Nos. 24-354, 24-422

IN THE

Supreme Court of the United States

FEDERAL COMMUNICATIONS COMMISSION, ET AL.,
Petitioners,

v.

CONSUMERS' RESEARCH, ET AL.,
Respondents.

SHLB COALITION, ET AL.,
Petitioners,

v.

CONSUMERS' RESEARCH, ET AL.,
Respondents.

On Writs of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF OF AMICUS CURIAE PUBLIC CITIZEN IN SUPPORT OF PETITIONERS

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INTEREST OF AMICUS CURIAE[1]

Amicus curiae Public Citizen is a nonprofit consumer advocacy organization with members in all fifty states. Public Citizen regularly appears before Congress, administrative agencies, and courts to advocate for laws and policies that protect consumers, workers, and the general public. Public Citizen has a strong interest in defending Congress's prerogative to confer authority on expert agencies to serve the public interest by responding to evolving contemporary realities. Public Citizen often participates as amicus in this Court and the courts of appeals in cases raising constitutional separation-of-powers challenges to such congressional authorizations. *See, e.g.*, *SEC v. Jarkesy*, 603 U.S. 109 (2024); *Allstates Refractory Contractors, LLC v. Su*, 79 F.4th 755 (6th Cir. 2023), *cert. denied* 144 S. Ct. 2490 (2024).

Public Citizen submits this brief to explain that Congress did not delegate legislative power when it conferred authority on the Federal Communications Commission (FCC) to create and fund programs to promote universal access to telecommunications services. Accepting respondents' contrary argument could severely undermine this Court's longstanding recognition that Congress enjoys considerable latitude to empower executive agencies to determine how best to implement Congress's directives. Such a result would hamstring Congress in pursuing its substantive goals and would imperil any number of longstanding administrative schemes on which regulated parties and the public have come to rely.

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[1] This brief was not written in any part by counsel for a party. No one other than amicus curiae or its counsel made a monetary contribution to the preparation or submission of the brief.

SUMMARY OF ARGUMENT

I. The Constitution grants Congress exclusive authority to exercise legislative power, while it charges the executive with faithfully implementing Congress's laws. The Court has long recognized that this arrangement allows Congress to lay out its legislative mandates in general terms, as the necessities of government will often require, and to confer discretion on the executive to determine how best to carry out those directives in light of changing on-the-ground realities and the policies articulated by Congress. While Congress must craft its directives to the executive in terms sufficiently intelligible to enable a determination whether the executive has complied with statutory requirements, this Court has emphasized that the degree of executive discretion that will most effectively enable the fulfillment of such legislatively enacted requirements is generally a matter best left to Congress's judgment.

II. In keeping with these principles, the Telecommunications Act of 1996 sets out Congress's policy goal of ensuring that certain vital telecommunications services be made available at affordable prices throughout the nation, and it directs the executive to develop and fund programs that will effectuate that goal. This legislative arrangement falls squarely in line with the sort of statutory schemes that this Court has routinely upheld as consistent with constitutional separation-of-powers principles.

Although the decision below expresses doubt as to the constitutionality of Congress's decision to confer authority on the executive to implement universal-service programs and administer a Universal Service Fund (USF) to finance those programs, that doubt is

unfounded. To begin with, the decision below departs from this Court's precedents by imposing an unduly stringent standard for the level of specificity with which Congress must spell out the details of how the executive is to fulfill Congress's statutory mandates. Furthermore, the decision adopts an implausible reading of certain statutory provisions as conferring virtually unbounded authority on the executive. Properly read, the Telecommunications Act offers constitutionally sufficient guidance for executive action. And if there were any doubt on that point, the doctrine of constitutional avoidance would counsel against reading the statute to grant the executive limitless authority.

III. The consequences of accepting respondents' argument that the Act impermissibly delegates legislative power could be extreme. Countless statutory schemes confer broad authority on the executive—for example, authority to set natural-gas prices, to regulate product safety, and to calculate appropriate fees for all manner of government services. A holding that the USF scheme violates constitutional separation-of-powers principles would break with longstanding precedent and, in the process, open innumerable statutory enactments to novel constitutional attacks. Beyond sowing practical disruption that would threaten the government's ability to serve and protect the public, such a result would threaten to deprive Congress of the flexibility that this Court has long recognized is essential to Congress's ability to effectually fulfill its constitutionally mandated legislative role.

ARGUMENT

I. The Constitution allows Congress ample latitude to authorize the executive to implement broadly drawn statutory mandates.

Article I of the U.S. Constitution provides that "[a]ll legislative Powers herein granted shall be vested in … Congress." U.S. Const. art. I, § 1. Article II then empowers the executive to "take Care that [Congress's] Laws be faithfully executed." U.S. Const. art. II, § 3. For a century, this Court has consistently recognized that these complementary provisions allow Congress to "use officers of the executive branch within defined limits, to secure the exact effect intended by its acts of legislation, by vesting discretion in such officers to make public regulations interpreting a statute and directing the details of its execution." *J.W. Hampton, Jr., & Co. v. United States*, 276 U.S. 394, 406 (1928). Indeed, this Court has observed that such arrangements are both permissible and an essential foundation of functional government, "dependent as Congress is on the need to give discretion to executive officials to implement its programs." *Gundy v. United States*, 588 U.S. 128, 147 (2019) (plurality opinion).

As the Court has repeatedly explained, "[n]ecessity … fixes a point beyond which it is unreasonable and impracticable to compel Congress to prescribe detailed rules," and "[t]he legislative process would … bog down if Congress were constitutionally required to appraise before-hand the myriad situations to which it wishes a particular policy to be applied and to formulate specific rules for each situation." *Am. Power & Light Co. v. SEC*, 329 U.S. 90, 105 (1946); *see, e.g.*, *J.W. Hampton*, 276 U.S. at 407–08 (explaining that Congress may direct the executive to set "just and

reasonable" interstate-carrier rates because "[t]he rates to be fixed are myriad" and "[i]f Congress were to be required to fix every rate, it would be impossible to exercise the power at all"). This need for legislative flexibility is particularly acute today, moreover, "in our increasingly complex society, replete with ever changing and more technical problems." *Mistretta v. United States*, 488 U.S. 361, 372 (1989). Put bluntly, "Congress simply cannot do its job" in the face of evolving contemporary realities "absent an ability to delegate power under broad general directives." *Id.*

Of course, Congress must act in accordance with the Constitution's separation of powers and so cannot delegate its Article I authority "to make a law." *Wikerson v. Rahrer*, 140 U.S. 545, 562 (1891); *see J.W. Hampton*, 276 U.S. at 406 (cautioning that Congress cannot transfer legislative power to the President under the guise of a grant of discretion). But Congress does not abdicate its legislative role by writing "broad general directives," *Mistretta*, 488 U.S. at 372, that allow leeway for the executive to "exercise judgment on matters of policy" when it comes to implementation, *id.* at 378. As this Court has held, Congress fulfills its legislative function as long as it "clearly delineates the general policy, the public agency which is to apply it, and the boundaries" of that agency's "authority." *Am. Power & Light*, 329 U.S. at 105.

This Court has distilled these principles into a test that, for a century, has governed the question whether a congressional delegation of authority to the executive comports with constitutional separation-of-powers principles. Specifically, a court must ask whether Congress has "la[id] down by legislative act an intelligible principle to which the person or body authorized" to execute Congress's legislation "is

directed to conform." *J.W. Hampton*, 276 U.S. at 409. "So long as Congress" has done so, it has not delegated legislative power. *Mistretta*, 488 U.S. at 372. And an executive agency that issues regulations or orders to implement Congress's legislation exercises Article II *executive* power by "tak[ing] Care that the Laws be faithfully executed." U.S. Const. art. II, § 3.

The intelligible-principle test evinces respect for the respective roles of the legislative, executive, and judicial branches. By allowing Congress wide latitude to repose authority in executive bodies capable of responding flexibly to novel or unforeseen situations, the test guards against undue judicial interference with Congress's decisions about how best to accomplish its legislative aims. *See Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 474–75 (2001) ("[W]e have 'almost never felt qualified to second-guess Congress regarding the permissible degree of policy judgment that can be left to those executing or applying the law.'" (quoting *Mistretta*, 488 U.S. at 416 (Scalia, J., dissenting))). At the same time, the requirement that Congress must supply intelligible principles to guide executive discretion enables the judiciary to assess the executive's "application of [Congress's] policy in the light of [Congress's] legislative declarations" and to guard against "statutory or constitutional excesses." *Am. Power & Light*, 329 U.S. at 105–06; *see Yakus v. United States*, 321 U.S. 414, 426 (1944) (explaining that a statute creates a nondelegation problem "[o]nly if … there is an absence of standards for the guidance of [executive] action, so that it would be impossible … to ascertain whether the will of Congress has been obeyed").

Consistent with the flexibility that inheres in the constitutional plan, this Court has "over and over"

applied the intelligible-principle test to uphold federal statutes that direct executive bodies to regulate in pursuit of "even very broad" congressional aims. *Gundy*, 588 U.S. at 146 (plurality opinion). After all, "Congress is no less endowed with common sense" than the courts are and is "better equipped to inform itself of the 'necessities' of government." *Mistretta*, 488 U.S. at 416 (Scalia, J., dissenting). Accordingly, this Court, out of "wisdom and humility alike," typically has been loath to interfere with Congress's judgment that an executive agency should enjoy a wide measure of discretion to "carry[] out [its] charge" in the face of unpredictable and constantly evolving on-the-ground realities. *Gundy*, 588 U.S. at 148 (plurality opinion).

II. The USF falls within the heartland of the sort of congressional delegations that this Court has routinely upheld.

A. In the Telecommunications Act of 1996, Congress tasked the FCC with creating and implementing "policies for the preservation and advancement of universal [telecommunications] service." 47 U.S.C. § 254(b). Recognizing that the meaning of universal service would necessarily "evolv[e]" with "advances in telecommunications and information technologies and services," *id.* § 254(c)(1), Congress directed the FCC to fashion regulations to support access to those services that, at any given time, "are essential to education, public health, or public safety," *id.* § 254(c)(1)(A), "have … been subscribed to by a substantial majority of residential customers," *id.* § 254(c)(1)(B), "are being deployed in in public telecommunications networks by telecommunications carriers," *id.* § 254(c)(1)(C), and "are consistent with the public interest, convenience, and necessity," *id.* § 254(c)(1)(D). In addition, Congress supplied seven

principles to guide the FCC, including that "[q]uality services should be available at just, reasonable, and affordable rates," *id.* § 254(b)(1), and that "[a]ccess to advanced telecommunications and information services should be provided in all regions of the Nation," *id.* § 254(b)(2); *see also id.* §§ 254(b)(3)–(7). Congress also directed the executive to require payments from telecommunications providers to finance the programs that the FCC institutes to pursue the Telecommunications Act's mandate. Specifically, Congress directed that "[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and non-discriminatory basis, to the specific, predictable, and sufficient mechanisms established by the [FCC] to preserve and advance universal service." *Id.* § 254(d).

Through these provisions, Congress has issued a regulatory mandate, set forth the "general policy" of universal access that the required regulations are to pursue, identified the FCC as "the public agency which is to apply" that policy, and circumscribed the "boundaries" of the FCC's "authority" to regulate. *Am. Power & Light*, 329 U.S. at 105. Congress's framework for addressing the "complex economic and social problem[]" of ensuring access to vital telecommunications services is thus "constitutionally sufficient" and entitled to "judicial approval." *Id.*

Critically, Congress's scheme for directing the executive to implement and fund universal-service policies is comparable to legislative schemes that this Court has upheld against nondelegation challenges in the past. *Whitman*, for example, upheld the Clean Air Act's requirement that the Environmental Protection Agency (EPA) set air-quality standards "'requisite to protect the public health' with 'an adequate margin of

safety.'" 531 U.S. at 465 (quoting 42 U.S.C. § 7409(b)(1)). The decision below suggests that the delegation in *Whitman* was permissible only because "Congress made the crucial policy judgment—that the public should be protected from harmful pollutants"—and needed to rely on the EPA's "scientific expertise" to give effect to that judgment. Pet. App. 34a. That suggestion does not distinguish *Whitman*, because Congress here similarly "made the crucial policy judgment," *id.*—that certain necessary and widely used telecommunications services should be available at affordable rates across the nation—and properly entrusted the FCC, with its expertise in the latest "advances in telecommunications and information technologies and services," 47 U.S.C. § 254(c)(1), to specify precisely what the covered services should be.

National Broadcasting Co. v. United States, 319 U.S. 190 (1943) (*NBC*), is likewise instructive, and the Fifth Circuit's attempt to distinguish it from this case is unavailing. In *NBC*, this Court upheld a statute that authorized the FCC to grant radio broadcasting licenses as "public interest, convenience, or necessity" dictates. *Id.* at 216. According to the decision below, the statute in *NBC* delegated a power that was "executive in character"—*i.e.*, the allocation of a public resource—and so did not need to satisfy the intelligible-principle test. Pet. App. 37a. This rationale, however, appears nowhere in *NBC*. Rather, *NBC* upheld the statutory grant of licensing authority because the FCC was "not left at large" in exercising this authority, 319 U.S. at 216, as Congress had "define[d] broad areas for regulation and … establish[ed] standards for [executive] judgment adequately related in their application to the problems to be solved," *id.* at 220. Emphasizing the

"fluid and dynamic" nature of the then-evolving radio industry, *NBC* held that Congress was not required to "attempt[] an itemized catalogue" of the relevant considerations and could instead permissibly give the FCC a "comprehensive mandate" to carry out "the large public aims" of the statute in accordance with the statute's express purposes. *Id.* at 218–19; *see also N.Y. Cent. Sec. Corp. v. United States*, 287 U.S. 12, 24–25 (1932) (upholding a statute that directed the executive to approve railroad acquisitions in the "public interest" because statutory purpose and context gave meaning to that term). As in *NBC* and *New York Central Securities Corp.*, the statute in this case expresses a clear policy directive—pursuing nationwide access to affordable telecommunications services—against which to assess executive action.

Yakus likewise supports the FCC. The statute at issue in that case, the Emergency Price Control Act, empowered the executive to set "fair and equitable" commodity prices. 321 U.S. at 423. The decision below points out that the statute required the executive to give "due consideration" to certain baseline prices and to make adjustments in light of certain factors. Pet. App. 37a–38a (quoting *Yakus*, 321 U.S. at 421). But just as the statutory context in *Yakus* provided "legislative direction" to the executive in carrying out its price-setting duty, *id.* at 38a, statutory context here too offers the FCC specific "principles" on which to "base [its] policies." 47 U.S.C. § 254(b). While the Fifth Circuit characterized these principles as more capacious than the statutory considerations in *Yakus*, Pet. App. 37a–38a, "Congress is not confined to that method of executing its policy which involves the least possible delegation of discretion to administrative officers" and is free to choose "the flexibility attainable

by the use of less restrictive standards." *Yakus*, 321 U.S. at 425–26. Indeed, this Court has unflinchingly accepted the executive's authority to set "just and reasonable" rates in multiple contexts without requiring the level of guidance that the Fifth Circuit read the statute in *Yakus* as offering. *See, e.g.*, *Fed. Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 600–02 (1944) (wholesale natural-gas prices); *Tagg Bros. & Moorhead v. United States*, 280 U.S. 420, 439–40 (1930) (certain stockyard services); *J.W. Hampton*, 276 U.S. at 407–08 (interstate carriage).

Conversely, the Telecommunications Act's universal-service provisions look nothing like the "only two statutes" that this Court has ever held to impermissibly delegate legislative power. *Whitman*, 531 U.S. at 474. First, in *Panama Refining Co. v. Ryan*, 293 U.S. 388 (1935), this Court held a delegation to be unconstitutionally broad where Congress passed a statute that granted the President "unlimited authority to determine the policy" with respect to prohibiting interstate transportation of hot oil, and to adopt a prohibition, or not, "as he may see fit," without stating "whether or in what circumstances or under what conditions the President" was to do so, *id.* at 415. Here, in contrast, Congress has expressly set forth its policy aim of ensuring universal access to telecommunications services. And while the implementation of that legislative aim requires the FCC to make some interstitial policy judgments, "[i]t is well settled … that it is no argument against the constitutionality of an act to say that it delegates broad powers to executives to determine the details of any legislative scheme." *United States v. Rock Royal Co-op.*, 307 U.S. 533, 574 (1939); *see Mistretta*, 488 U.S. at 417 (Scalia, J., dissenting) ("[A] certain degree

of discretion … *inheres* in most executive … action, and it is up to Congress, by the relative specificity or generality of its statutory commands, to determine—up to a point—how small or how large that degree shall be.").

Second, in *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935), this Court held that Congress had impermissibly delegated legislative power when it authorized the executive to pass "whatever" industrial codes might "tend to effectuate" any one of a "broad range of objectives," such as ensuring a free flow of commerce, promoting industrial capacity, fostering labor-management harmony, eliminating unfair commercial practices, reducing unemployment, conserving natural resources, and increasing domestic consumption and purchasing power. *Id.* at 534–35; *see id.* at 551. Here, unlike the statute in *A.L.A. Schechter*, which gave the executive "virtually unfettered" authority to "enact[] laws for the government of trade and industry throughout the country," *id.* at 542, the Telecommunications Act empowers the FCC to create and fund programs to further a discrete, limited statutory objective within the circumscribed domain of telecommunications services.

Given the wide range of broad delegations that this Court has approved in the past, it easily follows that Congress's decision here to confer authority on the FCC to determine the most effective way to implement a specific, clearly stated policy directive falls squarely within Congress's constitutional authority.

B. While the decision below does not resolve the question whether Congress's grant of authority to the executive to create and fund universal-service prog-

rams violates constitutional nondelegation principles, it voices "grave concerns" about the constitutionality of the statutory scheme. Pet. App. 42a. These concerns are unwarranted. The decision's misgivings derive from a misunderstanding of the level of granularity with which Congress is required to define its policy mandates and from a misreading of statutory text.

On the former point, the decision below recognizes that the Telecommunications Act offers some "guidance on the contours of Congress's idea of a universal service policy." *Id.* at 27a (citing 47 U.S.C. § 254(b)). It characterizes this guidance, though, as "aspirational," *id.* at 28a, and "contentless in important respects," *id.* at 29a. *All* legislative policy aims, however, can be characterized as aspirational. What matters for nondelegation purposes is that they are "defined" with sufficient clarity that they are capable of delimiting the permitted scope of executive action. *Yakus*, 321 U.S. at 423; *see id.* (approving a statutory grant of authority to the executive to set commodity prices under Congress's "declared policy" of "stabiliz[ing] … prices so as to prevent war-time inflation"). As the decision below itself recognizes, the statute here expressly "reflects [Congress's] policy goal of making telecommunications services available to all Americans." Pet. App. 10a. And although the decision complains that Congress left certain subsidiary matters up to executive discretion—such as "which schools and libraries should receive subsidized services," *id.* at 29a, and what cellphone-service rates are "affordable," *id.* at 30a—this Court's precedents have long permitted Congress to issue "broad general directives," *Mistretta*, 488 U.S. at 372, and entrust the "executive[] to determine the details of [the] legislative scheme," *Rock Royal*, 307 U.S. at 574; *cf. Lichter*

v. United States, 334 U.S. 742, 785 (1948) ("It is not necessary that Congress supply administrative officials with a specific formula for their guidance in a field where flexibility and the adaptation of the congressional policy to infinitely variable conditions constitute the essence of the program.").

On the latter point, the decision below identifies certain statutory provisions that it reads as stripping Congress's universal-service directive of meaningful limits on executive authority. In particular, the decision emphasizes that the statute requires the USF to be "sufficient" to fund the FCC's universal-service programs but that nothing in the statutory language bars the FCC from collecting far more money than it needs to run those programs. Pet. App. 27a (quoting 47 U.S.C. § 254(b)(5)). The decision also points to statutory language that permits the FCC to pursue universal-service principles that the FCC deems "necessary and appropriate for the protection of the public interest, convenience, and necessity." *Id.* at 28a (quoting 47 U.S.C. § 254(b)(7)). According to the decision below, these provisions confer freewheeling discretion on the FCC, divorced from any constraints that might appear elsewhere in the statutory scheme.

This reading of the statute is implausible. Despite the suggestion in the decision below that the statute empowers the FCC to collect unlimited funds, Congress's direction that the funds be "sufficient" to support the FCC's universal-service programs, 47 U.S.C. § 254(d), is better read to require that the funds collected be related to the cost of running those programs. *See, e.g.*, *Yates v. United States*, 574 U.S. 528, 543 (2015) (cautioning courts "to 'avoid ascribing to one word a meaning so broad that it is inconsistent with its accompanying words, thus giving unintended

breadth to the Acts of Congress'" (quoting *Gustafson v. Alloyd Co.*, 513 U.S. 561, 575 (1995))); *Lagos v. United States*, 584 U.S. 577, 583–84 (2018) (choosing a "limited interpretation" rather than a "broad interpretation" of the types of expense recoverable under a criminal restitution statute, based on the context provided by "the statute as a whole"). Further, it is implausible to conclude that, by authorizing the FCC to pursue "necessary and appropriate" policies, 47 U.S.C. § 254(b)(7), Congress contemplated that the FCC would have free rein to create programs that are untethered from the universal-service principles that form the backbone of the statutory framework within which this catchall grant of authority is embedded. *See Harrington v. Purdue Pharma L.P.*, 603 U.S. 204, 217 (2024) (explaining that "a catchall phrase tacked on at the end of a long and detailed list of specific directions" should not necessarily be "afford[ed] … the broadest possible construction it can bear" but "must be interpreted in light of its surrounding context").

Constitutional-avoidance principles also militate against embracing the unbounded interpretation adopted by the decision below. After all, "[w]hen 'a serious doubt' is raised about the constitutionality of an Act of Congress, 'it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided.'" *Jennings v. Rodriguez*, 583 U.S. 281, 296 (2018) (quoting *Crowell v. Benson*, 285 U.S. 22, 62 (1932)). This principle applies as much to nondelegation concerns as to any other form of constitutional doubt. *See Indus. Union Dep't, AFL-CIO v. Am. Petroleum Inst.*, 448 U.S. 607, 646 (1980) (plurality opinion) (explaining that "[a] construction of [a] statute that avoids th[e] kind of open-ended grant"

that raises nondelegation concerns "should certainly be favored"); *Nat'l Cable Television Ass'n v. United States*, 415 U.S. 336, 342 (1974) (reading a statute "narrowly to avoid [nondelegation] problems").

Accordingly, the Telecommunications Act is best read to authorize the executive to create programs—and only those programs—that further Congress's express policy aim of providing affordable, nationwide telecommunications access and to create a USF that is large enough—but not larger than reasonably necessary—to fund those programs adequately. The FCC has implemented the Act within these boundaries. And as explained above, this limited grant of authority within a specified domain to achieve a specified purpose easily satisfies the constitutional requirements established by this Court's nondelegation precedents.

III. Invalidating the USF on nondelegation grounds would imperil any number of longstanding congressional schemes.

Accepting respondents' argument that the Telecommunications Act violates nondelegation principles would require breaking from this Court's precedents, *see supra* Part II, and effect a sea change in constitutional law with enormous ramifications. Such a holding could deny Congress "the necessary resources of flexibility and practicality, which … enable it to perform its function in laying down policies and establishing standards, while leaving to selected instrumentalities the making of subordinate rules within prescribed limits." *Panama Refining Co.*, 293 U.S. at 421. And it could call into question the constitutionality of a host of longstanding statutory

schemes that readily pass muster under this Court's existing precedents.

For example, just as Congress has empowered the FCC to utilize its expert judgment to determine which telecommunications services have become sufficiently "essential" to fall subject to the statutory universal-services mandate, 47 U.S.C. § 254(c)(1)(A), Congress has granted executive agencies broad discretion to decide which tobacco products should be subject to certain marketing regulations, 21 U.S.C. § 387a(b), which plant or animal species are sufficiently at risk of extinction to receive certain statutory protections, 16 U.S.C. § 1533(a)(1), and which executive, administrative, or professional employees should be exempt from statutory wage-and-hour protections, 29 U.S.C. § 213(a)(1).

Meanwhile, Congress's grant of authority to the FCC to determine what rates are "just, reasonable, and affordable" for the covered services, 47 U.S.C. § 254(b)(1), echoes Congress's decision elsewhere to empower the FCC to "determine and prescribe what will be the just and reasonable charge" for common carriers to impose for services, as well as what "practice[s] [are] or will be just, fair, and reasonable" for common carriers to follow, *id.* § 205(a). Such a grant of authority is not at all unusual. Other agencies, such as the Federal Energy Regulatory Commission and the Federal Maritime Commission, enjoy comparable discretion to establish "just and reasonable" rates for commercial actors within their respective domains. 15 U.S.C. § 717d(a) (natural-gas companies); 46 U.S.C. § 40701(b) (ocean carriers).

More broadly, the FCC's authority to implement programs that are "necessary and appropriate" to

carry out the statutory purpose embodied in the Telecommunications Act, 47 U.S.C. § 254(b)(7), is the sort of delegation that is ubiquitous throughout the U.S. Code. For example, Congress has empowered the Consumer Product Safety Commission to promulgate safety standards that are "reasonably necessary to prevent or reduce an unreasonable risk of injury," 15 U.S.C. § 2056(a), and has authorized the Occupational Safety and Health Administration to promulgate "any occupational safety or health standard," 29 U.S.C. § 655(b), that is "reasonably necessary or appropriate to provide safe or healthful employment," *id.* § 652(8). Other examples are legion. *See, e.g.*, 12 U.S.C. § 5531(b) (authorizing the Consumer Financial Protection Bureau to promulgate rules that are necessary to prevent "unfair, deceptive, or abusive acts or practices" related to certain consumer transactions); 15 U.S.C. § 78k-1(a)(2) (authorizing the Securities and Exchange Commission to "facilitate the establishment of a national market system for securities" with "due regard for the public interest, the protection of investors, and the maintenance of fair and orderly markets"); 29 U.S.C. § 628 (authorizing the Equal Employment Opportunity Commission to establish "reasonable exemptions" to the Age Discrimination in Employment Act where they are "necessary and proper in the public interest"); 31 U.S.C. § 5111(a)(1) (authorizing the Secretary of the Treasury to mint and issue coins "in amounts the Secretary decides are necessary to meet the needs of the United States"); 42 U.S.C. § 300g-1(b)(1)(A)(iii) (authorizing the EPA Administrator to issue drinking-water regulations that "present[] a meaningful opportunity for health risk reduction").

Furthermore, just as the FCC has statutory authorization to collect the funds that are needed to finance the universal-service programs that Congress has directed it to create, 47 U.S.C. § 254(d), Congress has elsewhere made "entirely appropriate delegations of discretionary authority" for executive agencies to assess and collect monetary charges to support their operations, *Skinner v. Mid-Am. Pipeline Co.*, 490 U.S. 212, 222 (1989). For example, the Secretary of the Interior has statutory authority to set recreation fees at certain federal lands according to certain factors, such as "the benefits and services provided to the visitor," 16 U.S.C. § 6802(b)(1), and "such other factors or criteria as determined appropriate by the Secretary," *id.* § 6802(b)(6). Congress has similarly authorized the National Credit Union Administration Board to charge operating fees to federal credit unions according to a schedule of the Board's creation that "gives due consideration to the expenses of the Administration in carrying out its [statutory] responsibilities." 12 U.S.C. § 1755(b). And the Comptroller of the Currency may impose charges on certain regulated entities "as the Comptroller determines is necessary or appropriate to carry out the responsibilities of the [Comptroller's] Office." 12 U.S.C. § 16. Here too, the list could go on and on. *See, e.g.*, 7 U.S.C. § 473d (authorizing the Secretary of Agriculture to charge "reasonable" fees for certain cotton-testing services); 21 U.S.C. § 136a(a)(1) (authorizing the Secretary of Agriculture to charge fees "sufficient" to fund certain quarantine and inspection programs); 31 U.S.C. § 9701(b) (generally authorizing agency heads to promulgate rules establishing fees for government services that are

"fair" and are based on, among other things, "public policy" and "other relevant facts").

While all of these statutory schemes differ in their particulars, the variety of mechanisms that Congress has devised to ensure that its legislative directives are efficiently carried out only underscores the "wisdom" of this Court's longstanding acceptance that Congress must be allowed flexibility with respect to the breadth or narrowness of the directives it issues to the executive. *Gundy*, 588 U.S. at 148 (plurality opinion). Were this Court now to reverse course and require that Congress cabin executive discretion to an unprecedented degree, countless statutes would need to be reevaluated—and potentially invalidated—under a novel and untested nondelegation standard. The prospect of such practical disruption serves as an apt illustration of the harm that such a standard would inflict on the delicate balance that the Constitution has struck among the branches of government.

CONCLUSION

The decision below should be reversed.

Respectfully submitted,

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