

IN THE  
**Supreme Court of the United States**

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

*v.*

PRESIDENT & FELLOWS OF HARVARD COLLEGE,  
*Respondent.*

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

*v.*

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

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ON WRITS OF CERTIORARI TO THE UNITED STATES COURTS  
OF APPEALS FOR THE FIRST AND FOURTH CIRCUITS

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**BRIEF IN SUPPORT OF RESPONDENTS OF *AMICI  
CURIAE* MULTICULTURAL MEDIA, TELECOM AND  
INTERNET COUNCIL, INC., NATIONAL ASSOCIATION OF  
BLACK OWNED BROADCASTERS, NATIONAL HISPANIC  
FOUNDATION FOR THE ARTS, EMMA BOWEN FOUNDATION  
FOR MINORITY INTERESTS IN MEDIA, AND NATIONAL  
NEWSPAPER PUBLISHERS ASSOCIATION**

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**TABLE OF CONTENTS**

	<i>Page</i>
TABLE OF CONTENTS.....	i
TABLE OF CITED AUTHORITIES .....	iii
INTEREST OF <i>AMICI CURIAE</i> .....	1
INTRODUCTION AND SUMMARY OF THE ARGUMENT.....	3
ARGUMENT.....	6
I.    ELIMINATING THE USE OF RACE AS A FACTOR IN ADMISSIONS COULD ADVERSELY AFFECT COMMUNICATIONS POLICIES AND PROGRAMS DESIGNED TO PROMOTE DIVERSITY AND EQUITY .....	6
II.   USING RACE AS A FACTOR IN ADMISSIONS PROMOTES A DIVERSE AND INCLUSIVE PIPELINE OF STUDENTS FROM COLLEGES AND UNIVERSITIES TO LEADERS IN THE COMMUNICATIONS INDUSTRY.....	16
A.  THE USE OF RACE AS A FACTOR IN ADMISSIONS PROMOTES A DIVERSE AND INCLUSIVE WORKFORCE, WHICH IS CRITICAL TO THE SUCCESS OF THE COMMUNICATIONS INDUSTRY .....	16

*Table of Contents*

	<i>Page</i>
B. DIVERSITY IN THE COMMUNICATIONS INDUSTRY RELIES ON DIVERSITY IN COLLEGES AND UNIVERSITIES. ....	.20
III. ELIMINATING THE USE OF RACE AS A FACTOR IN ADMISSIONS COULD STIFLE THE CREATION AND MAINTENANCE OF THE DIVERSE COMMUNICATIONS MARKETPLACE THAT CONGRESS INTENDED.....	.21
CONCLUSION .....	.26

TABLE OF CITED AUTHORITIES

	<i>Page</i>
<b>CASES</b>	
<i>Associated Press v. United States</i> , 326 U.S. 1 (1945).....	7
<i>FCC v. Prometheus Radio Project</i> , 141 S. Ct. 1150 (2021).....	10
<i>Fisher v. University of Texas at Austin</i> , 579 U.S. 365 (2016).....	17, 18, 20
<i>Grutter v. Bollinger</i> , 539 U.S. 306 (2003).....	18, 20
<i>Regents of Univ. of California v. Bakke</i> , 438 U.S. 265 (1978).....	18
<i>Students for Fair Admissions, Inc. v. President &amp; Fellows of Harvard College</i> , 980 F.3d 157 (1st Cir. 2020).....	20
<i>Turner Broadcasting System, Inc. v. FCC</i> , 512 U.S. 622 (1994).....	7, 23
<i>TV 9 Inc. v. FCC</i> , 495 F.2d 929 (D.C. Cir. 1973) .....	23

*Cited Authorities*

	<i>Page</i>
<b>CONSTITUTION &amp; STATUTES</b>	
47 U.S.C. § 151 .....	7
47 U.S.C. § 309(j)(3)(B) .....	8
47 U.S.C. § 309(j)(4)(D) .....	8
47 U.S.C. § 532 .....	10
47 U.S.C. § 532(a) .....	7, 10
<b>OTHER AUTHORITIES</b>	
47 C.F.R. §§ 1.2110, 27.1102, 27.1104, 27.1106, 27.1301 ..	8
47 C.F.R. §§ 73.2080, 76.73, 76.75 .....	12
47 C.F.R. §§ 76.970-76.977 .....	10
<i>2014 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Second Report and Order, 31 FCC Rcd 9864 (2016) .....</i>	<i>10, 11, 24</i>
Adam Grant, <i>What Straight-A Students Get Wrong</i> , N.Y. TIMES (Dec. 8, 2018), <a href="https://www.nytimes.com/2018/12/08/opinion/college-gpa-career-success.html">https:// www.nytimes.com/2018/12/08/opinion/college- gpa-career-success.html</a> .....	18-19

*Cited Authorities*

	<i>Page</i>
Adam Jacobson, <i>Diverse Content: A Driver of TV Antenna Use</i> , RADIO + TELEVISION BUSINESS REPORT (Feb. 15, 2022), <a href="https://www.rbr.com/diverse-content-a-driver-of-tv-antenna-use/">https://www.rbr.com/diverse-content-a-driver-of-tv-antenna-use/</a> . . . . .	24
<i>Affordable Connectivity Program, et al.</i> , Report and Order and Further Notice of Proposed Rulemaking, FCC 22-2 (rel. Jan. 21, 2022) (statement of Chairwoman Jessica Rosenworcel) . . . . .	14
Brief of Former Commissioners and General Counsel of the Federal Communications Commission and the Minority Media and Telecommunications Council, As Amici Curiae in Support of Respondents, <i>Fisher v. University of Texas at Austin</i> , 570 U.S. 297 (No. 11-345) (2012) . . . . .	20
Broadcast Varied Ownership Incentives for Community Expanded Service Act, S. 2456, 117th Cong. (2021) . . . . .	12, 13
Commissioner Nathan Simington Remarks at the Multicultural Media, Telecom & Internet Council 2022 Former FCC Chairs Symposium, FCC (July 20, 2022), <a href="https://docs.fcc.gov/public/attachments/DOC-385497A1.pdf">https://docs.fcc.gov/public/attachments/DOC-385497A1.pdf</a> . . . . .	21
<i>Cox Digital Academy</i> , Cox, <a href="https://www.cox.com/residential/internet/connect2compete/digital-academy.html">https://www.cox.com/residential/internet/connect2compete/digital-academy.html</a> (last visited July 15, 2022) . . . . .	14

*Cited Authorities*

	<i>Page</i>
David Honig, <i>How the FCC Helped Exclude Minorities from Ownership of the Airwaves</i> , MMTc (Oct. 5, 2006), <a href="https://www.mmtconline.org/wp-content/uploads/2020/10/How-the-FCC-Helped-Exclude-Minorities-from-Owners-of-the-Airwaves.pdf">https://www.mmtconline.org/wp-content/uploads/2020/10/How-the-FCC-Helped-Exclude-Minorities-from-Owners-of-the-Airwaves.pdf</a> . . . . .	21
Ernst & Young LLP, <i>FCC Econometric Analysis of Potential Discrimination Utilization Ratios for Minority- and Women-Owned Companies in FCC Wireless Spectrum Auctions</i> , FCC, <a href="https://transition.fcc.gov/opportunity/meb_study/auction_utilization_study.pdf">https://transition.fcc.gov/opportunity/meb_study/auction_utilization_study.pdf</a> . . . . .	9
Erwin G. Krasnow and Lisa M. Fowlkes, <i>The FCC’s Minority Tax Certificate Program: A Proposal for Life After Death</i> , 51 FED. COMM. L.J. 665, 670 (1999). . . . .	12
Executive Order No. 13985 on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, THE WHITE HOUSE (Jan 20, 2021), <a href="https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/">https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/</a> . . . . .	15
<i>Expanding Broadcast Ownership Opportunities Act</i> , H.R. 4871, 117th . . . . .	13

*Cited Authorities*

	<i>Page</i>
<i>Get Involved, How to be a Champion for Digital Equity</i> , COX, <a href="https://www.cox.com/residential/internet/connect2compete/get-involved.html">https://www.cox.com/residential/internet/connect2compete/get-involved.html</a> (last visited July 15, 2022) . . . . .	14
INTEL AND DALBERG, DECODING DIVERSITY: THE FINANCIAL AND ECONOMIC RETURNS TO DIVERSITY IN TECH (June 2016), <a href="https://dalberg.com/wp-content/uploads/2016/06/Diversity-report.pdf">https://dalberg.com/wp-content/uploads/2016/06/Diversity-report.pdf</a> . . . . .	17, 18, 19
<i>Internet Essentials</i> , COMCAST, <a href="https://www.internetessentials.com/">https://www.internetessentials.com/</a> (last visited July 26, 2022). . . . .	14
Jon Sallet, <i>FCC Transaction Review: Competition and the Public Interest</i> , FCC BLOG (Aug. 12, 2014, 12:39 PM), <a href="https://www.fcc.gov/news-events/blog/2014/08/12/fcc-transaction-review-competition-and-public-interest">https://www.fcc.gov/news-events/blog/2014/08/12/fcc-transaction-review-competition-and-public-interest</a> . . . . .	9
Katherine W. Phillips, <i>How Diversity Makes Us Smarter</i> , SCIENTIFIC AMERICAN (Oct. 1, 2014), <a href="https://www.scientificamerican.com/article/how-diversity-makes-us-smarter/">https://www.scientificamerican.com/article/how-diversity-makes-us-smarter/</a> . . . . .	16
Letter from Jessica Rosenworcel, Chairwoman, FCC, to the Honorable Jamaal Bowman, <i>et al.</i> , U.S. House of Representatives (Aug. 31, 2021), <a href="https://docs.fcc.gov/public/attachments/DOC-375654A2.pdf">https://docs.fcc.gov/public/attachments/DOC-375654A2.pdf</a> . . . . .	23

*Cited Authorities*

	<i>Page</i>
McKINSEY & COMPANY—DIVERSITY WINS: HOW INCLUSION MATTERS 4 (May 2020), <a href="https://www.mckinsey.com/~media/mckinsey/featured%20insights/diversity%20and%20inclusion/diversity%20wins%20how%20inclusion%20matters/diversity-wins-how-inclusion-matters-vf.pdf">https://www.mckinsey.com/~media/mckinsey/featured%20insights/diversity%20and%20inclusion/diversity%20wins%20how%20inclusion%20matters/diversity-wins-how-inclusion-matters-vf.pdf</a> . . . . .	17
Media Bureau and Office of Economics and Analytics, <i>Fifth Report on Ownership of Broadcast Stations</i> , FCC (Sept. 2021), <a href="https://docs.fcc.gov/public/attachments/DA-21-1101A1.pdf">https://docs.fcc.gov/public/attachments/DA-21-1101A1.pdf</a> . . . . .	21
<i>Overview of the FCC’s Review of Significant Transactions</i> , FCC, <a href="https://www.fcc.gov/reports-research/guides/review-of-significant-transactions">https://www.fcc.gov/reports-research/guides/review-of-significant-transactions</a> (last updated July 10, 2014) . . . . .	9
<i>Review of the Commission’s Broadcast and Cable Equal Employment Opportunity Rules and Policies</i> , Further Notice of Proposed Rulemaking, 36 FCC Rcd 12055 (2021) (statement of Commissioner Geoffrey Starks). 23, 24	
Robin Young and Samantha Raphaelson, <i>Diversifying The Radio Dial: Black Station Owners Demand Action</i> , WBUR (July 22, 2020), <a href="https://www.wbur.org/hereandnow/2020/07/22/black-owned-radio-stations">https://www.wbur.org/hereandnow/2020/07/22/black-owned-radio-stations</a> . . . . .	22
<i>Rules and Policies to Promote New Entry and Ownership Diversity in the Broadcasting Services</i> , Report and Order, 33 FCC Rcd 7911 (2018) . . . . .	11

*Cited Authorities*

	<i>Page</i>
S. Ct. Rule 37.6. . . . .	1
Stacie de Armas, <i>A Relevancy Revolution: The Importance of Spanish Language Content</i> , NIELSEN (Feb. 24, 2022), <a href="https://www.nielsen.com/us/en/insights/article/2022/a-relevancy-revolution-the-importance-of-spanish-language-content/">https://www.nielsen.com/us/en/insights/article/2022/a-relevancy-revolution-the-importance-of-spanish-language-content/</a> . . . . .	23
<i>Statement of Nine Former FCC Chairs Recommending Reinstatement of the FCC’s Tax Certificate Policy</i> (Sept. 7, 2021), <a href="https://www.mmtconline.org/wp-content/uploads/2021/09/FCCChairstaxcertificatestatement.pdf">https://www.mmtconline.org/wp-content/uploads/2021/09/FCCChairstaxcertificatestatement.pdf</a> . . . . .	13
<i>Updating Part 1 Competitive Bidding Rules, et al.</i> , Report and Order, Order on Reconsideration of the First Report and Order, Third Order on Reconsideration of the Second Report and Order, Third Report and Order, 30 FCC Rcd 7493 (2015) . . . . .	8
William H. Frey, <i>New 2020 Census Results Show Increased Diversity Countering Decade-Long Declines in America’s White and Youth Populations</i> , BROOKINGS (Aug. 13, 2021), <a href="https://www.brookings.edu/research/new-2020-census-results-show-increased-diversity-countering-decade-long-declines-in-americas-white-and-youth-populations/">https://www.brookings.edu/research/new-2020-census-results-show-increased-diversity-countering-decade-long-declines-in-americas-white-and-youth-populations/</a> . . . . .	16

**INTEREST OF *AMICI CURIAE***<sup>1</sup>

*Amici* are nonprofit, nonpartisan organizations that recognize the importance of diversity, equity, and inclusion in the communications industry and are experienced with issues falling in the intersection between communications policy and civil rights.

The Multicultural Media, Telecom and Internet Council, Inc. (“MMTC”) is the technology, media, and telecommunications industries’ leading nonpartisan, national nonprofit diversity organization. Since opening its doors in 1986, MMTC has worked to promote and preserve equal opportunity, civil rights, and social justice in the mass media, telecommunications, and broadband industries and to close the “digital divide” on behalf of its members and constituents, including current and prospective radio and broadcast station owners, programmers, and others involved in the communications sector. MMTC has helped diverse entrepreneurs gain access to capital and become media and telecommunications owners, breaking down structural and regulatory barriers to entrepreneurial opportunity. It has also fought for equal employment opportunity in radio, television, and cable, and it has helped diversify the communications bar by training and deploying over 100 communications lawyers and professionals.

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1. In letters filed with the Clerk, counsel for all parties have consented in writing to the filing of this brief. Pursuant to S. Ct. Rule 37.6, counsel affirms that no counsel for any party authored this brief in whole or in part, and that no person or entity other than *Amici Curiae* and their counsel made any monetary contribution to the preparation or submission of this brief.

The National Association of Black Owned Broadcasters (“NABOB”) is the first and only trade organization representing the interests of African American radio, television, and digital media owners across the country. NABOB was organized in 1976 by a small group of African American broadcasters to establish a voice and a viable presence in the industry and to address specific concerns facing African American broadcasters. NABOB’s mission is to improve and increase opportunities for Black and minority owners in media. Utilizing advocacy resources, NABOB provides information in critical business areas, including advertising sales, station acquisition, financing, and federal broadcast regulation.

The National Hispanic Foundation for the Arts (“NHFA”) is the leading national Hispanic organization concerned with issues impacting the United States Latinx community in media. NHFA was founded in 1997 by actors Jimmy Smits, Sonia Braga, Esai Morales, and Merel Julia, along with attorney Felix Sanchez, to advance the presence of Latinos in the media, telecommunications, and entertainment industries. NHFA identifies and launches Hispanic talent, develops and distributes content meaningful to the Latinx community, mentors and supports organizations committed to Hispanic arts, studies industry opportunities and Hispanic impact, promotes civil rights, creates a national conversation about Latinx diversity in the media, and spotlights organizations that engage Hispanic consumers.

The Emma Bowen Foundation for Minority Interests in Media (“EBF”) promotes a more diverse industry by recruiting promising students of color for multi-year paid internships at some of the nations’ leading media and

technology companies, including Comcast, NBCUniversal, Hearst Television, The New York Times, the National Football League, Spectrum, ViacomCBS, and Discovery. EBF Fellows work as paid interns through their college graduation, gaining significant on-the-job training and making connections with colleagues and mentors that last a lifetime. EBF Fellows graduate with invaluable work experience and a head start in whichever career they choose.

The National Newspaper Publishers Association (“NNPA”) is a trade organization of the more than 200 African American-owned community newspapers from around the United States. Since its founding 79 years ago, NNPA has been the voice of the Black community and an incubator for news that makes history and impacts our country. As the largest and most influential Black-owned media resource in the United States, NNPA delivers news, information, and commentary to over 20 million people each week. Americans from all backgrounds seek news from the Black perspective from NNPA-member newspapers around the country. In the United States, which is now among the most diverse countries in the world, the Black Press is more relevant than ever. The Black Press believes that the United States can best lead the world away from racial and national antagonisms when it accords full human and legal rights to every person, regardless of race, color, or creed.

### **INTRODUCTION AND SUMMARY OF THE ARGUMENT**

Eliminating the use of race as a factor in college and university admissions will have adverse consequences throughout the communications industry and beyond.

I. Eliminating the use of race as a factor in admissions will adversely affect communications policies and programs designed to promote diversity and equity. Congress has long recognized the importance of diversity in the communications industry. First, the Communications Act contains provisions to help promote spectrum auction participation among certain underrepresented groups, including racial minorities. Second, the Federal Communications Commission (“FCC”) is required to consider the importance of diversity in its public interest determination when deciding whether or not to approve mergers and acquisitions. Third, Section 612 of the Communications Act and FCC rules, known as the leased access rules, require all cable operators to designate channel capacity for commercial use for unaffiliated video programmers. Fourth, the FCC has recently reinstated a series of broadcast ownership rules, which were designed to foster a diversity of voices, by facilitating the acquisition and operation of broadcast stations by diverse entrants, including women- and minority-owned businesses. Finally, the FCC’s Equal Employment Opportunity (“EEO”) rules and policies have prohibited broadcasters and Multichannel Video Programming Distributors (“MVPDs”) from discriminating in hiring on the basis of race, color, religion, national origin, sex, and age. An adverse decision may expose diversity-based programs and policies currently in place, and it could also constrain efforts to reinstate programs and policies that successfully promote diversity.

Further, communications industry participants similarly promote diversity in their internal programs and policies, following the lead of Congress and the FCC. These communications industry participants—including

broadcasters, cable operators, broadband providers, and others—have also reaffirmed the significance of diversity in the communications sector, implementing programs intended to achieve racial equity and support the provision of communications services in low-income and underserved communities. These policies and programs directly or indirectly promote decision-making that considers race. A decision eliminating the use of race as a factor in admissions could have broad implications beyond the field of higher education.

II. Using race as a factor in admissions promotes a diverse and inclusive pipeline of students from colleges and universities to leaders in the communications industry. Eliminating race as a factor in admissions decision-making would result in a much more limited pool of diverse applicants to communications companies. Policies that promote a diverse and inclusive student body inevitably promote a diverse and inclusive workforce, which is critical to the success of the communications industry. Indeed, diversity in the communications industry relies on diversity in colleges and universities. Therefore, when colleges and universities are less diverse, corporations and organizations are likely to become less diverse due to a shrinking candidate pipeline. This means that broadcast stations, radio stations, and television networks will be less likely to reflect the communities they serve and less likely to develop diverse programming and content.

III. Eliminating the use of race as a factor in admissions could stifle the creation and maintenance of the diverse communications marketplace that Congress intended. Diversity in higher education is necessary to ensure a robust exchange of ideas through mass

media. Students who are educated at diverse colleges and universities and who choose to join mass media organizations after graduation bring with them the awareness of a multicultural society, through exposure to various racial and ethnic groups on campuses. In turn, this creates a more equitable and inclusive industry that shapes the way in which members of the public think and interact. The need for more diverse and culturally competent graduates entering the communications sector is especially critical now, given the decreasing number of minority-owned broadcast stations across the country. Diversity in media ownership increases the potential that diverse groups can receive programming from both mainstream and alternative media outlets that is targeted toward their interests and needs, which leads to greater civic engagement. To promote a diverse communications marketplace, there are no available or workable race-neutral alternatives. Indeed, diverse voices are needed to communicate diverse perspectives.

## **ARGUMENT**

### **I. ELIMINATING THE USE OF RACE AS A FACTOR IN ADMISSIONS COULD ADVERSELY AFFECT COMMUNICATIONS POLICIES AND PROGRAMS DESIGNED TO PROMOTE DIVERSITY AND EQUITY.**

The communications industry, and mass media in particular, should reflect and represent everyone—all races, ethnicities, and viewpoints. This Court and Congress have long recognized the value of diversity in the communications industry. Indeed, this Court has more than once found that “the widest possible dissemination

of information from diverse and antagonistic sources is essential to the welfare of the public.” *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 663 (1994) (quoting *Associated Press v. United States*, 326 U.S. 1, 20 (1945)).

Similarly, Congress has emphasized the importance of having diverse viewpoints in mass media, and it has issued a number of statutory directives to the FCC and the communications industry to promote a more diverse and inclusive communications marketplace. In the Communications Act, Congress directed the FCC to “make available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nation-wide, and world-wide wire and radio communication service.” 47 U.S.C. § 151. Congress further specified that the FCC should “promote competition in the delivery of diverse sources of video programming and to assure that the widest possible diversity of information sources are made available to the public from cable systems in a manner consistent with growth and development of cable systems.” 47 U.S.C. § 532(a).

Following Congressional directives, the FCC has cemented the importance of a diverse and inclusive communications marketplace by implementing a number of programs and policies, discussed below, that are designed to advance racial diversity, as well as other types of diversity.

First, the Communications Act contains two provisions to help promote spectrum auction participation among certain underrepresented groups, including

racial minorities. When auctioning spectrum and awarding spectrum licenses, Section 309(j)(3)(B) of the Communications Act requires the FCC to “promot[e] economic opportunity and competition . . . by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.” 47 U.S.C. § 309(j)(3)(B). In addition, Section 309(j)(4)(D) of the Communications Act requires the FCC to “ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services, and, for such purposes, consider the use of tax certificates, bidding preferences, and other procedures.” 47 U.S.C. § 309(j)(4)(D).

The FCC has also adopted rules that allow “designated entities” to receive spectrum auction bidding credits—*i.e.*, percentage discounts on spectrum licenses—provided that they prevail at auction. *See, e.g.*, 47 C.F.R. §§ 1.2110, 27.1102, 27.1104, 27.1106, 27.1301. The purpose of this program is to encourage participation in spectrum auctions by small businesses, rural businesses, and businesses owned by members of minority groups and women, and to provide them with, among other things, an “on-ramp into the wireless business.” *Updating Part 1 Competitive Bidding Rules, et al.*, Report and Order, Order on Reconsideration of the First Report and Order, Third Order on Reconsideration of the Second Report and Order, Third Report and Order, 30 FCC Rcd 7493, ¶ 134 (2015).

These statutory provisions and FCC rules have been the first step toward righting a historical wrong. For too long, minority-owned applicants were highly unlikely to win even one spectrum license at auction in comparison to non-minority-owned applicants. *See* Ernst & Young LLP, *FCC Econometric Analysis of Potential Discrimination Utilization Ratios for Minority- and Women-Owned Companies in FCC Wireless Spectrum Auctions*, FCC, at 4, [https://transition.fcc.gov/opportunity/meb\\_study/auction\\_utilization\\_study.pdf](https://transition.fcc.gov/opportunity/meb_study/auction_utilization_study.pdf). As a result of Congressional and regulatory action, however, some minority-owned businesses have successfully participated in recent spectrum auctions and acquired significant spectrum resources, and will be able to continue to do so, helping to mitigate an excessive concentration of wireless assets among a particular type of applicant.

Second, the FCC must take into account the “public interest” when it reviews transactions pertaining to licenses and authorizations, and decides whether or not to approve mergers and acquisitions, and in making its public interest determination, the agency is required to consider the importance of diversity. As part of this determination, “the FCC examines the likely effects of the transfer on . . . the diversity of license holders, and the diversity of information sources and services available to the public.” *Overview of the FCC’s Review of Significant Transactions*, FCC, <https://www.fcc.gov/reports-research/guides/review-of-significant-transactions> (last updated July 10, 2014); *see also* Jon Sallet, *FCC Transaction Review: Competition and the Public Interest*, FCC BLOG (Aug. 12, 2014, 12:39 PM), <https://www.fcc.gov/news-events/blog/2014/08/12/fcc-transaction-review-competition-and-public-interest> (“[T]he ‘public interest’ standard is

not limited to purely economic outcomes. It necessarily encompasses the ‘broad aims of the Communications Act,’ which include, among other things, . . . ensuring a diversity of information sources and services to the public.” (internal citations omitted).

Third, Section 612 of the Communications Act (47 U.S.C. § 532) and sections 76.970 through 76.977 of the FCC’s rules (47 C.F.R. §§ 76.970-76.977) require all cable operators to reserve channel capacity for commercial use by unaffiliated video programmers. The purpose of this requirement, known as leased access, is “to promote competition in the delivery of diverse sources of video programming and to assure that the widest possible diversity of information sources are made available to the public from cable systems in a manner consistent with growth and development of cable systems.” 47 U.S.C. § 532(a).

Fourth, the FCC has a series of broadcast ownership rules—the Local Television Ownership Rule, Local Radio Ownership Rule, Revenue-Based Eligible Entity Standard, and Incubator Program—all recently reinstated by this Court in *FCC v. Prometheus Radio Project*, 141 S. Ct. 1150 (2021), which were designed to “foster a diversity of voices, by facilitating the acquisition and operation of broadcast stations by small businesses, new entrants, and minority- and female-owned businesses.” *2014 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Second Report and Order, 31 FCC Rcd 9864, ¶ 237 (2016) (“*2014 Quadrennial Review Report and Order*”).

The Local Television Ownership Rule “promotes opportunities for diversity in broadcast ownership by helping to ensure the presence of independently-owned broadcast television stations in the local market, thereby increasing the likelihood of a variety of viewpoints and preserving ownership opportunities for new entrants.” *Id.* Likewise, the Local Radio Ownership Rule promotes diversity “by helping to ensure the presence of independently owned broadcast radio stations in the local market, thereby increasing the likelihood of a variety of viewpoints and preserving ownership opportunities for new entrants.” *Id.* ¶125. Rather than specifically targeting minorities, the FCC, through the Revenue-Based Eligible Entity Standard, created a category of “eligible entities” that are subject to less restrictive media ownership rules in comparison to other entities, based on revenue. *Id.* ¶ 286. And the Incubator Program was designed to help facilitate diverse broadcast station ownership by formally pairing a broadcasting entity with limited resources and experience with a more established broadcaster that provides the other broadcasting entity with training, financial resources, and other assistance. *See Rules and Policies to Promote New Entry and Ownership Diversity in the Broadcasting Services*, Report and Order, 33 FCC Rcd 7911 (2018). Although the Incubator Program does not specifically target minorities, the intent of the program is to promote racial and ethnic diversity.

Finally, the FCC’s EEO rules and policies have prohibited broadcasters and MVPDs from discriminating in employment on the basis of race, color, religion, national origin, sex, and age for some FCC regulatees, for over fifty years. Under the FCC’s rules, broadcasters with five or more full-time employees, and MVPDs with six

or more full-time employees, are required to establish, maintain, and carry out an EEO recruitment program that is designed to prevent discrimination and ensure equal opportunity. *See* 47 C.F.R. §§ 73.2080, 76.73, 76.75. In carrying out the recruitment program, broadcasters and MVPDs must conduct broad public outreach of job openings, participate in and host job fairs, establish an internship program for community members, establish training and mentoring programs for station personnel, and participate in scholarship programs. *See id.*

Disturbing statutory provisions and rules that support and foster diversity-based programs and policies that are currently in place will make it more difficult to reinstate programs and policies that promote diversity, including, for example, bipartisan efforts to reinstate the FCC's minority tax certificate program. The now-repealed program (which was in effect between 1978 and 1995) was the most effective vehicle for advancing minority broadcast ownership—ownership of broadcast stations by people of color. *See* Erwin G. Krasnow and Lisa M. Fowlkes, *The FCC's Minority Tax Certificate Program: A Proposal for Life After Death*, 51 FED. COMM. L.J. 665, 670 (1999). The program provided broadcasters a tax incentive to sell their stations to minority owners. During its 17 years in operation, the program quintupled minority broadcast ownership across the country. *See id.* Before the program's existence in 1978, only 40 of 8,500 broadcast stations were minority owned. *See id.* During the program's operation, minorities acquired 288 radio stations, 43 television stations, and 31 cable systems. *See id.* The *Broadcast Varied Ownership Incentives for Community Expanded Service (VOICES) Act*, introduced in the U.S. Senate, and the *Expanding Broadcast*

*Ownership Opportunities Act*, introduced in House of Representatives, would amend the Communications Act to reinstate and improve the program, reestablishing the FCC’s commitment to advancing broadcast ownership diversity. See *Broadcast Varied Ownership Incentives for Community Expanded Service Act*, S. 2456, 117th Cong. (2021); *Expanding Broadcast Ownership Opportunities Act*, H.R. 4871, 117th Cong. (2021). Several interest groups, including *Amici* MMTC and NABOB, as well as nine former chairpersons of the FCC, have supported the legislation and urged Congress to require the FCC to reestablish the program. See *Statement of Nine Former FCC Chairs Recommending Reinstatement of the FCC’s Tax Certificate Policy* (Sept. 7, 2021), <https://www.mmtconline.org/wp-content/uploads/2021/09/FCCChairstaxcertificatestatement.pdf>.

Communications industry participants similarly promote diversity in their internal programs and policies. Following Congress and the FCC’s lead, communications industry participants—including broadcasters, cable operators, broadband providers and others—have also reaffirmed the significance of diversity in the communications sector, implementing a number of programs that are intended to achieve racial equity and support the provision of communications services in low-income and underserved communities. These policies and programs directly or indirectly promote decision-making that uses race as a factor.

For example, Comcast Corporation’s (“Comcast”) Internet Essentials program provides high-speed internet access to low-income consumers (*i.e.*, consumers who are eligible for public assistance programs like the National

School Lunch Program, Housing Assistance, Medicaid, and the Supplemental Nutrition Assistance Program) at a discounted price. *See Internet Essentials*, COMCAST, <https://www.internetessentials.com/> (last visited July 26, 2022). Through this program, consumers also receive free internet training and access to Comcast Xfinity WiFi hotspots. *Id.* While subscribers of any race are eligible for the Internet Essentials program, it undoubtedly has a larger impact on helping people of color achieve access to broadband service, something that has been recognized as “essential for full participation in modern life.” *Affordable Connectivity Program, et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 22-2 (rel. Jan. 21, 2022) (statement of Chairwoman Jessica Rosenworcel).

In addition, Cox Communications (“Cox”) is helping to improve digital equity through its Connect2Compete and ConnectAssist low-cost internet solutions, which provide high-speed broadband access to low-income households at a low cost. *See Get Involved, How to be a Champion for Digital Equity*, Cox, <https://www.cox.com/residential/internet/connect2compete/get-involved.html> (last visited July 15, 2022). Cox is also committed to collaborating with suppliers from diverse backgrounds, and it is involved in various community service initiatives, such as the Cox Digital Academy, which provides free digital literacy training. *See Cox Digital Academy*, Cox, <https://www.cox.com/residential/internet/connect2compete/digital-academy.html> (last visited July 15, 2022). These programs are important because broadband access enables people of color and others from low-income and underserved communities to gain new skills, apply for and secure gainful employment, attend online classes, and engage in civic dialogue.

The Biden Administration, like former administrations, has also emphasized the importance of diversity, equity, and inclusion. In January 2021, President Biden signed Executive Order No. 13985, which directs agencies within the Federal Government to assess whether people from underserved communities experience systemic barriers in accessing opportunities available pursuant to the agencies' policies and programs. *See* Executive Order No. 13985 on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, THE WHITE HOUSE (Jan 20, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>. Agencies like the FCC were “strongly encouraged” to conduct the assessment. *See id.* The Executive Order confirms that “[a]ffirmatively advancing equity, civil rights, racial justice, and equal opportunity is the responsibility of the whole of our Government” and explains that “because advancing equity requires a systematic approach to embedding fairness in decision-making processes, executive departments and agencies . . . must recognize and work to redress inequities in their policies and programs that serve as barriers to equal opportunity.” *Id.*

As a result, a decision eliminating the use of race as a factor in admissions could have broad implications beyond the field of higher education.

## **II. USING RACE AS A FACTOR IN ADMISSIONS PROMOTES A DIVERSE AND INCLUSIVE PIPELINE OF STUDENTS FROM COLLEGES AND UNIVERSITIES TO LEADERS IN THE COMMUNICATIONS INDUSTRY.**

In addition to negatively impacting communications industry rules and policies, eliminating the use of race as a factor in admissions would result in a much more limited pool of diverse applicants to communications companies.

### **A. THE USE OF RACE AS A FACTOR IN ADMISSIONS PROMOTES A DIVERSE AND INCLUSIVE WORKFORCE, WHICH IS CRITICAL TO THE SUCCESS OF THE COMMUNICATIONS INDUSTRY.**

The United States is increasingly becoming more racially and culturally diverse. Results from the 2020 Census show that people of color—people identifying as Black, Asian American, Native Hawaiian or Pacific Islander, Native American, and Latino or Hispanic—make up over 40 percent of the U.S. population. *See* William H. Frey, *New 2020 Census Results Show Increased Diversity Countering Decade-Long Declines in America's White and Youth Populations*, BROOKINGS (Aug. 13, 2021), <https://www.brookings.edu/research/new-2020-census-results-show-increased-diversity-countering-decade-long-declines-in-americas-white-and-youth-populations/>. It is therefore important that companies and organizations in the communications industry are able to hire individuals from diverse racial and ethnic backgrounds who are not only culturally competent, but also able to meet the needs of the U.S. population and participate in the interconnected and global marketplace. *See* Katherine W. Phillips, *How*

*Diversity Makes Us Smarter*, SCIENTIFIC AMERICAN (Oct. 1, 2014), <https://www.scientificamerican.com/article/how-diversity-makes-us-smarter/> (“Diversity enhances creativity. It encourages the search for novel information and perspectives, leading to better decision-making and problem-solving.”); *see also* Brief for Fortune-100 and Other Leading American Businesses as Amici Curiae Supporting Respondents, *Fisher v. University of Texas at Austin*, 579 U.S. 365 (2016) (No. 14-981).

Companies often seek out diverse employees because a diverse workforce generates significant economic benefits. A 2020 study from McKinsey & Company shows that companies that are racially and ethnically diverse are more likely to financially outperform their non-diverse peers. *See* MCKINSEY & COMPANY – DIVERSITY WINS: HOW INCLUSION MATTERS 4 (May 2020), <https://www.mckinsey.com/~/media/mckinsey/featured%20insights/diversity%20and%20inclusion/diversity%20wins%20how%20inclusion%20matters/diversity-wins-how-inclusion-matters-vf.pdf>. Companies in the top quartile of racial and ethnic diversity outperform non-diverse companies in the fourth quartile of racial and ethnic diversity by 36 percent in terms of profitability. *See id.*

To illustrate, by increasing the amount of racial and ethnic diversity among employees, companies in the U.S. technology industry could generate up to \$570 billion in value. *See* INTEL AND DALBERG, DECODING DIVERSITY: THE FINANCIAL AND ECONOMIC RETURNS TO DIVERSITY IN TECH (June 2016), <https://dalberg.com/wp-content/uploads/2016/06/Diversity-report.pdf> (“DECODING DIVERSITY REPORT”). Increases in racial or ethnic diversity positively correlate with increases in the operating

margin. *See id.* Therefore, an increase in racial and ethnic diversity could represent an increase in \$6-7 billion in operating earnings across the entire technology industry. *See id.*

Equally important, the formal and informal education, training, and skills development that students receive at diverse colleges and universities help students become qualified for, and prepared to succeed in the workforce. Indeed, diverse colleges and university “better prepare[] students for an increasingly diverse workforce and society” in comparison to those higher education institutions that are not diverse. *Fisher v. Univ. of Texas at Austin*, 579 U.S. 365, 381 (2016). A racially diverse student body is necessary to ensure that college and university campuses reflect the real world. Diverse colleges and universities expose students to a variety of viewpoints and perspectives, which help students meaningfully contribute to and participate in diverse communities after graduation. As this Court affirmed in *Grutter*, “[t]hrough exposure to widely diverse people, cultures, ideas, and viewpoints,” students who are educated in diverse environments are able to contribute unique thoughts and perspectives to the workforce, improving their respective organizations overall and helping them become more inclusive. *See Grutter v. Bollinger*, 539 U.S. 306, 330 (2003); *see also Regents of Univ. of California v. Bakke*, 438 U.S. 265, 313 (1978). Moreover, students who are educated at diverse colleges and universities also develop unique skills that enable them to think more creatively, view issues from multiple angles, and be more flexible with how they approach challenges and devise solutions to problems. *See Adam Grant, What Straight-A Students Get Wrong*, N.Y. TIMES (Dec. 8, 2018), <https://>

[www.nytimes.com/2018/12/08/opinion/college-gpa-career-success.html](http://www.nytimes.com/2018/12/08/opinion/college-gpa-career-success.html).

At most colleges and universities across the United States, a culture of inclusivity is often cultivated and celebrated. By having the space to learn and grow alongside individuals who are dissimilar to themselves, students who are educated at diverse higher education institutions are likely to be more sensitive to and tolerant of, different backgrounds, races, ethnicities, cultures, and experiences, reducing incidents of discrimination and stereotyping in the workplace. Because of their undergraduate experiences, students from diverse colleges and universities see racial and ethnic diversity as a requirement and expect inclusivity from employers, thereby improving the culture of the workforce for everyone involved.

An open and inclusive work environment generally contributes to employee satisfaction and retention, particularly for racially and ethnically diverse employees. Individuals are likely to remain in an industry when they feel that their differences, as well as their colleagues' differences, are respected and valued. A recent study from Intel shows that “Millennials are 38 percent more likely to feel engaged and 28 percent more likely to feel empowered when they are working in an organization that they believe fosters inclusivity.” See *DECODING DIVERSITY REPORT*; see also *id.* (“An overwhelming majority of Millennials prefer not to work at organizations they see as unsupportive of innovation, and 40 percent of these same Millennials see a lack of gender and racial/ethnic diversity as a major barrier to innovation.”).

**B. DIVERSITY IN THE COMMUNICATIONS INDUSTRY RELIES ON DIVERSITY IN COLLEGES AND UNIVERSITIES.**

Colleges and universities are the “training ground for a large number of our Nation’s leaders.” *Grutter*, 539 U.S. at 332. When colleges and universities are more diverse, corporations and organizations, including those in the communications industry, become more diverse. *See Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 980 F.3d 157, 173-74 (1st Cir. 2020) (“[G]lobal companies want to hire and promote graduates who have been educated in diverse settings.”). The benefits gained from a diverse industry workforce “are not theoretical, but real” because our global market is diverse. *See Grutter*, 539 U.S. at 330. However, when colleges and universities are less diverse, corporations and organizations are likely to become less diverse due to a shrinking candidate pipeline. In the communications industry, this means that broadcast stations, radio stations, and television networks would be less likely to reflect the communities that they serve, and less likely to develop diverse programming and content. *See* Brief of Former Commissioners and General Counsel of the Federal Communications Commission and the Minority Media and Telecommunications Council, As Amici Curiae in Support of Respondents, *Fisher v. University of Texas at Austin*, 570 U.S. 297 (No. 11-345) (2012).

### **III. ELIMINATING THE USE OF RACE AS A FACTOR IN ADMISSIONS COULD STIFLE THE CREATION AND MAINTENANCE OF THE DIVERSE COMMUNICATIONS MARKETPLACE THAT CONGRESS INTENDED.**

Diversity in higher education is necessary to ensure a robust exchange of ideas through mass media. Students who are educated at diverse colleges and universities and who choose to join mass media organizations after graduation bring with them the awareness of a multicultural society, through exposure to various racial and ethnic groups on their respective campuses. In turn, this creates a more equitable and inclusive industry that shapes the way in which members of the public think and interact. New media, such as blogs, podcasts, and social media websites, and mass media, particularly over-the-air broadcasting, undoubtedly has a significant impact on our society's educational, cultural, and political development, which makes it "the most influential industry in the nation." David Honig, *How the FCC Helped Exclude Minorities from Ownership of the Airwaves*, MMTTC (Oct. 5, 2006), <https://www.mmtconline.org/wp-content/uploads/2020/10/How-the-FCC-Helped-Exclude-Minorities-from-Owners-of-the-Airwaves.pdf>.

The need for more diverse and culturally competent graduates entering the communications sector is especially critical now given the decreasing number of minority-owned broadcast stations across the country. See Commissioner Nathan Simington Remarks at the Multicultural Media, Telecom & Internet Council 2022 Former FCC Chairs Symposium, FCC (July 20, 2022), <https://docs.fcc.gov/public/attachments/DOC-385497A1>.

pdf (“I can think of no better way to increase the stake that diverse communities hold in the vital public institution of broadcast television and radio than by encouraging minority students to pursue careers in the broadcast industry.”). While people of color comprise a growing percentage of the U.S. population, minority ownership of mass media, and broadcast stations in particular, is rapidly declining. The number of minority-owned broadcast stations has historically been concerning, but current minority ownership levels are especially low. A recent study from the FCC shows that people from racial minority groups own only four percent of commercial broadcast stations. *See* Media Bureau and Office of Economics and Analytics, *Fifth Report on Ownership of Broadcast Stations*, FCC (Sept. 2021), <https://docs.fcc.gov/public/attachments/DA-21-1101A1.pdf>. The report also shows that two percent of U.S. noncommercial broadcast stations are owned by people who identify as Black and three percent of those stations are owned by people who identify as Hispanic/Latino. *See id.* Nationally, people who identify as Black own about one percent of low power commercial televisions stations—television stations meant to deliver programming tailored to localized interests—while people who identify as Hispanic/Latino own 13.8 percent of low power television stations. *See* Media Bureau and Office of Economics and Analytics, *Fifth Report on Ownership of Broadcast Stations*, FCC (Sept. 2021), <https://docs.fcc.gov/public/attachments/DA-21-1101A1.pdf>; Robin Young and Samantha Raphaelson, *Diversifying The Radio Dial: Black Station Owners Demand Action*, WBUR (July 22, 2020), <https://www.wbur.org/hereandnow/2020/07/22/black-owned-radio-stations>. In an August 2021 letter to members of Congress, FCC Chairwoman Jessica Rosenworcel agreed that the

state of minority broadcast ownership is dire, asserting that the “number of broadcast stations owned by women and people of color is far too low” and noting that “lack of diversity in ownership has consequences.” Letter from Jessica Rosenworcel, Chairwoman, FCC, to the Honorable Jamaal Bowman, *et al.*, U.S. House of Representatives (Aug. 31, 2021), <https://docs.fcc.gov/public/attachments/DOC-375654A2.pdf>.

Although people of color often appear in front of the camera in television broadcasts or at the microphone in radio broadcasts, they are seldom found in positions of authority behind the scenes. Minority exclusion from the airwaves has had, and continues to have, profound consequences, namely that when diverse ownership and management decrease, diverse programming content also decreases. *See, e.g., TV 9 Inc. v. FCC*, 495 F.2d 929, 938 (D.C. Cir. 1973) (“[I]t is upon ownership that public policy places primary reliance with respect to diversification of content, and that historically has proved to be significantly influential with respect to editorial comment and the presentation of news.”).

Having diverse owners and supervisory and managerial staff of broadcast stations, radio stations, and television networks helps promote diverse programming and “the widest possible dissemination” of diverse viewpoints. *See Turner Broad. Sys., Inc.*, 512 U.S. at 663. Community groups could be more effective if the people making editorial decisions in local television and radio stations were more representative of the communities the stations serve.

Because broadcasters provide the voice and conscience of their respective communities and tell the American story, “it is imperative that they represent all of America.” *Review of the Commission’s Broadcast and Cable Equal Employment Opportunity Rules and Policies*, Further Notice of Proposed Rulemaking, 36 FCC Rcd 12055 (2021) (statement of Commissioner Geoffrey Starks). Diverse individuals therefore must be represented in “who decides what is newsworthy; and who decides what talent is hired and promoted.” *Id.*

Diverse owners and managerial staff at broadcast stations can help ensure that the needs of their audiences are adequately addressed. Diverse communities demand diverse content that is meaningful and representative of their cultures and experiences. *See* Stacie de Armas, *A Relevancy Revolution: The Importance of Spanish Language Content*, NIELSEN (Feb. 24, 2022), <https://www.nielsen.com/us/en/insights/article/2022/a-relevancy-revolution-the-importance-of-spanish-language-content/>. To illustrate, nearly 60 percent of the bilingual and Spanish-dominant Latinx population find it important to have access to “content in Spanish and/or Hispanic-targeted English-language content.” Adam Jacobson, *Diverse Content: A Driver of TV Antenna Use*, RADIO + TELEVISION BUSINESS REPORT (Feb. 15, 2022), <https://www.rbr.com/diverse-content-a-driver-of-tv-antenna-use/>; *see also* 2014 Quadrennial Review Report and Order ¶ 247 (“Hispanic viewers favor the major Spanish-language networks . . .; watch local, Spanish-language news at higher levels than English-language news; and watch more telenovelas than other program types.”); *id.* ¶ 248 (“Spanish-language programs are nearly 30 times more likely to appear on Hispanic-owned stations than English-

language programs, while local programs are nearly six times more likely than non-local.”).

Diverse content can also be necessary in the event of an emergency situation. For example, diverse communities can be better protected by ensuring that lifesaving information is communicated over radio and television broadcasts in a community’s widely-spoken language when a natural disaster strikes or a weather event requires evacuation of an area. Lack of multilingual emergency information should not be an obstacle when confronting matters of life or death. Ultimately, remedial steps must be taken to improve minority broadcast ownership, not stifle it.

To promote a diverse communications marketplace, there are no available or workable race-neutral alternatives. Indeed, diverse voices are needed to communicate diverse perspectives. As FCC Commissioner Geoffrey Starks explained, the need for “representation [in mass media] is not abstract or theoretical—how we receive and process information is deeply intertwined with what we see and hear, and who delivers the message.” *Review of the Commission’s Broadcast and Cable Equal Employment Opportunity Rules and Policies*, Further Notice of Proposed Rulemaking, 36 FCC Rcd 12055 (2021) (statement of Commissioner Geoffrey Starks). Although there is value in having a community of people with similar backgrounds, race is not an entirely shared experience among all members of a race, and no racial or ethnic group is a monolith.

**CONCLUSION**

For the foregoing reasons, *Amici Curiae* respectfully request that this Court affirm the decisions below.

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