Religious Mission Of Catholic Colleges And Universities

Beyond the academic mission they share with their secular counterparts, Catholic colleges and universities also advance their religious mission by seeking diversity, including racial diversity, in the composition of their student bodies. Catholic teachings emphasize the dignity of each human being and the importance of service to the community and the underserved.¹⁹ *Amici's* commitment to developing “good citizenship” in a

Georgetown University community”); *Apply*, COLL. OF THE HOLY CROSS (last visited July 27, 2022), <https://www.holycross.edu/admissions-aid/apply> (“During the application process, we hope to learn about your talents and passions — the things that really move you — and get a sense of how you will grow and contribute to the community.”).

¹⁹ See, e.g., *We are all Notre Dame*, UNIV. OF NOTRE DAME DIVISION OF STUDENT AFFAIRS (last visited July 27, 2022), <https://studentaffairs.nd.edu/about/diversity-inclusion/> (“As a Catholic University, we believe every human being possesses the dignity of being made in God’s image, and every culture reflects God’s grandeur. Diversity at Notre Dame enriches the lives of every individual and the community as a whole.”); *Together at Notre Dame: Notre Dame Principles of Diversity and Inclusion*, UNIV. OF NOTRE DAME OFFICE OF THE PRESIDENT (last visited July 27, 2022) (“*Together at Notre Dame*”), <https://diversity.nd.edu/together-at-notre-dame/> (“We affirm the transcendent dignity and worth of every human person.”); *DePaul DREAM*, DEPAUL UNIV. OFFICE OF INSTITUTIONAL DIVERSITY & EQUITY (last visited July 27, 2022) (“*DePaul DREAM*”), <https://offices.depaul.edu/diversity/advocacy/Pages/depaul-dream.aspx> (recognizing “the dignity of the individual” as “part of our core values and traditions as a Catholic” university).

diverse society is drawn from Catholic religious tradition and social teaching. That tradition and teaching view diversity as a key component in respecting the dignity of each human person and promoting the common good and social justice.²⁰ As Pope Francis stated in his apostolic exhortation *AMORIS LÆTITIA*, “Jesus ‘expects us to stop looking for those personal or communal niches which shelter us from the maelstrom of human misfortune, and instead to enter into the reality of other people’s lives.’”²¹ A spiritual touchstone that underscores these principles comes from St. Paul, who in his Epistle to the Galatians said “[t]here is neither Jew nor Greek: there is neither bond nor free: there is neither male nor female. For you are all one in Christ Jesus.” *Galatians* 3:28 (DRB).

²⁰ See *Together at Notre Dame*, *supra* note 19 (“One of the essential tests of social justice within any Christian community is its abiding spirit of inclusion. Scriptural accounts of Jesus provide a constant witness of this inclusiveness.”); *Community & Diversity: Our Commitment*, GEORGETOWN UNIV. (last visited July 27, 2022), <https://www.georgetown.edu/campus-life/campus-life/community-diversity/> (“At the heart of Georgetown is a longstanding Jesuit tradition of people for others, which steers us towards spiritual inquiry, civic engagement and religious and cultural pluralism.”); *Villanova: Our Philosophy*, *supra* note 8 (“It is through a diverse community of scholars and students—representing various viewpoints and experiences—that the Catholic intellectual tradition is best accomplished.”).

²¹ Pope Francis, *AMORIS LÆTITIA* (¶ 308) (Mar. 19, 2016) (“*AMORIS LÆTITIA*”) (quoting Pope Francis, *EVANGELII GAUDIUM* (¶ 270) (Nov. 24, 2013)), https://www.vatican.va/content/dam/francesco/pdf/apost_exhortations/documents/papa-francesco_esortazione-ap_20160319_amoris-laetitia_en.pdf.

For example, the Jesuit educational tradition recognizes the value of diversity as necessary to the best pedagogy.²² Indeed, at Georgetown's founding in 1789, Bishop John Carroll insisted that it be open to students of different faiths.²³ Notre Dame's mission statement similarly recognizes that "the intellectual interchange essential to a university requires, and is enriched by, the presence and voices of diverse scholars and students."²⁴ Likewise, Holy Cross believes that "[f]ostering a true and fruitful dialogue requires a diverse community of participants" and the "Jesuit mission has always sought to engage with people of all cultures, value systems and faith traditions. Today, we do this by bringing people of all backgrounds and beliefs here to The Hill and by sending our students out into the world."²⁵ Other Catholic orders also regard diversity

²² *Undergraduate Education in the Jesuit Tradition*, GEORGETOWN COLL. (last visited July 27, 2022), <https://college.georgetown.edu/discover/undergraduate-education-jesuit-tradition/>.

²³ *University History*, GEORGETOWN UNIV. (last visited July 27, 2022), <https://hr.georgetown.edu/history/>, ("[Archbishop John] Carroll envisioned an academy as both a Catholic and distinctly American institution. Moreover, he welcomed to the school students of all faiths and economic classes. In accordance with Carroll's determination that his academy be 'open to Students of every religious Profession' nearly a fifth of the student population during the first decade was Protestant. Throughout the 19th century, religious pluralism characterized Georgetown's student population ...").

²⁴ *Notre Dame Mission*, *supra* note 7.

as central to a Catholic education.²⁶ As Pope Francis stated in *AMORIS LÆTITIA*, the “combination of two different ways of thinking can lead to a synthesis that enriches both.”²⁷

Based on their experience, *amici* respectfully submit that having a racially diverse student body serves their Catholic religious mission for at least four reasons.

First, diversity creates a dynamic learning environment that furthers the pedagogical goals of Catholic colleges and universities. *Amici* and other Catholic institutions of higher education strive to provide an education that furthers Catholic values of rigorous thinking, understanding of and empathy toward people of different backgrounds, concern for the poor and underserved, and leadership in service to others. Having a campus community comprised of students with a broad array of experiences and perspectives, including a variety of racial identities, is integral to that iterative learning process.

²⁵ *Mission and Action*, COLL. OF THE HOLY CROSS (last visited July 27, 2022), <https://www.holycross.edu/about-us/jesuit-catholic-tradition>.

²⁶ See, e.g., *Diversity Statement*, VILLANOVA UNIV. OFFICE OF DIVERSITY, EQUITY & INCLUSION (last visited July 27, 2022), <https://www.villanova.edu/university/diversity-inclusion/about.html#diversity-statement> (“Villanova University, as a Catholic Augustinian institution of higher education, recognizes diversity as an integral component of the teaching and learning experience and as an essential element of the ongoing intellectual, social and spiritual development of every member of the Villanova community.”).

²⁷ *AMORIS LÆTITIA*, *supra* note 21 (¶ 139).

The imperative to create diverse and inclusive student and graduate communities is particularly important to *amici* and other Catholic institutions of higher learning. As just one example, Georgetown has long “link[ed] the authentic following of the Gospel of Jesus with an obligation to address the social realities of poverty, oppression and injustice in our world.”²⁸ The practices central to Georgetown’s religious mission include: (1) “serious and sustained discourse among people of different faiths, cultures, and beliefs”; and (2) producing graduates who will work for “the well-being of humankind,” be “responsible and active participants in civic life,” and “live generously in service to others.”²⁹ These practices are enhanced by students’ sustained exposure to members of a truly diverse community.³⁰

²⁸ *Spirit of Georgetown*, *supra* note 3.

²⁹ *Georgetown Mission Statement*, *supra* note 2.

³⁰ See, e.g., *Notre Dame Board of Trustees’ Task Force Report on Diversity, Equity, and Inclusion*, UNIV. OF NOTRE DAME OFFICE OF THE PRESIDENT (last visited July 27, 2022), <https://president.nd.edu/presidents-initiatives/notre-dame-board-of-trustees-task-force-report-on-diversity-equity-and-inclusion/> (describing mission to “fight against racism and all forms of injustice,” noting that “[t]here are networks of privilege, prejudice, and power so commonplace that often neither oppressors nor victims are aware of them. We must be aware and also understanding by reason of fellowship with the impoverished and by reason of patient learning.”) (emphasis omitted); *College of Liberal Arts and Sciences - Diversity, Equity & Inclusion*, VILLANOVA UNIV. (last visited July 27, 2022), <https://www.villanova.edu/university/liberal-arts-sciences/about/diversity.html> (describing “interrelated goals embedded in the University’s Augustinian mission” as including a commitment “to anti-racism, the policy or practice of opposing racism and promoting racial acceptance”).

Second, the dynamic growth students experience through a diverse environment, even if at times potentially challenging, enhances *amici*'s mission to increase tolerance, and thereby reduce racial stereotyping, in furtherance of the Catholic values of respect for the dignity of all persons and divine creation.³¹ Particularly for a Catholic institution committed to advancing these tenets, “[t]he attainment of a diverse student body ... serves values beyond race alone, including enhanced classroom dialogue and the lessening of racial isolation and stereotypes.” *Fisher*, 570 U.S. at 308.

Third, consistent with the commitment to the common good and social justice at the core of the Catholic faith, *amici* and other Catholic institutions of higher learning believe it is a moral imperative to ensure that talented members of underrepresented minority groups have access to the educational opportunities that will enable them to advance and

³¹ See, e.g., *Diversity and Inclusion*, UNIV. OF NOTRE DAME (last visited July 27, 2022), <https://diversity.nd.edu/> (Notre Dame promotes “a spirit of diversity and inclusion through academic inquiry, and programs and opportunities that reflect our foundational belief in the dignity of all men and women.”); *Together at Notre Dame*, *supra* note 19 (“We affirm the transcendent dignity and worth of every human person.”); *DePaul DREAM*, *supra* note 19 (DePaul recognizes “the dignity of the individual. We value diversity and culture because these are part of our core values and traditions as a Catholic, Vincentian, and urban university.”); *Diversity Equity and Inclusion at Villanova*, VILLANOVA UNIV. (last visited July 27, 2022), <https://www.villanova.edu/university/diversity-inclusion/about.html> (“we believe that diversity is at the heart of all teaching and learning experiences”).

contribute to the public good.³² This is borne out by empirical studies that suggest that African-Americans and Latinos and Latinas who attended Catholic secondary schools were more likely than

³² See, e.g., Pope John Paul II, EX CORDE ECCLESIAE (¶ 34) (Aug. 15, 1990), https://www.vatican.va/content/john-paul-ii/en/apost_constitutions/documents/hf_jp-ii_apc_15081990_ex-corde-ecclesiae.html (“The Christian spirit of service to others for the promotion of social justice is of particular importance for each Catholic University.... Every Catholic University feels responsible to contribute concretely to the progress of the society within which it works: for example it will be capable of searching for ways to make university education accessible to all those who are able to benefit from it, especially the poor or members of minority groups who customarily have been deprived of it.”); *Characteristics of Jesuit Higher Education: A Guide for Mission Reflection*, ASS’N OF JESUIT COLLS. & UNIVS. (last visited July 27, 2022), <https://static1.squarespace.com/static/55d1dd88e4b0dee65a6594f0t/612fafa56362bb224b00f773/1630515115139/A+Guide+for+Mission+Reflection+09-21.pdf> (“The core principles of Catholic social teaching ... include: A preferential option for those who experience poverty and marginalization, stemming from a vision of God as ‘deliverer’ who identifies with those who are oppressed[.]”); *DePaul Mission Statement*, *supra* note 6 (“Since its founding in 1898, DePaul University has remained dedicated to making education accessible to all, with special attention to including underserved and underrepresented communities.”); *A Message from Rev. John I. Jenkins, C.S.C.*, UNIV. OF NOTRE DAME OFFICE OF THE PRESIDENT (last visited July 27, 2022), <https://president.nd.edu/homilies-writings-addresses/a-message-from-rev-john-i-jenkins-c-s-c---let-us-seize-this-moment-to-make-notre-dame-even-more-a-force-for-good/> (President of Notre Dame calling upon community to enhance diversity “because only in this way can we live up to our Catholic mission, a mission that demands that we respect the dignity of every person, strive to build a community in which everyone can flourish and show regard for the most vulnerable”).

their non-Catholic school counterparts to graduate from high school and college.³³

Fourth, a diverse student community furthers *amici's* Catholic mission of developing thoughtful, creative and diverse leaders who will be equipped to contribute to the Catholic goal of service to others after graduation. By exposing students to classmates with a wide variety of backgrounds and racial identities, *amici* equip students with the critical thinking skills and cultural understandings necessary to navigate and succeed as servant-leaders in a variety of governmental, military, creative, business, educational, and non-governmental endeavors.

For example, part of Georgetown's mission is to educate "women and men to be reflective lifelong learners, to be responsible and active participants in civic life and to live generously in service to others."³⁴ Education in a diverse environment fosters the development of engaged and informed citizens who are able to work creatively and collaboratively with persons unlike themselves—a skill that empirical studies recognize as particularly integral to competing in a global marketplace.³⁵ *Amici's*

³³ See generally, e.g., J. Grogger & D. Neal, *Further Evidence of the Effects of Catholic Secondary Schooling*, BROOKS-WHARTON PAPERS ON URBAN AFFAIRS 151 (2000); D. Neal, *The Effects of Catholic Secondary Schooling on Educational Achievement*, 15 J. LABOR ECON. 98 (1997).

³⁴ *Georgetown Mission Statement*, *supra* note 2.

³⁵ Numerous studies show that diverse companies have increased revenue, greater creativity and collaboration among employees, and enhanced longevity and retention. See, e.g., S. Dixon-Fryle, *Diversity wins: How inclusion matters*, MCKINSEY (footnote continued)

experience mirrors this understanding: for example, DePaul has found that “a diverse workforce and educational environment is directly related to our success and is essential in preparing DePaul students to live and work in a global community.”³⁶ In addition to enhancing the servant-leadership skills of the student body as a whole, racial diversity contributes to the Catholic mission by producing racially diverse graduates who contribute to all sectors of public, economic and social life. The benefits of diversity have also been documented among parishioners, who overwhelmingly agree “that having people of different cultural backgrounds enriches their parish.”³⁷

In short, the inclusion of students with diverse backgrounds and diverse racial identities advances not only the academic mission but also the religious

& Co. (May 19, 2000); M. Tsusaka, *The Business Imperative of Diversity*, BOSTON CONSULTING GRP. (June 20, 2019); J. Bourke, *The diversity and inclusion revolution: Eight powerful truths*, DELOITTE REV. (Jan. 22, 2018). These studies found that, *inter alia*, diverse organizations are twice as likely to meet or exceed financial targets, six times more likely to innovate, eight times more likely to improve business outcomes, and 35% more likely to outperform industry peers. Companies with more diverse management teams also have 19% higher revenues due to innovation.

³⁶ *Institutional Diversity & Equity – Diversity at DePaul*, DEPAUL UNIV. (last visited July 27, 2022), <https://offices.depaul.edu/diversity/Pages/default.aspx>.

³⁷ M. Gray, *Cultural Diversity in the Catholic Church*, CTR. FOR APPLIED RESEARCH IN THE APOSTOLATE (Oct. 2016), <https://www.usccb.org/issues-and-action/cultural-diversity/upload/Cultural-Diversity-Summary-Report-October-2016.pdf>.

mission of Catholic institutions of higher learning, allowing them to offer high-quality education and to shape future leaders who will make tangible contributions to the Catholic spiritual commitment to social justice and the common good.

II. FIRST AMENDMENT FREEDOMS SUPPORT THE COMPELLING INTEREST IN *AMICI'S* DIVERSITY-BASED ADMISSIONS POLICIES

This Court has long held that racial diversity in college and university admissions serves a compelling interest. *See Grutter*, 539 U.S. at 328-33; *Fisher*, 570 U.S. at 310-11. *Amici* respectfully submit that this compelling interest is not merely judicially implied but is rooted in constitutional principle. The First Amendment freedom of speech protects the academic freedom of colleges and universities, both secular and religious alike, to consider racial diversity in deciding who they shall admit to study. And the First Amendment Free Exercise Clause protects the religious freedom of Catholic colleges and universities in particular to consider racial diversity in their student bodies as an aspect of advancing their religious mission. *Amici* respectfully submit that these constitutional principles support reaffirming precedent that racial diversity in admissions serves a compelling interest.

A. The Free Speech Clause Supports Academic Freedom To Consider Race In Admissions

The Court has long acknowledged that academic freedom is a “special concern of the First

Amendment,” even if it is “not a specifically enumerated constitutional right.” *Bakke*, 438 U.S. at 312 (Powell, J., concurring). In light of “the expansive freedoms of speech and thought associated with the university environment, universities occupy a special niche in our constitutional tradition.” *Grutter*, 539 U.S. at 329. Accordingly, “in the University setting, ... the [government] acts against a background and tradition of thought and experiment that is at the center of our intellectual and philosophic tradition.” *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 835 (1995).

This understanding of academic freedom as a species of free speech has long supported judicial respect for colleges’ and universities’ educational autonomy in matters of educational hiring and curriculum. “The Nation’s future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth out of a multitude of tongues,” and “[t]he classroom is peculiarly [this kind of] marketplace of ideas.” *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967) (quotations omitted).

The judicial regard for academic freedom applies equally to college and university admissions decisions. In the now-canonical statement of the “four essential freedoms of the university,” the concurrence in *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957), expressly listed admissions decisions as one of those freedoms:

[i]t is the business of a university to provide that atmosphere which is most conducive to speculation, experiment and creation ... an atmosphere in which

there prevail the four essential freedoms of a university—to determine for itself on academic grounds *who may teach, what may be taught, how it shall be taught, and **who may be admitted to study.***

Id. at 263 (Frankfurter, J., concurring in the result) (emphasis added, quotations omitted).

Admissions decisions that consider race as one among other factors thus are a component of academic freedom protected by the First Amendment. Affording universities “the right to select those students” whom they believe “will contribute most to the robust exchange of ideas” is a “countervailing constitutional interest ... of the First Amendment.” *Bakke*, 438 U.S. at 313 (Powell, J.); see *Fisher*, 570 U.S. at 308 (recognizing that university mandates to foster intellectual growth include decisions as to which students should comprise their student bodies); *Bakke*, 438 U.S. at 312 (Powell, J.) (“The freedom of a university to make its own judgments as to education includes the selection of its student body.”). As *Grutter* observed, “a compelling interest in a diverse student body” lies “at the heart of [a university’s] proper institutional mission,” and thus a school’s “educational judgment that [racial] diversity is essential to its educational mission is one to which [the Court will] defer.” 539 U.S. at 329, 328.

Accordingly, as an integral component of shaping and furthering their academic mission, *amici* and other colleges and universities should retain discretion regarding the students they choose to admit, including discretion to consider the racial diversity of their student bodies among other

admissions factors. *See Fisher*, 570 U.S. at 311-14. A measure of judicial deference to such academic decisionmaking is especially appropriate because the determination of who should become a member of a student body “requires an expert evaluation of cumulative information” that is particularly in the purview of the university, and “not readily adapted to the procedural tools of judicial or administrative decision-making.” *Bd. of Curators, Univ. of Mo. v. Horowitz*, 435 U.S. 78, 90 (1978). This Court has repeatedly noted the need for “respect for the faculty’s professional judgment” and “discretion in making judgments as to the academic performance of students and their entitlement to promotion or graduation.” *Regents of Univ. of Mich. v. Ewing*, 474 U.S. 214, 225 & n.11 (1985) (quotations omitted).

Similar respect and deference is warranted for admissions decisions. Admissions decisions are central to the academic mission of a college or university. How to constitute a class involves academic judgment, arguably more so than other decisions protected by First Amendment academic freedom precedents, such as the management of extracurricular activities or university governance. *See, e.g., Christian Legal Soc. Chapter of Univ. of Cal., Hastings Coll. of Law v. Martinez*, 561 U.S. 661, 686 (2010) (“A college’s commission—and its concomitant license to choose among pedagogical approaches—is not confined to the classroom, for extracurricular programs are, today, essential parts of the educational process.”); *Bd. of Regents of Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 231-32 (2000) (declining to distinguish extracurricular student activities along lines of relevance to the university’s mission of “stimulat[ing] the whole

universe of speech and ideas”); *Ewing*, 474 U.S. at 226 n.12 (academic freedom “thrives not only on the independent and uninhibited exchange of ideas among teachers and students, but also, and somewhat inconsistently, on autonomous decisionmaking by the academy itself”) (citing *Keyishian*, 385 U.S. at 603).

No less than curricular decisions, research selection, or university governance, admissions policies reflect the exercise of colleges’ and universities’ academic expertise. The “complex educational judgments,” *Grutter*, 539 U.S. at 328, involved in evaluating applicants’ abilities to contribute to a student body thus implicate academic freedom that gives constitutional weight to the compelling interest in student body diversity this Court recognized in *Grutter* and *Fisher*.

B. The Free Exercise Clause Supports Religious Freedom To Consider Race In Admissions

For Catholic colleges and universities like *amici* in particular, the Free Exercise Clause supplies an additional constitutional dimension to the compelling interest in racial diversity as one factor among many in admissions. *Amici*’s foundational Catholic values and teachings inform their commitment to give value to the identity of the whole person in admissions and to compose a student body that will, after graduation, promote the Catholic mission of the common good and service to others, especially the poor and underserved. *See supra* Part I.C.

The Free Exercise Clause has long protected religion-based decisions relating to the education of

students. *See, e.g., Wisconsin v. Yoder*, 406 U.S. 205 (1972) (compulsory secondary school attendance of Amish students against the teachings of their faith violates the Free Exercise Clause); *Pierce v. Soc’y of the Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510 (1925) (compulsory public school attendance violates the Free Exercise Clause, *inter alia*). Similarly, this Court has recognized that, under the Free Exercise Clause, religious primary and secondary schools and their students must be included in public educational funding schemes on an equal footing with secular schools and their students. *See, e.g., Carson v. Makin*, 142 S. Ct. 1987, 1997 (2022) (State cannot “condition[] the availability of benefits” in a manner that excludes religious schools because it “effectively penalizes the free exercise of religion”) (quotations omitted); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2022 (2017) (Free Exercise Clause bars “automatic and absolute exclusion” of church entity “from the benefits of a public program for which [it was] otherwise fully qualified”); *cf. Sherbert v. Verner*, 374 U.S. 398, 404 (1963) (Free Exercise Clause does not permit government to condition unemployment benefits on claimant’s religious beliefs); *Thomas v. Review Bd. of Ind. Employment Sec. Div.*, 450 U.S. 707, 709, 720 (1981) (similar).

These same freedoms support treating as a compelling interest *amici*’s discretion to choose students so as to fulfill their religious missions. The Free Exercise Clause’s protections do not begin and end at formal “worship.” *See, e.g., Horvath v. City of Leander*, 946 F.3d 787, 796 (5th Cir. 2020) (Ho, J., concurring in the judgment in part and dissenting in part) (“The broader scope of ‘exercise’—in contrast to

‘worship’ and ‘conscience’—indicates that, at the time of the Founding, the public would have understood the right to ‘free exercise’ to extend beyond mere ritual and private belief to cover any action motivated by faith.”).

As set forth in detail above, *see supra* Part I.C, promoting student body diversity—including racial diversity—is a fundamental component of *Amici*’s religious beliefs and teachings. A tenet of Catholicism is that “communion is enriched by respect and appreciation for differences within an overall perspective that advances the common good.”³⁸ In an educational setting, the Catholic mission is “enriched by the presence and voices of diverse scholars and students,”³⁹ and is reinforced by Catholicism’s focus on respecting the dignity of all people, including the “intrinsic connection between dignity and diversity as a natural and necessary context for human flourishing.”⁴⁰

Amici’s efforts to further diversity in admissions, including racial diversity, thus are inextricably intertwined with their religious foundations. *Amici* should not be unduly constrained in the range of factors they can consider in admissions, including the racial diversity of their student body and the graduates they send forth into the world as Catholic-educated alumni. For this reason, the free exercise of religion provides additional constitutional weight to the compelling interest in racial diversity in

³⁸ AMORIS LÆTITIA, *supra* note 21 (¶ 139).

³⁹ *Together at Notre Dame*, *supra* note 19.

⁴⁰ *DePaul Mission Statement*, *supra* note 6.

admissions for the Catholic institutions of higher learning that *amici* represent.

CONCLUSION

Amici respectfully urge this Court to affirm the judgments below.

Respectfully submitted,

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