

No. 21-661

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In the Supreme Court of the United States

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CITY OF EUGENE, OREGON, ET AL., PETITIONERS

v.

FEDERAL COMMUNICATIONS COMMISSION, ET AL.

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*ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT*

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BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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## QUESTION PRESENTED

Title VI of the Communications Act of 1934 (Communications Act), as amended, 47 U.S.C. 521 *et seq.*, generally prohibits a cable operator from providing cable services over a cable system without obtaining a cable franchise from a franchising authority—typically a local or state government entity. 47 U.S.C. 541(b)(1). As conditions on the grant of a cable franchise, a franchising authority may require the cable operator to pay a franchise fee of up to five percent of its revenue from providing cable services; to reserve channel capacity for public, educational, or governmental use; and to provide free cable service for public buildings. Title VI states, however, that a franchising authority “may not regulate the services, facilities, and equipment provided by a cable operator except to the extent consistent with [Title VI],” 47 U.S.C. 544(a), and it expressly preempts “any provision of law of any State, political subdivision, or agency thereof, or franchising authority” that is “inconsistent with [the Communications Act],” 47 U.S.C. 556(c).

The Federal Communications Commission (FCC) determined that a fee imposed by petitioner City of Eugene, Oregon, on cable operators’ use of rights-of-way to provide broadband Internet service is preempted because it is inconsistent with 47 U.S.C. 544(b)(1). That provision states that a franchising authority, “in its request for proposals for a franchise \* \* \*, may not \* \* \* establish requirements for video programming or other information services,” which include broadband Internet service. *Ibid.* The question presented is as follows:

Whether the court of appeals properly upheld the FCC’s determination that Title VI preempts petitioner City of Eugene’s fee on cable operators’ use of rights-of-way to provide an information service.

(I)

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