No. 21-1124

In the Supreme Court of the United States

NATIONAL POSTAL POLICY COUNCIL, ET AL.,
PETITIONERS

v.

POSTAL REGULATORY COMMISSION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENT POSTAL REGULATORY COMMISSION IN OPPOSITION

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QUESTION PRESENTED

In the Postal Accountability and Enhancement Act (2006 Act), Pub. L. No. 109-435, 120 Stat. 3198, Congress directed the Postal Regulatory Commission to "establish," and authorized it thereafter to "revise," a "system for regulating rates and classes for market-dominant products" of the U.S. Postal Service—products over which the Postal Service possesses statutory exclusivity or exercises sufficient market power to set prices. 39 U.S.C. 3622(a). The 2006 Act prescribed nine "objectives" that the system must "be designed to achieve," 39 U.S.C. 3622(b) (capitalization omitted), as well as "factors" to be taken into account "[i]n establishing or revising such system," 39 U.S.C. 3622(c) (capitalization omitted). Congress also set forth various requirements for the system, 39 U.S.C. 3622(d)(1) and (2), including that it limit annual rate increases based on inflation, 39 U.S.C. 3622(d)(1)(A).

Congress directed the Commission, after ten years and "as appropriate thereafter," to "review the system" it had established to determine whether that system was achieving the stated "objectives," taking into account the enumerated "factors." 39 U.S.C. 3622(d)(3). Section 3622(d)(3) authorizes the Commission, if it determines that the system is not achieving those objectives, to "make such modification or adopt such alternative system for regulating rates and classes for market-dominant products as necessary to achieve the objectives." *Ibid.* The question presented is as follows:

Whether Congress's authorization to the Commission to "make such modifications or adopt such alternative system * * * as necessary to achieve the" statute's enumerated "objectives," 39 U.S.C. 3622(d)(3), violates the nondelegation doctrine.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-30a) is reported at 17 F.4th 1184. The order of the Postal Regulatory Commission (C.A. App. 2305-2788, excerpted at Pet. App. 31a-93a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on November 12, 2021. The petition for a writ of certiorari was filed on February 10, 2022. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. a. For most of the Nation's history, Congress regulated postal rates directly. See *National Ass'n of Greeting Card Publishers* v. *United States Postal Serv.*,

462 U.S. 810, 813 (1983). In 1970, Congress conferred ratemaking authority on an agency (the Commission) that was previously known as the Postal Rate Commission and is now called the Postal Regulatory Commission. Postal Reorganization Act, Pub. L. No. 91-375, § 3621, 84 Stat. 760. That grant of authority reflected Congress's recognition "that the increasing economic, accounting, and engineering complexity of ratemaking issues" made them ill-suited for Congress and its staff, and that ratemaking duties were better entrusted to an "expert[]" agency "composed of 'professional economists, trained rate analysts, and the like.'" *Greeting Card Publishers*, 462 U.S. at 822-823 (citation omitted).

b. In 2006, Congress enacted the Postal Accountability and Enhancement Act (2006 Act), Pub. L. No. 109-435, 120 Stat. 3198, to "reform[]" certain aspects of the then-existing "ratemaking scheme." *United States Postal Serv.* v. *Postal Regulatory Comm'n*, 785 F.3d 740, 744 (D.C. Cir. 2015) (*USPS*). Among other things, Congress directed that the "Commission shall * * * by regulation establish * * * a modern system for regulating rates and classes of market-dominant products," 39 U.S.C. 3622(a)—*i.e.*, products over which the Postal Service either "enjoys a statutory monopoly" or "exercises sufficient market power so that it can effectively dictate the[ir] price," *USPS*, 785 F.3d at 744 (citing 39 U.S.C. 3642(b)(1) and (2)). The 2006 Act further provides that, having established such a system, the Commission "may * * * revise" it "from time to time thereafter." 39 U.S.C. 3622(a).

Congress provided several forms of guidance for the Commission's establishment and revision of the new ratemaking system. First, Congress specified nine "objectives" that the system "shall be designed to achieve":

> (1) To maximize incentives to reduce costs and increase efficiency.
>
> (2) To create predictability and stability in rates.
>
> (3) To maintain high quality service standards established under [39 U.S.C.] 3691.
>
> (4) To allow the Postal Service pricing flexibility.
>
> (5) To assure adequate revenues, including retained earnings, to maintain financial stability.
>
> (6) To reduce the administrative burden and increase the transparency of the ratemaking process.
>
> (7) To enhance mail security and deter terrorism.
>
> (8) To establish and maintain a just and reasonable schedule for rates and classifications, however the objective under this paragraph shall not be construed to prohibit the Postal Service from making changes of unequal magnitude within, between, or among classes of mail.
>
> (9) To allocate the total institutional costs of the Postal Service appropriately between market-dominant and competitive products.

39 U.S.C. 3622(b) (capitalization omitted). Congress instructed the Commission to "appl[y]" each of those objectives "in conjunction with the others." *Ibid.*

Congress also identified a list of "factors" that the Commission "shall take into account" "[i]n establishing or revising" its new ratemaking system for market-dominant products. 39 U.S.C. 3622(c) (capitalization omitted). Those factors include, *inter alia*, "the value of the mail service" supplied, the "effect of rate increases" on mail users and the public, "the importance of pricing flexibility," the "need for the Postal Service

to increase its efficiency and reduce its costs," and "the policies of [the 2006 Act]." 39 U.S.C. 3622(c)(1), (3), (7), (12), and (14). Congress did not make the enumerated factors exclusive, but instead directed the Commission to take into account "such other factors as the Commission determines appropriate." 39 U.S.C. 3622(c)(14).

Finally, Congress specified several particular "requirements" that the new system must satisfy. 39 U.S.C. 3622(d) (capitalization omitted); see 39 U.S.C. 3622(d)(1) and (2). Most relevant here, the system must limit annual rate increases to annual changes in a particular measure of inflation: "the Consumer Price Index for All Urban Consumers," 39 U.S.C. 3622(d)(1)(A), known as the CPI, see United States Bureau of Labor Statistics, Department of Labor, *Consumer Price Index*, https://www.bls.gov/cpi/ (explaining that the CPI "is a measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services"); *USPS*, 785 F.3d at 744-745.

In addition to authorizing the Commission to "revise" its new system "from time to time," 39 U.S.C. 3622(a), the 2006 Act specifically instructs the Commission to conduct periodic notice-and-comment reviews to determine whether the system is achieving Section 3622(b)'s "objectives." 39 U.S.C. 3622(d)(3). Section 3622(d)(3) directs that, "[t]en years after the date of enactment of the [2006 Act] and as appropriate thereafter, the Commission shall review the system for regulating rates and classes for market-dominant products established under this section to determine if the system is achieving the objectives in [Section 3622](b), taking into account the factors in [Section 3622](c)." *Ibid.* Section 3622(d)(3) then states that,

> [i]f the Commission determines, after notice and opportunity for public comment, that the system is not achieving the objectives in [Section 3622](b), taking into account the factors in [Section 3622](c), the Commission may, by regulation, make such modification or adopt such alternative system for regulating rates and classes for market-dominant products as necessary to achieve the objectives.

Ibid.

2. a. In 2017, following its review of the system it had established under the 2006 Act, the Commission determined that, "while some aspects of the system of regulating rates and classes for market dominant products have worked as planned, overall, the system has not achieved the objectives of the [2006 Act]." C.A. App. 368; see generally *id.* at 361-653; Pet. App. 6a-7a. In particular, the Commission found that, although the Postal Service had "generally achieved short-term financial stability" under the Commission's initial system, "both medium-term and long-term financial stability measures ha[d] not been achieved." C.A. App. 367. The Commission noted that, "while some cost reductions and efficiency gains [had] occurred, * * * the incentives were not maximized in a way that allowed the Postal Service to achieve financial stability." *Ibid.* In addition, "there was not an adequate mechanism to maintain reasonable rates * * * because certain products and classes failed to cover their attributable costs, further threatening the financial health of the Postal Service." *Ibid.*; see *id.* at 2320.

The Commission found that, in the decade after the 2006 Act was enacted, the Postal Service had suffered a cumulative net loss of approximately $59.1 billion, and had defaulted on the vast majority of its statutory pay-

ment obligations. C.A. App. 534; see *id.* at 2316-2318. As a result of that deficit, the Postal Service had resorted to "extraordinary measures to preserve liquidity," including taking on large amounts of debt, "suspend[ing] all but the most essential capital investments," and defaulting on congressionally mandated benefits payments. *Id.* at 2646.

Based on its examination of the available economic data, the Commission determined that those outcomes had occurred because the Postal Service's "operating environment" had "rapidly" changed after the 2006 Act's enactment. C.A. App. 2316. The Great Recession of 2007 "had a substantial negative impact on Postal Service volume and revenues." *Ibid.* That economic downturn had coincided with "emergent technological trends (*e.g.*, email, text messaging, and other electronic transmission of messages and information) that resulted in even greater volume declines for First-Class Mail[] in particular—the Postal Service's most profitable mail class." *Id.* at 2317. The Postal Service's liabilities had also increased precipitously, due in part to the 2006 Act's requirement that the Postal Service prefund health benefits for retirees, which entailed payments that averaged roughly $5.6 billion annually. *Id.* at 2316-2317.

The Commission concluded that the problems it had identified were compounded by the initial system's inflexible price-cap provision, which rigidly limited the Postal Service's ability to raise rates by restricting rate increases to the rate of inflation reflected in the CPI. C.A. App. 2323-2330, 2607-2608. The Commission observed that Congress had adopted the price cap in 2006 to "enable the Postal Service to achieve sufficient revenues to cover all of its * * * costs and statutorily man-

dated obligations while * * * motivat[ing] the Postal Service to cut costs and become more efficient." *Id.* at 366. It explained that linking potential Postal Service rate increases to the rate of inflation had been reasonable when the 2006 Act was enacted because the Postal Service's finances were stable then, and increases in the costs of delivering mail were largely correlated with inflation. *Id.* at 400.

The Commission further explained, however, that the correlation between mail-delivery costs and inflation had begun to erode almost immediately after the 2006 Act became law. C.A. App. 2593-2594 & n.349. The period of deflation that followed the 2007 economic downturn had significantly constrained the Postal Service's ability to increase rates in response to technological changes and diminishing mail volume. *Id.* at 2317. Since 2007, the Postal Service's costs had risen by more than 54%, but inflation-based rate authority had risen by only 27%. *Id.* at 2399. This "sudden divergence 'made it extremely challenging for the Postal Service to manage retained earnings through sustained net income.'" *Id.* at 2594 (citation omitted). Thus, instead, of creating incentives to increase efficiency, the rate cap had left the Postal Service "chronically underwater," lacking the capital to make efficiency-improving investments. *Id.* at 2651; see *id.* at 2612, 2650-2651.

b. The Commission engaged in two rounds of notice and comment to determine how to address those concerns. C.A. App. 2314. In December 2020, it issued Order No. 5763 (Order), which petitioners have challenged in this case. C.A. App. 2305-2788; Pet. App. 31a-93a (excerpts); see *id.* at 7a-10a.

As relevant here, the Order provides for a revised rate cap, under which the Postal Service may increase

rates beyond the rate of inflation in certain limited respects where the initial price cap prevented the ratemaking system from achieving the 2006 Act's stated objectives. Specifically, the Order authorizes the Postal Service to raise rates to accommodate declines in mail density, C.A. App. 2385, and to cover statutorily mandated retirement obligations, *id.* at 2411-2412; see *id.* at 2328, 2332. The Order also provides additional ratemaking authority to address certain longstanding problems concerning classes of mail whose revenues do not cover the costs incurred to provide them because the initial price cap constrained the Postal Service's ability to set compensatory rates. *Id.* at 2493.

The Commission considered and rejected commenters' objections to its revised rate cap. Those objections included arguments by commenters who purchase postal products (collectively, mailers) that the additional rate authority would undermine the statutory objectives of "maximiz[ing] incentives to reduce costs and increase efficiency," "creat[ing] predictability and stability in rates," "increas[ing] the transparency of the ratemaking process," and "maintain[ing] a just and reasonable schedule for rates," 39 U.S.C. 3622(b)(1), (2), (6), and (8), as well as assertions by the Postal Service that the additional rate authority the Commission had proposed was inadequate. See C.A. App. 2390-2410, 2429-2450, 2477-2499, 2587-2591, 2612-2678. After reviewing the available economic data, the Commission determined that its modified rate cap best advanced the 2006 Act's objectives taken together. See, *e.g.*, *id.* at 2581-2582, 2592, 2622-2623.

3. a. Organizations representing mailers—including petitioners and respondent Association for Postal Commerce (APC)—and the Postal Service petitioned for re-

view of the Order in the D.C. Circuit. See 39 U.S.C. 3663; Pet. App. 3a, 10a. The court of appeals denied requests to stay the Order and rate increases promulgated thereunder pending judicial review, and increased rates took effect in August 2021. Pet. App. 10a.

b. The court of appeals denied the petitions for review and upheld the Order. Pet. App. 1a-30a.

Petitioners contended that Section 3622(d)(3) does not authorize the Commission to permit certain rate increases that exceed increases in the CPI. The court of appeals rejected that argument. Pet. App. 10a-16a. The court observed that "[t]he plain text" of Section 3622(d)(3) "permits the Commission to either make minor changes to the ratemaking system or replace it altogether," by specifying that the Commission may "'*make such modification or adopt such alternative system* for regulating rates and classes * * * as necessary to achieve the objectives'" set forth in the statute. *Id.* at 12a (quoting 39 U.S.C. 3622(d)(3)). The court noted that petitioners "d[id] not contest this interpretation." *Id.* at 13a.

Instead, petitioners contended that, even when adopting an "alternative ratemaking system," the Commission still "must incorporate the price cap" that the 2006 Act required to be included in the Commission's original ratemaking system. Pet. App. 13a. The court of appeals rejected that argument. *Ibid.* The court explained that, in the context of "§ 3622(a) and (d)(1)(A), 'system' refers broadly to a scheme for 'regulating rates and classes for market-dominant products,' not to the subset of schemes that comply with the price cap"; that "'system' most logically means the same in § 3622(d)(3)"; and that the alternative systems that provision authorizes the Commission to adopt "include[] rules that do not comply with the price cap." *Ibid.*

Petitioners also argued that Section 3622(d)(3)'s directive that the Commission review, and its authorization for the Commission to modify or replace, the system "established under" Section 3622 means that "any alternate system adopted must also comply with all of § 3622's requirements." Pet. App. 13a. The court of appeals rejected that contention as well, explaining that "the phrase 'established under' modifies only the system the Commission may review, not the alternative system it may adopt." *Ibid.* The court also rejected petitioners' contention that Congress's inclusion of an express "exception to the price cap for emergencies in § 3622(d)(1)(E)" bars construing Section 3622(d)(3) to authorize departures from that cap. *Id.* at 14a. The court explained that petitioners' own reading was inconsistent with the statutory context and structure because it would "render § 3622(a) superfluous" insofar as it authorizes the Commission to "revise" the ratemaking system that Congress directed it to adopt. *Ibid.*

The court of appeals rejected petitioners' further contention that the Commission's reading of Section 3622(d)(3) "runs afoul of the nondelegation doctrine and should be rejected on constitutional avoidance grounds." Pet. App. 16a. The court explained that, under well-settled precedent, "[a] statutory delegation of authority is constitutional so long as Congress has provided an 'intelligible principle to which the person or body authorized to act is directed to conf[o]rm.'" *Ibid.* (quoting *Whitman* v. *American Trucking Ass'ns*, 531 U.S. 457, 472 (2001), in turn quoting *J. W. Hampton, Jr., & Co.* v. *United States*, 276 U.S. 394, 409 (1928)) (brackets omitted). The court contrasted Section 3622(d)(3) with the only "two statutes" for which this Court has found "'the requisite "intelligible princi-

ple" lacking'"—"'one of which provided literally no guidance for the exercise of discretion, and the other of which conferred authority to regulate the entire economy on the basis of no more precise a standard than stimulating the economy by "assuring fair competition."'" *Id.* at 17a (quoting *American Trucking*, 531 U.S. at 474). The court explained that, unlike those laws, Section 3622(d)(3) "provides an intelligible principle to guide the Commission by requiring that alterations to the rate-making system be 'necessary to achieve the objectives' in § 3622(b), which enumerates nine criteria." *Ibid.*

Finally, the court of appeals rejected arguments that the Order was arbitrary and capricious, finding that the Commission had addressed every concern raised by the parties and had "articulated a rational connection between the statutory objectives and the decision it made." Pet. App. 21a; see *id.* at 18a-30a.

ARGUMENT

The court of appeals correctly held that the Commission did not exceed its authority under 39 U.S.C. 3622(d)(3) in adopting the Order, including its revised rate cap, and that Section 3622(d)(3) does not violate the nondelegation doctrine. The court's decision does not conflict with any decision of this Court or of another court of appeals.

Petitioners contend (Pet 15-27) that the Court should grant review to reconsider its existing nondelegation precedents. That argument lacks merit. Petitioners have not demonstrated any special justification that could plausibly warrant such a departure from *stare decisis* principles. In any event, this case would be an unsuitable vehicle to address that question. Further review is not warranted.

1. The court of appeals correctly held that the Commission acted within its authority under Section 3622(d)(3) in adopting the Order. Pet. App. 10a-17a.

a. The 2006 Act directed the Commission to "establish," "by regulation," "a modern system for regulating rates and classes for market-dominant products." 39 U.S.C. 3622(a). Congress specified nine "objectives" that the system must "be designed to achieve," 39 U.S.C. 3622(b) (capitalization omitted); set forth a nonexhaustive list of "factors" that the Commission should consider in developing the system, 39 U.S.C. 3622(c) (capitalization omitted); and prescribed several parameters for the system, including the cap on rate increases tied to the CPI, 39 U.S.C. 3622(d)(1) and (2). Congress directed the Commission to establish the system within 18 months, and it authorized the Commission to "revise" the system "from time to time thereafter by regulation," 39 U.S.C. 3622(a), consistent with the criteria—and taking into account the factors—that the statute identifies, see, *e.g.*, 39 U.S.C. 3622(c) ("In establishing or revising such system, the [Commission] shall take into account" the enumerated factors.).

In Section 3622(d)(3), Congress additionally directed the Commission to review the system through a notice-and-comment process ten years after the statute's enactment, and "as appropriate thereafter, * * * to determine if the system is achieving the objectives in [Section 3622](b), taking into account the factors in [Section 3622](c)." 39 U.S.C. 3622(d)(3). That provision states that, "[i]f the Commission determines * * * that the system is not achieving" the statutory objectives, it may "make such modification or adopt such alternative system for regulating rates and classes for market-dominant products as necessary to achieve the objectives." *Ibid.*

The court of appeals correctly recognized that Section 3622(d)(3), "[b]y its plain terms, * * * permits the Commission" to make "two types of change" if it determines following its review of the original system that the system is not meeting the statutory objectives. Pet. App. 12a. Under those circumstances, the Commission may "either make minor changes to the ratemaking system" (pursuant to its authority to "'make * * * modification[s]'"), or "replace" the system with one that the Commission determines will meet the objectives (pursuant to its authority to "'adopt [an] alternative system'"). *Ibid.* (brackets in original). In the proceedings below, petitioners "d[id] not contest th[at] interpretation." *Id.* at 13a. They instead contended that, even when the Commission exercises its authority to replace the original system with an "alternative system," 39 U.S.C. 3622(d)(3), it cannot deviate from the requirements (including the inflation-based rate cap) that Section 3622(d)(1) specifies for the original system. Pet. App. 13a. The court correctly rejected that argument. *Id.* at 13a-16a.

The term "system," as used in preceding portions of Section 3622, "refers broadly to a scheme for 'regulating rates and classes for market-dominant products,' not to the subset of schemes that comply with the price cap." Pet. App. 13a. In Section 3622(d)(3)'s authorization to "adopt [an] alternative system," 39 U.S.C. 3622(d)(3), the term "'system' most logically means the same" thing "absent evidence that Congress had a contrary intent," which the court of appeals found lacking here. Pet. App. 13a. The authority conferred by Section 3622(d)(3) thus includes the power to adopt an alternative system that does not track the original parameters set forth in Section 3622(d)(1) and (2)—"includ[ing] rules that do not comply with the price cap." *Ibid.*

The court of appeals also correctly explained that petitioners' contrary interpretation of Section 3622(d)(3) would "render § 3622(a) superfluous." Pet. App. 14a. That provision authorizes the Commission to "revise" the original system "from time to time," including before the first review conducted under Section 3622(d)(3). 39 U.S.C. 3622(a); see p. 12, *supra*. Under the approach that petitioner took below, "no meaningful difference" would exist between the Commission's authority to revise the system under Section 3622(a) and its authority to adopt an alternative system under Section 3622(d)(3). Pet. App. 14a. The statutory structure thus suggests that Section 3622(d)(3) confers "broader" authority than Section 3622(a) provides. *Id.* at 15a. The inference that Section 3622(d)(3) confers broader substantive authority is also consistent with the fact that the Commission must satisfy "more onerous procedural requirements"—including a determination, based on a notice-and-comment process, that the existing system is not achieving the statutory objectives—before adopting an alternative system. *Ibid.*

The court of appeals correctly rejected petitioners' remaining grounds for construing Section 3622(d)(3) not to authorize an "alternative system" that departs from Section 3622(d)'s requirements. Pet. App. 13a; see *id.* at 13a-17a. The court held that neither Section 3622(d)(3)'s reference to "the system 'established under' § 3622," nor Congress's inclusion of an exception to the rate cap in Section 3622(d)(1)(A), limits Section 3622(d)(3) to alternatives that preserve the original rate cap. *Id.* at 13a; see *id.* at 13a-14a. The court observed that the legislative history supports the Commission's reading of Section 3622(d)(3). *Id.* at 15a-16a. And it correctly rejected petitioners' contention that principles of "constitutional avoidance" compelled it to construe Section 3622(d)(3) narrowly to avoid

violating the nondelegation doctrine. *Id.* at 16a. The court explained that Section 3622(d)(3) presents no nondelegation problem because it "provides an intelligible principle to guide the Commission by requiring that alterations to the ratemaking system be 'necessary to achieve the objectives' in § 3622(b), which enumerates nine criteria." *Id.* at 17a. And to the extent the court viewed its interpretation as embodying "the plain meaning of the statutory text," *id.* at 16a, constitutional-avoidance principles could not have justified rejecting that reading, see *Jennings* v. *Rodriguez*, 138 S. Ct. 830, 842 (2018).

b. In this Court, petitioners do not appear to dispute the court of appeals' interpretation of Section 3622(d)(3) or urge the Court to grant review on that issue. Instead, the petition for a writ of certiorari takes that interpretation as its premise in contending that Section 3622(d)(3), so construed, violates the nondelegation doctrine. Pet. i, 2, 28.

In its brief supporting petitioners, respondent APC contests (Br. 4) the court of appeals' interpretation of Section 3622(d)(3) in light of that provision's text, context, and structure. APC asserts that the provision "unambiguously" precludes the revised rate cap contained in the Commission's Order. See APC Br. 3-9. But petitioners have not sought review of that issue, and it is not fairly included in the question presented in the petition, which concerns whether the Court should abrogate its existing nondelegation precedents. Pet. i. The interpretation of Section 3622(d)(3) is antecedent to the question presented, in the sense that a court can apply nondelegation principles only after it has identified the scope of authority that a particular statutory provision confers. See, *e.g.*, *Gundy* v. *United States*, 139 S. Ct. 2116, 2123 (2019) (plurality opinion) ("[A] nondelegation inquiry always begins (and often almost ends) with statutory in-

terpretation."). But the petition focuses on the nondelegation principles that should apply in determining whether Section 3622(d)(3), "[a]s interpreted by the court below," violates that doctrine. Pet. 28 (emphasis omitted); see Pet. 27-32.

In any event, the question whether the court of appeals correctly interpreted Section 3622(d)(3) as authorizing the Order's revised rate cap would not independently warrant this Court's review. APC identifies no prior decision of this Court addressing that provision. APC's assertion (Br. 1) that the court of appeals "misapplied" *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), does not warrant plenary review. See Sup. Ct. R. 10. And although the 2006 Act vests the D.C. Circuit with exclusive jurisdiction to review the Commission's final orders, see 39 U.S.C. 3663, so that no circuit conflict on that interpretive issue could emerge, APC has not established that this issue of first impression is sufficiently important to warrant the Court's review.

2. Petitioners contend (Pet. 27-32) that Section 3622(d)(3), as construed by the court of appeals, violates the nondelegation doctrine. That argument lacks merit and does not warrant review.[1]

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[1] In a footnote, petitioners contend (Pet. 3 n.2) that the Court should hold their petition pending its decision in *West Virginia* v. *EPA*, No. 20-1530 (argued Feb. 28, 2022). *West Virginia* involves a provision of the Clean Air Act, 42 U.S.C. 7401 *et seq.*, that addresses the measures that the Environmental Protection Agency may consider in developing emission guidelines, 42 U.S.C. 7411. Petitioners have not explained how the Court's forthcoming decision with respect to that markedly different statutory scheme might bear on the permissibility of Congress's conferral of authority on the Commission to modify or adopt an alternative to the existing ratemaking system for certain Postal Service products.

a. The Constitution provides that "[a]ll legislative Powers herein granted shall be vested in a Congress of the United States." U.S. Const. Art. I, § 1. "This text permits no delegation of those powers." *Whitman* v. *American Trucking Ass'ns*, 531 U.S. 457, 472 (2001). The Court "ha[s] recognized, however, that the separation-of-powers principle, and the nondelegation doctrine in particular, do not prevent Congress from obtaining the assistance of its coordinate Branches." *Mistretta* v. *United States*, 488 U.S. 361, 372 (1989). The Constitution does not "deny[] to the Congress the necessary resources of flexibility and practicality . . . to perform its function." *Yakus* v. *United States*, 321 U.S. 414, 425 (1944) (citation omitted).

The Court "ha[s] '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.'" *American Trucking*, 531 U.S. at 474-475 (quoting *Mistretta*, 488 U.S. at 416 (Scalia, J., dissenting)). And it has recognized that "Congress is not confined to that method of executing its policy which involves the least possible delegation of discretion to administrative officers." *Yakus*, 321 U.S. at 425-426. Instead, the "extent and character of [the] assistance" that Congress may seek from another Branch in a particular context "must be fixed according to common sense and the inherent necessities of the governmental co-ordination" at issue, *J. W. Hampton, Jr., & Co.* v. *United States*, 276 U.S. 394, 406 (1928)—matters that Congress is typically best positioned to assess. See *Mistretta*, 488 U.S. at 372; see also *id.* at 416 (Scalia, J., dissenting).

The Court has held that Congress may confer discretion on the Executive to implement and enforce the laws so long as Congress supplies an "intelligible principle"

defining the limits of that discretion. *Mistretta*, 488 U.S. at 372 (quoting *J. W. Hampton*, 276 U.S. at 409). The Court has further clarified that the vesting of authority in an Executive Branch official is "constitutionally sufficient" under that intelligible-principle standard "if Congress clearly delineates [1] the general policy, [2] the public agency which is to apply it, and [3] the boundaries of th[e] delegated authority." *Id.* at 372-373 (quoting *American Power & Light Co.* v. *SEC*, 329 U.S. 90, 105 (1946)). In determining whether a statute supplies an intelligible principle, a court should consider the "'words of a statute * * * in their context and with a view to their place in the overall statutory scheme,'" and it may "look[] to 'history and purpose' to divine the meaning of language." *Gundy*, 139 S. Ct. at 2126 (plurality opinion) (brackets and citations omitted).

Consistent with those principles, the Court has rejected nearly every nondelegation challenge it has confronted. "From the beginning of the Government," Congress has enacted, and the Court has upheld, statutes "conferring upon executive officers power to make rules and regulations * * * for administering the laws which did govern." *United States* v. *Grimaud*, 220 U.S. 506, 517 (1911). For example, early Congresses enacted a series of statutes that conferred on the President the power to impose or lift trade sanctions and tariffs. *Marshall Field & Co.* v. *Clark*, 143 U.S. 649, 683-689 (1892). The Court rejected a nondelegation challenge to one such statute in 1813, see *The Cargo of the Brig Aurora* v. *United States*, 11 U.S. (7 Cranch) 382, 388 (1813), and again in 1892, see *Marshall Field*, 143 U.S. at 681-694. And in the nine decades since the Court articulated the

"intelligible principle" standard, it has similarly upheld numerous statutes against nondelegation challenges.[2]

In the Nation's history, the Court has struck down only two statutes on nondelegation grounds. *American Trucking*, 531 U.S. at 474 (discussing *Panama Ref. Co.* v. *Ryan*, 293 U.S. 388 (1935), and *A. L. A. Schechter Poultry Corp.* v. *United States*, 295 U.S. 495 (1935)). In 1935, the Court concluded that two provisions of the National Industrial Recovery Act, ch. 90, 48 Stat. 195—enacted in response to the Great Depression—contained "excessive delegations" because Congress had "failed to articulate *any* policy or standard that would serve to confine the discretion of the authorities to whom Congress had delegated power." *Mistretta*, 488 U.S. at 373 & n.7 (emphasis added). The Court held those provisions

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[2] See, *e.g.*, *Gundy*, 139 S. Ct. at 2128-2130 (plurality opinion) (authority to specify how sex-offender registration statute applies to individuals who committed sex offenses before the statute was enacted); *id.* at 2130-2131 (Alito, J., concurring in the judgment); *American Trucking,* 531 U.S. at 472-476 (authority to set nationwide air-quality standards limiting pollution); *Loving* v. *United States*, 517 U.S. 748, 771-774 (1996) (authority to set aggravating factors for death penalty in courts martial); *Touby* v. *United States*, 500 U.S. 160, 165-167 (1991) (authority to temporarily designate controlled substances); *Mistretta*, 488 U.S. at 374-377 (Sentencing Guidelines); *Lichter* v. *United States*, 334 U.S. 742, 785-786 (1948) (authority to set standards for recovery of excessive profits from military contractors); *Fahey* v. *Mallonee*, 332 U.S. 245, 247, 249-250 (1947) (authority to set rules for reorganization, etc., of savings-and-loan associations); *American Power & Light*, 329 U.S. at 105 (authority to set standards for prevention of unfair or inequitable distribution of voting power among security holders); *Yakus*, 321 U.S. at 425-427 (authority to set commodity prices); *Federal Power Comm'n* v. *Hope Natural Gas Co.*, 320 U.S. 591, 600-601 (1944) (authority to set natural-gas wholesale prices); *National Broad. Co.* v. *United States*, 319 U.S. 190, 225-227 (1943) (authority to set standards for broadcast licensing); *J. W. Hampton*, 276 U.S. at 407-411 (authority to set tariffs).

invalid because "one * * * provided literally no guidance for the exercise of discretion, and the other * * * conferred authority to regulate the entire economy on the basis of no more precise a standard than stimulating the economy by assuring 'fair competition.'" *American Trucking*, 531 U.S. at 474. Since 1935, the Court has "upheld, again without deviation, Congress' ability to delegate power under broad standards." *Mistretta*, 488 U.S. at 373.

b. The court of appeals correctly held that Section 3622(d)(3) comports with those principles. Pet. App. 16a-17a.

As discussed above, see pp. 17-18, *supra*, a statutory delegation of authority is "constitutionally sufficient if Congress clearly delineates" (1) "the general policy" to be pursued, (2) "the public agency which is to apply it," and (3) "the boundaries of th[e] delegated authority." *American Power & Light*, 329 U.S. at 105. Although petitioners do not frame their challenge in those terms, they do not appear to dispute that Section 3622(d)(3) satisfies the second and third requirements. The provision grants authority to "the Commission," 39 U.S.C. 3622(d)(3), and the authority it confers consists of modifying or replacing the existing "system for regulating rates and classes for market-dominant products" of the Postal Service. 39 U.S.C. 3622(a). Section 3622(d)(3) does not authorize regulation of any private conduct; it empowers the Commission to alter the framework for regulating the rates at which certain products will be offered for sale to the public by the Postal Service, "an independent establishment of the executive branch of the Government of the United States," 39 U.S.C. 201.

In substance, petitioners appear (Pet. 29-32) to contend that Section 3622(d)(3) supplies inadequate guid-

ance to the Commission—*i.e.*, that it does not identify "the general policy" to be pursued, *American Power & Light*, 329 U.S. at 105. But the statutory text amply specifies Congress's policy. Section 3622(d)(3) permits the Commission to "modif[y]" or "adopt [an] alternative" to the existing ratemaking system for market-dominant products only if it first "determines * * * that the system is not achieving the objectives in [Section 3622](b), taking into account the factors in [Section 3622](c)." 39 U.S.C. 3622(d)(3). If the Commission makes such a determination after notice and comment, it may only make modifications or adopt an alternative system that it finds to be "necessary to achieve the objectives" set forth in Section 3622(b). *Ibid.*

Those nine statutory objectives provide ample guidance to inform the Commission's exercise of its authority. They include (1) "maximiz[ing] incentives to reduce costs and increase efficiency"; (2) "creat[ing] predictability and stability in rates"; (3) "maintain[ing] high quality service standards"; (4) "allow[ing] the Postal Service pricing flexibility"; (5) "assur[ing] adequate revenues, including retained earnings, to maintain financial stability"; (6) "reduc[ing] the administrative burden and increas[ing] the transparency of the ratemaking process"; (7) "enhanc[ing] mail security and deter[ring] terrorism"; (8) "maintain[ing] a just and reasonable schedule for rates"; and (9) "allocat[ing] the total institutional costs of the Postal Service appropriately between market-dominant and competitive products." 39 U.S.C. 3622(b). Congress further instructed the Commission to "appl[y]" each objective "in conjunction with the others." *Ibid.*; see pp. 2-3, *supra*.

Section 3622 is much more specific than other delegations the Court has upheld, such as authority to li-

cense radio broadcasters as the "public interest, convenience, or necessity" requires, *National Broad. Co.* v. *United States*, 319 U.S. 190, 225 (1943); to set "just and reasonable" rates for natural gas, *Federal Power Comm'n* v. *Hope Natural Gas Co.*, 320 U.S. 591, 600 (1944); and to establish commodity prices that would be "fair and equitable," *Yakus*, 321 U.S. at 427; see *Avent* v. *United States*, 266 U.S. 127, 130 (1924) (Holmes, J.) (determining that a statute authorizing emergency rules for railroad-equipment shortages that are "reasonable and in the interest of the public and of commerce fixe[d] the only standard that is practicable or needed").

The adequacy of the direction that Congress supplied is particularly clear in light of the limited scope of the authority Section 3622(d)(3) confers. "[T]he degree of agency discretion that is acceptable varies according to the scope of the power" delegated. *American Trucking*, 531 U.S. at 475. Indeed, when the authority conferred is narrow enough, Congress "need not provide any direction." *Ibid.*

As explained above, Section 3622(d)(3) does not authorize the Commission to regulate any private party, but only to superintend the government's *own* operations by regulating rates charged by an Executive Branch instrumentality. See p. 20, *supra*. And even within that sphere, Section 3622(d)(3) applies only to a specified category of Postal Service products. That limited conferral of authority does not necessitate granular instructions.

c. Petitioners' contrary arguments lack merit.

Petitioners contend (Pet. 30-31) that the statute does not specify the precise degree to which the Commission should prioritize a particular objective or deem it to be achieved by the system. *E.g.*, Pet. 30 ("[H]ow do we

know when and if incentives have been maximized enough? At what point do rates become inflexible, unpredictable, or unstable? When are service standards too low?"). But the Constitution does not require Congress to quantify the statutory objectives in such minute detail.

The particular types of judgments that Congress entrusted to the Commission are especially well suited for an expert agency. Analyzing and balancing the objectives that Congress specified in Section 3622 requires data-driven economic analysis of the type that has "long [been] associated with the executive function." *Gundy*, 139 S. Ct. at 2140 (Gorsuch, J., dissenting) (citation omitted). Determining the level of prices that will best serve and harmonize the economic and other objectives enumerated in Section 3622(b) is an inquiry appropriate for delegation to the Commission. *Id.* at 2140 n.65; see *Skinner* v. *Mid-America Pipeline Co.*, 490 U.S. 212, 214, 219-220 (1989). Congress long ago recognized that "the increasing economic, accounting, and engineering complexity of ratemaking issues" made postal ratemaking ill-suited for Congress and its staff. *National Ass'n of Greeting Card Publishers* v. *United States Postal Serv.*, 462 U.S. 810, 822 (1983). Congress permissibly assigned those duties to an "expert[]" agency "composed of 'professional economists, trained rate analysts, and the like.'" *Id.* at 822-823 (citation omitted).

Petitioners also contend (Pet. 31) that Section 3622(d)(3) provides inadequate direction because "many of the[] objectives" set forth in Section 3622(b) "point in competing directions." But a conferral of authority on the Executive is not defective merely because it requires an agency to exercise judgment and to balance competing considerations. See *Yakus*, 321 U.S. at 425

("It is no objection that the determination of facts and the inferences to be drawn from them in the light of the statutory standards and declaration of policy call for the exercise of judgment.").

Congress's instruction that "each" enumerated objective "shall be applied in conjunction with the others," 39 U.S.C. 3622(b), provides significant guidance to the agency. That directive makes clear that the Commission should not pursue any one objective or subset of them to the exclusion of the others, but instead should bear all of them in mind in designing an appropriate system. Based on public comment and an extensive, data-driven analysis, the Commission undertook that task in fashioning the Order at issue here. See C.A. App. 2590-2671.

3. Petitioners do not contend that the D.C. Circuit's nondelegation holding conflicts with any decision of this Court or another court of appeals. Instead, petitioners principally contend (Pet. 15-27) that the Court should grant review to consider overruling its existing nondelegation precedents. That argument lacks merit.

a. As the "proponent[s] of overruling precedent," petitioners bear "the heavy burden of persuading the Court that changes in society or in the law dictate that the values served by *stare decisis* yield in favor of a greater objective." *Vasquez* v. *Hillery*, 474 U.S. 254, 266 (1986). "Although not an inexorable command, *stare decisis* is a foundation stone of the rule of law, necessary to ensure that legal rules develop in a principled and intelligible fashion." *Michigan* v. *Bay Mills Indian Cmty.*, 572 U.S. 782, 798 (2014) (citations and internal quotation marks omitted); see *Kimble* v. *Marvel Entm't, LLC*, 576 U.S. 446, 455 (2015). Adherence to precedent "promotes the evenhanded, predictable, and consistent development of legal principles, fosters reli-

ance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Payne* v. *Tennessee*, 501 U.S. 808, 827 (1991). "[T]his Court has always held that any departure from the doctrine demands special justification." *Bay Mills*, 572 U.S. at 798 (citation and internal quotation marks omitted).

Petitioners' burden is especially heavy because they seek to overturn not a single decision but "a long line of precedents." *Bay Mills*, 572 U.S. at 798. The Court's nondelegation standards have been settled by decisions tracing back decades, see, *e.g.*, *American Power & Light*, 329 U.S. at 105; *J. W. Hampton*, 276 U.S. at 409, and the underlying principle traces back to the early days of the Republic, see, *e.g.*, *Marshall Field*, 143 U.S. at 681-694; *The Cargo of the Brig Aurora*, 11 U.S. (7 Cranch) at 387-388. Granting review to reconsider that longstanding body of precedent "would ill serve the goals of 'stability' and 'predictability'" that stare decisis "aims to ensure." *CSX Transp., Inc.* v. *McBride*, 564 U.S. 685, 699 (2011) (quoting *Hilton* v. *South Carolina Pub. Rys. Comm'n*, 502 U.S. 197, 202 (1991)). That concern is particularly acute here, as congressional conferrals of authority on agencies "pervade[] the whole corpus of administrative law," and petitioners' proposed abrogation of existing precedent could "cast doubt on many settled" delegations and agency actions taken pursuant to them. *Kisor* v. *Wilkie*, 139 S. Ct. 2400, 2422 (2019).

Apart from their "belief" that this Court's nondelegation precedents were "'wrongly decided,'" *Kimble*, 576 U.S. at 456 (citation omitted); see Pet. 15-27, petitioners offer no persuasive "special justification" for overruling those decisions, let alone the type of "particularly special justification" that would be required to overturn such a deeply ingrained principle, *Kisor*,

139 S. Ct. at 2423 (internal quotation marks omitted). Petitioners' assertion that the doctrine "ha[s] lost any clear meaning," Pet. 18 (emphasis omitted), is belied by the long line of this Court's precedents, unbroken for nearly 90 years, consistently applying the doctrine to uphold congressional enactments that conferred authority on the Executive. See pp. 17-20, *supra*. Petitioners also identify no basis for concluding that lower courts are confused about the doctrine's contours or have difficulty applying it.

b. In any event, this case would be a poor vehicle for reconsidering the nondelegation doctrine. By nearly any measure, Congress has provided ample guidance to the Commission by setting out nine statutory objectives and authorizing the Commission to modify or adopt an alternative to the existing system only if "necessary to achieve th[ose] objectives." 39 U.S.C. 3622(d)(3). The sufficiency of that instruction is especially clear given the limited scope and nature of the Commission's authority in designing the ratemaking system for a subset of the products sold by an arm of the Executive Branch. See p. 22, *supra*. Further review is not warranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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MAY 2022