Nos. 19-1231, 19-1241

IN THE
Supreme Court of the United States

FEDERAL COMMUNICATIONS COMMISSION, ET AL.,
Petitioners,

v.

PROMETHEUS RADIO PROJECT, ET AL.,
Respondents.

NATIONAL ASSOCIATION OF BROADCASTERS, ET AL.,
Petitioners,

v.

PROMETHEUS RADIO PROJECT, ET AL.,
Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF OF *AMICUS CURIAE* SOUTHEASTERN LEGAL FOUNDATION IN SUPPORT OF PETITIONERS

TYLER R. GREEN
Counsel of Record
JEFFREY M. HARRIS
ALEXA R. BALTES
TIFFANY H. BATES
ANTONIN SCALIA LAW SCHOOL
SUPREME COURT CLINIC
CONSOVOY MCCARTHY PLLC
1600 Wilson Boulevard
Suite 700
Arlington, VA 22209
(703) 243-9423
tyler@consovoymccarthy.com

November 23, 2020

Counsel for Amicus Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitution and Statutes

Other Authorities

STATEMENT OF INTEREST[1]

Southeastern Legal Foundation (SLF), founded in 1976, is a national nonprofit, public interest law firm and policy center that advocates for constitutional individual liberties, limited government, and free enterprise in the courts of law and public opinion. In particular, SLF advocates to protect individual rights and the framework set forth to protect such rights in the Constitution. This aspect of its advocacy is reflected in the regular representation of those challenging overreaching governmental and other actions in violation of the constitutional framework. *See, e.g.*, *Util. Air Regulatory Grp. v. EPA*, 573 U.S. 302 (2014), and *Nat'l Ass'n of Mfrs. v. Dep't of Def.*, 138 S. Ct. 617 (2018). SLF also regularly files *amicus curiae* briefs with this Court about issues of agency overreach and deference. *See*, *e.g.*, *Kisor v. Wilkie,* 139 S. Ct. 2400 (2019).

---

[1] Pursuant to this Court's Rule 37.6, counsel for *amicus curiae* certifies that this brief was not authored in whole or in part by counsel for any party and that no person or entity other than *amicus curiae* or their counsel have made a monetary contribution to the preparation or submission of this brief. Counsel of record for all parties received timely notice of the intent of *amicus curiae* to file this brief and have consented to it.

INTRODUCTION AND SUMMARY OF ARGUMENT

Section 202(h) of the Telecommunications Act of 1996 commands the FCC to review broadcast ownership restrictions and to repeal regulations that the evolving competitive market renders unnecessary. Pub. L. No. 104-104, §202(h), 110 Stat. 56, 111-12 (1996), *as amended by* Pub. L. No. 108-199, §629, 118 Stat. 3, 99-100 (2004); *see* Brief for Industry Petitioners ("Ind. Pet. Br.") at 24-33. Indeed, §202(h) explicitly commands the FCC to reevaluate its broadcast-ownership rules in light of what is "necessary in the public interest *as the result of competition*." §202(h) (emphasis added). "Public interest" in the abstract might be a capacious term—and perhaps too capacious a concept, standing alone, to guide agency decisionmaking, *see infra* I.B—but its meaning here is constrained by the rest of the statutory text and context.

Given that Congress instructed the Commission to consider how the "results of competition" might obviate the need for various rules, it follows that, here, the relevant "public interest" is combating harms that result from anticompetitive practices. *See Washington Mkt. Co. v. Hoffman*, 101 U.S. 112, 115 (1879) ("We are not at liberty to construe any statute so as to deny effect to any part of its language. It is a cardinal rule of statutory construction that significance and effect shall, if possible, be accorded to every word."). And, indeed, Congress enacted the Telecommunications Act "to promote competition and reduce regulation" as communication technology evolves. *See* Pub. L. No. 104-104, Preamble, 110 Stat. 56 (1996).

The Third Circuit thus erred in implicitly concluding both that "public interest" reaches beyond competition concerns and that it affirmatively requires the FCC to consider "promoting ownership diversity." *Prometheus Radio Project v. FCC*, 939 F.3d 567, 587 (3d Cir. 2019); *see id.* (ordering the Commission to "ascertain on record evidence the likely effect of any rule changes it proposes … on ownership by women and minorities"). Divorcing "public interest" from "competition" is unfaithful to the statute's text, inconsistent with the statute's purpose, and problematic for the statute's constitutionality.

To be sure, the Commission and the Court have, at various points, expressed "competition, localism, and viewpoint diversity" as the "traditional policy goals" of ownership regulations. *See In re 2018 Quadrennial Regulatory Review*, 33 F.C.C. Rcd. 12111, 12127 (2018) ("2018 Review"); *FCC v. Nat'l Citizens Comm. for Broad.*, 436 U.S. 775, 780 (1978). Of course, neither the Commission's independent goals nor those advanced by the courts can rewrite the statute's text. But here, that is not a concern. Competition, localism, and viewpoint diversity work together to drive at a "touchstone" of regulating to "ensure[] that the public has access to 'a wide range of diverse and antagonistic opinions and interpretations.'" *In re 2002 Biennial Regulatory Review*, 17 F.C.C. Rcd. 18503, 18516 (2002) ("2002 Review"); *see* Ind. Pet. Br. at 30. Properly functioning competitive markets produce the same result, allowing the FCC to deregulate "as the result of competition."

Preserving a true, accessible, and relevant marketplace of ideas—as opposed to monopolizing broadcasts by limited voices—is the central feature of the Commission's ownership restrictions. Section 202(h) indicates that when competition achieves this goal, regulation need not interfere. In other words, §202(h) is not a vehicle for the FCC to regulate according to whatever it thinks might be good for society, but rather a command to serve the public interest by protecting against anticompetitive practices and consequences.

But even if this Court harbors doubt about which interpretation of "public interest"—a competition-based interpretation or an unbounded interpretation defined by anything the FCC (or the Third Circuit) determines is for the public good—is the best reading of the Act's text, it should adopt the narrower reading as a permissible saving construction that avoids at least three constitutional conflicts. *See Clark v. Martinez*, 543 U.S. 371, 380-81 (2005). First, the Third Circuit's expansive understanding of §202(h) will likely lead to violations of the First Amendment if the FCC must regulate the means and methods of communication disconnected from concerns about anticompetitive practices. *See infra* I.A. Second, if competition concerns do not constrain the meaning of "public interest," then that term is not constrained at all and likely violates the nondelegation doctrine—especially under the more robust application of the doctrine contemplated by at least five members of the Court. *See infra* I.B. Third, forcing the FCC to prefer ownership by women and minorities, even when doing so has no bearing on its competitive policy goals,

raises problems under the Fifth Amendment's equal protection principle. *See infra* I.C.

ARGUMENT

I. The Third Circuit's interpretation of §202(h) likely renders it unconstitutional.

The constitutional avoidance canon requires the Court to "consider the necessary consequences of its choice" between "two plausible statutory constructions." *Clark*, 543 U.S. at 380. "If one of them would raise a multitude of constitutional problems, the other should prevail—whether or not those constitutional problems pertain to the particular litigant before the Court." *Id.* at 380-81; *see Jennings v. Rodriguez*, 180 S. Ct. 830, 836 (2018).

Section 202(h) is best read to constrain "public interest" by *competition* concerns. But at the very least, that reading is a plausible alternative to the Third Circuit's much more expansive—and constitutionally precarious—approach. This Court should adopt the narrower reading to avoid likely violations of the First Amendment, the nondelegation doctrine, and the Fifth Amendment's equal protection principle.

A. The Third Circuit's reading of §202(h) likely violates the First Amendment.

Requiring the FCC to give in-depth and particularized consideration to the effect that any rule changes will have on ownership by women and minorities, disconnected from the need for competition

and diverse viewpoints, runs headlong into the protection afforded by the First Amendment. U.S. Const. amend. I. As a general matter, the First Amendment dictates that the "government may [not] restrict the speech of some elements of our society in order to enhance the relative voice of others." *Buckley v. Valeo*, 424 U.S. 1, 48-49 (1976). Nevertheless, this Court has long recognized that "broadcast media pose unique and special problems not present in the traditional free speech case"—and thus that unique and special First Amendment considerations apply to cases involving them. *See id.* at 49 n.55 (quoting *Columbia Broad. Sys. v. DNC*, 412 U.S. 94, 101 (1973)). For one thing, "broadcast frequencies constitute[] a scarce resource." *Red Lion Broad. Co. v. FCC*, 395 U.S. 367, 376 (1969). For another, "in a very real sense listeners and viewers [of broadcast media] constitute a 'captive audience.'" *Columbia Broad. Sys.*, 412 U.S. at 127. None of this means that broadcasters lack First Amendment freedoms or are somehow "without protection under the First Amendment." *Id.* at 102. But it does mean that the government may regulate use and ownership of frequencies to the extent these unique problems actually serve to undermine broader First Amendment principles. *See Red Lion*, 395 U.S. at 388; 390; *FCC v. Nat'l Citizens Comm. for Broad.*, 436 U.S. at 800.

Put differently, the scarcity of broadcast frequencies—and the possibility that a few voices might dominate the airwaves—threatens not only the competing speech rights of would-be broadcasters, but also the public's right to a free and open marketplace of ideas. *See Columbia Broad. Sys.*, 412 U.S. at 122

(identifying "the various interests in free expression of the public, the broadcaster, and the individuals"); *id.* at 123 ("[T]he public interest in providing access to the marketplace of 'ideas and experiences' would scarcely be served by a system so heavily weighted in favor of the financially affluent, or those with access to wealth."). In this situation, the rights of smaller or less affluent broadcasters who would be shut out by a "sanctuary" of "unlimited private censorship operating in a medium not open to all," *Red Lion*, 395 U.S. at 392, align with the public's right to a robust marketplace of ideas.

This Court has long held that when the rights of broadcasters who could otherwise take over the frequencies are pitted against the broader public interest in diverse viewpoints and information, "it is the right of the viewers and listeners, not the right of broadcasters, which is paramount." *Red Lion*, 395 U.S. at 390. Thus, the FCC can regulate broadcast media to serve this public interest—that is, it can regulate according to the "public interest standard." *See Nat'l Citizens Comm. for Broad.*, 436 U.S. at 795; *Columbia Broad Sys.*, 412 at 120, 122; *Red Lion*, 395 U.S. at 390.

The public interest standard recognizes that "[i]t is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market, whether it be by the Government itself or a private licensee." *Red Lion*, 395 U.S. at 390. The public interest standard "necessarily invites reference to First Amendment principles, and, in particular, to the First Amendment goal of

achieving the widest possible dissemination of information from diverse and antagonistic sources." *Nat'l Citizens Comm. for Broad.*, 436 U.S. at 795 (cleaned up); *Metro Broad., Inc. v. FCC*, 497 U.S. 547, 568 (1990) ("[T]he diversity of views and information on the airwaves serves important First Amendment values.").

Given of the "right of the public to be informed," *Columbia Broad Sys.*, 412 U.S. at 112, and the consequent importance of supporting a broadcast media that "reflect[s] different viewpoints," *id.* (quoting Report of Editorializing by Broadcast Licenses, 13 F.C.C. 1246, 1249 (1949)), the FCC is "permitted to take antitrust policies into account in making licensing decisions pursuant to the public interest standard," *Nat'l Citizens Comm. for Broad.*, 436 U.S. at 795. Regulations supporting the public's interest in an open marketplace of ideas thus "enhance rather than abridge the freedoms of speech and press protected by the First Amendment." *Red Lion*, 395 U.S. at 375. But regulations that go beyond that specific understanding of the public interest don't.

The Court has been explicit that when engaging the "delica[te] and difficult[]" task of "[b]alancing the various First Amendment interests involved in the broadcast media," the "process must necessarily be undertaken within the framework of the regulatory scheme that has evolved over the course of the past half century." *Columbia Broad. Sys.*, 412 U.S. at 102. That scheme has focused principally on combating information monopolization. *See id.* at 101-02 ("In analyzing the broadcasters' claim that the Fairness

Doctrine and two of its component rules violated their freedom of expression, we held that '(n)o one has a First Amendment right to a license or to monopolize a radio frequency; to deny a station license because the public interest requires it is not a denial of free speech.'" (quoting *Red Lion,* 395 U.S. at 389)). Restrictions on broadcasters do not violate the First Amendment *to the extent*—that is, "[o]nly when"—they serve the broader public interest in preserving a marketplace of ideas. *See id.* at 110.

When no concerns about viewpoint monopolization exist—as the FCC found here after reviewing its rules in light of "the public interest as the result of competition"—then there is no basis for altering the ordinary First Amendment principles that prohibit the government from "restrict[ing] the speech of some elements of our society in order to enhance the relative voice of others." *Buckley*, 424 U.S. at 48-49; *see also Columbia Broad. Sys.*, 412 U.S. at 102; *Nat'l Citizens Comm. for Broad.*, 436 U.S. at 799-800. Relying on broader, ahistorical, acontextual understandings of "public interest" to maintain regulations and restrictions over broadcasters in such a situation thus likely violates the First Amendment. This Court can avoid that constitutional problem by giving "public interest" the narrower meaning that is consistent both with precedent and the statute's text.

B. The Third Circuit's reading of §202(h) likely violates the nondelegation doctrine.

If the FCC's obligation to review regulations in the "public interest" is not limited to a competition

analysis, then it is not limited at all and likely runs into nondelegation problems. The nondelegation doctrine "bars Congress from transferring its legislative power to another branch of Government." *Gundy v. United States*, 139 S. Ct. 2116, 2121 (2019) (plurality opinion); *see Whitman v. Am. Trucking Ass'ns, Inc.*, 531 U.S. 457, 472 (2001). "If Congress could pass off its legislative power to the executive branch, the vesting clauses, and indeed the entire structure of the Constitution would make no sense." *Gundy*, 139 S. Ct. at 2134-35 (Gorsuch, J., dissenting) (cleaned up). It would also threaten representative accountability, *id.* at. 2135, and "invite the tyranny of the majority that follows when" legislative and executive responsibilities are "united in the same hands," *id.* at 2144-45.

Over the last century, the doctrine has been oft discussed, though rarely applied to invalidate a delegation to an administrative agency. *See id.* at 2130-31 (Alito, J., concurring in the judgment) ("[S]ince 1935, the Court has uniformly rejected nondelegation arguments and has upheld provisions that authorized agencies to adopt important rules pursuant to extraordinarily capacious standards."); *see also Mistretta v. United States*, 488 U.S. 361, 372 (1989) ("So long as Congress 'shall lay down by legislative act an intelligible principle to which the person or body authorized to exercise the delegated authority is directed to conform, such legislative action is not a forbidden delegation of legislative power.'" (cleaned up) (quoting *J.W. Hampton, Jr., & Co. v. United States*, 276 U.S. 394, 409 (1928))). During that time, the Court rejected nondelegation

challenges to statutes that require agencies to regulate in "the public interest." *See Nat'l Broad. Co. v. United States*, 319 U.S. 190, 225-26 (1943); *N.Y. Cent. Sec. Corp. v. United States*, 287 U.S. 12, 24-25 (1932). But it did so *only after* reading the statutes' text and context not to instruct the agency to do anything it perceives as good for society. Indeed, "a mere general reference to public welfare without any standard to guide determinations" *would* constitute an unconstitutional delegation. *Nat'l Broad. Co.*, 319 U.S. at 226; *N.Y. Cent. Sec. Corp.*, 287 U.S. at 24.

Thus, the Court must look to "[t]he purpose of the Act, the requirements it imposes, and the context of the provision in question" to see if it narrows and saves an otherwise impermissible delegation. *Nat'l Broad. Co.*, 319 U.S. at 226; *N.Y. Cent. Sec. Corp.*, 287 U.S. at 24 (same); *see also Am. Power & Light Co. v. SEC*, 329 U.S. 90, 104 (1946) (drawing "meaningful content from the purpose of the Act, its factual background and the statutory context in which [the phrase] appear[s]"). In other words, the Court must consider whether the "context" of the statute demonstrates that "public interest" is "not to be interpreted as setting up a standard so indefinite as to confer an unlimited power." *Nat'l Broad. Co.*, 319 U.S. at 216.

Here, the text and context of §202(h) demonstrate that the FCC is required to evaluate what the "public interest" requires *in light of competition*—that is, it should keep regulations only if they are necessary to protect against anticompetitive concerns. *See* Ind. Pet. Br. 29-33; *see supra* 2-4, 7-9. The Third Circuit's understanding, which requires the FCC to give

particularized consideration—disconnected from competition concerns—to the impact that modifying or repealing ownership restrictions would have on women and minority ownership, is unmoored from this context.[2] That is problematic. If "public interest" is not constrained by "[t]he purpose of the Act, the requirements it imposes, and the context of the provision in question," we are left with the kind of "general reference to public welfare" that lacks "any standard to guide [the FCC's] determinations." *See*

---

[2] In addition to the evidence pointing to *competition* as the relevant consideration—e.g., the stated purpose of the Telecommunications Act and the plain text of §202(h)—other evidence affirmatively indicates that fostering ownership by women and minorities *was not* part of the traditional understanding of public interest. In 1985, before the Act was passed, the Commission stated that "ownership rules were not primarily intended to function as a vehicle for promoting minority ownership in broadcasting" and that it would be "inappropriate to retain multiple ownership regulations for the sole purpose of promoting minority ownership." *In re Amend. of Section 73.3555*, 100 F.C.C.2d 74, 94 (1985). And in its 2002 Review, the Commission identified four diversity goals: viewpoint diversity, outlet diversity, source diversity, and program diversity. *See* 2002 Review at 18516. It noted that "viewpoint diversity" has always been "central" and that other kinds of diversity serve "a proxies for viewpoint diversity." *Id.* at 18518-19. Notably, the Commission excluded "ownership by diverse groups, such as minorities, women and small businesses," from its traditional diversity goals by questioning whether it had "legal authority to adopt measures to foster that goal" "[i]n addition" to its other policy goals. *Id.* at 18521. Of course, the Commission has since considered ownership by minorities and women to be an aspect of diversity. The point here is simply that it wasn't a part of the original understanding of "public interest."

Nat'l Broad Co., 319 U.S. at 226. Put differently, if "public interest" isn't constrained by competition concerns, then it isn't constrained at all. And that may well pose a delegation problem even under this Court's historically hands-off approach to the nondelegation doctrine.

And that hands-off approach might soon change. Recently, five members of this Court have indicated that "safeguarding [the] structure" of the Constitution will require the Court to breathe new life into the nondelegation doctrine as a tool to limit Congress's ability to "assign" away its responsibility through the "announce[ment of] vague aspirations." *See Gundy*, 139 S. Ct. at 2133, 2135, 2148 (Gorsuch, J., dissenting); *id.* at 2131 (Alito, J., concurring in the judgment) ("If a majority of this Court were willing to reconsider the approach we have taken for the past 84 years, I would support that effort."); *Paul v. United States*, 140 S. Ct. 342, 342 (2019) (Kavanaugh, J., respecting the denial of certiorari) ("Justice Gorsuch's scholarly analysis of the Constitution's nondelegation doctrine in his *Gundy* dissent may warrant further consideration in future cases."). These indications have led lower courts to conclude that this Court appears poised to reexamine and reinvigorate the doctrine. *Big Time Vapes, Inc. v. FDA*, 963 F.3d 436, 443 & n.20, 447 (5th Cir. 2020); *United States v. Lopez-Alvarado*, 812 F. App'x 873, 879 & n.3 (11th Cir. 2020); *Am. Inst. for Int'l Steel, Inc. v. United States*, 806 F. App'x 982, 990 (Fed. Cir. 2020).

If "public interest" in §202(h) can simply mean anything that the executive branch (or, for that matter, the judicial branch) deems good for the public,

then it embodies the kind of "vague aspiration[]" that threatens the very structure of our tripartite constitutional system. *Gundy*, 139 S. Ct. at 2133 (Gorsuch, J., dissenting). Such a construction would require the Court to confront the nondelegation doctrine again. The Court can avoid this issue by reading "public interest" through a competition lens. And it should do so. *See Clark*, 543 U.S. at 380-81.

C. The Third Circuit's reading of §202(h) likely violates the Fifth Amendment's equal protection principle.

Broadcast regulations and polices can give a preference to minorities and women if they satisfy heightened scrutiny. *See Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 227 (1995) (overruling the use of intermediate scrutiny in *Metro Broadcasting, Inc. v. FCC*, 497 U.S. 547 (1990), in favor of strict scrutiny for race classifications); *Sessions v. Morales-Santana*, 137 S. Ct. 1678, 1690 (2017) (applying intermediate scrutiny for sex classifications); *Lamprecht v. FCC*, 958 F.2d 382, 390-93 (D.C. Cir. 1992) (Thomas, J.). The government has a compelling interest in avoiding viewpoint monopolization of the airwaves. And if it can show that sex-based policies are substantially related to that interest and that race-based policies are narrowly tailored to achieve that interest, then it can regulate on the basis of those protected characteristics. *Adarand*, 515 U.S. at 227; *Lamprecht*, 958 F.2d at 390-93.

Inherent in that increased-scrutiny analysis is "the basic principle that the Fifth and Fourteenth

Amendments to the Constitution protect *persons*, not *groups*." *Adarand*, 515 U.S. at 227. "It follows from that principle" that group classifications are "'in most circumstances irrelevant and therefore prohibited'" and "should be subjected to detailed judicial inquiry to ensure that the *personal* right to equal protection of the laws has not been infringed." *Id.* (quoting *Hirabayashi v. United States*, 320 U.S. 81, 100 (1943)); *Lamprecht*, 958 F.2d at 391-92 (explaining the dangers that drive the intermediate scrutiny applicable to sex-based classifications in this context and noting that "the Supreme Court has repeatedly denounced 'unsupported generalizations about the relative interests and perspectives of men and women'" (quoting *Roberts v. U.S. Jaycees*, 468 U.S. 609, 628 (1984))).

Given the dangers that group classifications pose to the equal protection of all *persons*, there must be an appropriately tight relationship between race- or sex-based classifications and the accepted goals of federal actors like the FCC. *See Metro Broad.*, 497 U.S. at 569; *see also Lamprecht*, 958 F.2d at 398 ("When the government treats people differently because of their sex, equal-protection principles at the very least require that there be a meaningful factual predicate supporting a link between the government's means and its ends."). If such a relationship is lacking, the regulation or policy must fall in the face of the equal protection embodied in the Fifth Amendment. *See, e.g.*, *Lamprecht*, 958 F.2d at 398.

Here, the FCC has determined that some current ownership restrictions are not "necessary in the public interest as the result of competition." §202(h); *see*

Order on Reconsideration and Notice of Proposed Rulemaking, 32 F.C.C. Rcd. 9802, 9806-07, 9831, 9852 (2017); Ind. Pet. Br. at 14-17. In other words, it determined that the restrictions are unnecessary to maintain diverse viewpoints and a robust marketplace of ideas. For its part, the Third Circuit held that the FCC *cannot* make such a determination without first collecting data or engaging in "in-depth theoretical analysis" on how the rule change will affect ownership by minorities and women. *See Prometheus*, 939 F.3d at 587; Ind. Pet. Br. at 17-19. But since "[n]o party identifies any reason to question the FCC's key competitive findings and judgments," *see Prometheus*, 393 F.3d at 593 (Scirica, J., dissenting)—that is, since it is undisputed that the rule changes will not endanger competitive markets or viewpoint diversity—a group-based analysis would be necessary only for its own sake and not the task at hand.[3] So the Third Circuit's mandate creates an equal protection problem. *See supra* 14-15.

The Court should give the public interest standard its appropriate, narrower meaning and avoid this troubling confrontation with the Equal Protection principle of the Fifth Amendment.

---

[3] Notably, in its 2002 Review, the FCC cited this Court's equal protection precedents in questioning whether it had "legal authority" to adopt *any* measures "to foster th[e] goal" of "ownership by diverse groups." *See* 2002 Review at 18521 & n.123. Against this backdrop, the Third Circuit's conclusion that the FCC can *never* act without applying particularized measures to foster ownership diversity is startling.

CONCLUSION

The Court should reverse the decision below.

Respectfully submitted,

TYLER R. GREEN
Counsel of Record
JEFFREY M. HARRIS
ALEXA R. BALTES
TIFFANY H. BATES
ANTONIN SCALIA LAW SCHOOL
SUPREME COURT CLINIC
CONSOVOY MCCARTHY PLLC
1600 Wilson Boulevard
Suite 700
Arlington, VA 22209
(703) 243-9423
tyler@consovoymccarthy.com

November 23, 2020 *Counsel for Amicus Curiae*