measures" that are "substantially related" to the achievement of an "important" governmental objective of broadcast diversity.[1751]

In *Croson*, the Court ruled that the city had failed to establish a "compelling" interest in the racial quota system because it failed to identify past discrimination in its construction industry. Mere recitation of a "benign" or remedial purpose will not suffice, the Court concluded, nor will reliance on the disparity between the number of contracts awarded to minority firms and the minority population of the city. "[W]here special qualifications are necessary, the relevant statistical pool for purposes of demonstrating exclusion must be the number of minorities qualified to undertake the particular task." [1752] The overinclusive definition of minorities, including U.S. citizens who are "Blacks, Spanish-speaking, Orientals, Indians, Eskimos, or Aleuts," also "impugn[ed] the city's claim of remedial motivation," there having been "no evidence" of any past discrimination against non-blacks in the Richmond construction industry.[1753] It followed that Richmond's set-aside program also was not "narrowly tailored" to remedy the effects of past discrimination in the city: an individualized waiver procedure made the quota approach unnecessary, and a minority entrepreneur "from anywhere in the country" could obtain an absolute racial preference.[1754]

At issue in *Metro Broadcasting* were two minority preference policies of the FCC, one recognizing an "enhancement" for minority ownership and participation in management when the FCC considers competing license applications, and the other authorizing a "distress sale" transfer of a broadcast license to a minority enterprise. These racial preferences—unlike the set-asides at issue in *Fullilove*—originated as administrative policies rather than statutory mandates. Because Congress later endorsed these policies, however, the Court was able to conclude that they bore "the imprimatur of longstanding congressional support and direction." [1755]

Metro Broadcasting was noteworthy for several other reasons as well. The Court rejected the dissent's argument—seemingly accepted by a *Croson* majority—that Congress's more extensive authority to adopt racial classifications must trace to section 5 of the Fourteenth Amendment, and instead ruled that Congress also may rely on race-conscious measures in exercise of its commerce and spend-

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[1751] 497 U.S. at 564–65.
[1752] 488 U.S. at 501–02.
[1753] 488 U.S. at 506.
[1754] 488 U.S. at 508.
[1755] 497 U.S. at 600. Justice O'Connor's dissenting opinion contended that the case "does not present 'a considered decision of the Congress and the President.'" Id. at 607 (quoting *Fullilove*, 448 U.S. at 473).