

No. 24-422

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IN THE  
*Supreme Court of the United States*

SCHOOLS, HEALTH & LIBRARIES BROADBAND  
COALITION, ET AL.,

*Petitioners,*

v.

CONSUMERS' RESEARCH, ET AL.,

*Respondents.*

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On Petition for a Writ of Certiorari to the  
United States Court of Appeals for the Fifth Circuit

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**BRIEF FOR THE RESPONDENTS**

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ROBERT HENNEKE  
CHANCE WELDON  
TEXAS PUBLIC POLICY  
FOUNDATION  
901 Congress Avenue  
Austin, TX 78701  
(512) 472-2700  
rhenneke@texaspolicy.com

R. TRENT MCCOTTER  
*Counsel of Record*  
JONATHAN BERRY  
MICHAEL BUSCHBACHER  
JARED M. KELSON  
JAMES R. CONDE  
ADAM H CHAN  
BOYDEN GRAY PLLC  
800 Connecticut Ave. NW,  
Suite 900  
Washington, DC 20006  
(202) 706-5488  
tmccotter@boydengray.com

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## QUESTIONS PRESENTED

(1) Whether 47 U.S.C. § 254 violates the nondelegation doctrine by imposing no limit on the FCC's power to raise revenue for the USF.

(2) Whether the FCC violated the private nondelegation doctrine by transferring its revenue-raising power to a private company run by industry interest groups.

(3) Whether the combination of Congress's delegation to the FCC and the FCC's delegation to the private Universal Service Administrative Company violates the nondelegation doctrine.

## **PARTIES TO THE PROCEEDING**

Petitioners are Schools, Health & Libraries Broadband Coalition; Competitive Carriers Association; National Telecommunications Cooperative Association d/b/a NTCA – The Rural Broadband Association; USTelecom – The Broadband Association; Benton Institute for Broadband & Society; National Digital Inclusion Alliance; and Center for Media Justice d/b/a MediaJustice.

Respondents are Consumers' Research; Cause Based Commerce, Inc.; Kersten Conway; Suzanne Bettac; Robert Kull; Kwang Ja Kirby; Tom Kirby; Joseph Bayly; Jeremy Roth; Deanna Roth; Lynn Gibbs; Paul Gibbs; and Rhonda Thomas.

Nominal Respondents are the Federal Communications Commission and the United States of America.

**CORPORATE DISCLOSURE STATEMENT**

Consumers' Research and Cause Based Commerce, Inc., have no parent corporations, and no publicly held company owns 10% or more of their stock.

## STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceeding:

- *Consumers' Rsch. v. FCC*, No. 22-60008 (5th Cir.) (*en banc* opinion issued July 24, 2024); No. 24-354 (U.S.)

The same legal issues for different quarterly contribution rates arise in the following related proceedings:

- *Consumers' Rsch. v. FCC*, No. 23-456 (U.S.).
- *Consumers' Rsch. v. FCC*, No. 23-743 (U.S.).
- *Consumers' Rsch. v. FCC*, Nos. 22-60195, 22-60363, 23-60359, 23-60525, 24-60006, 24-60160, 24-60330, 24-60494 (5th Cir.).
- *Consumers' Rsch. v. FCC*, Nos. 21-3886, 22-4069 (6th Cir.).
- *Consumers' Rsch. v. FCC*, No. 22-13315 (11th Cir.).
- *Consumers' Rsch. v. FCC*, No. 23-1091 (D.C. Cir.).

There are no additional proceedings in any court that are directly related to these cases within the meaning of this Court's Rule 14.1(b)(iii).

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## **BRIEF FOR THE RESPONDENTS**

Respondents respectfully submit this brief in response to Petitioners' petition for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit.

### **OPINIONS BELOW**

The *en banc* Fifth Circuit's July 24, 2024, opinion (Pet.App.1a) is reported at 109 F.4th 743. The Fifth Circuit's March 24, 2023, vacated panel opinion (Pet.App.125a) is reported at 63 F.4th 441.

### **JURISDICTION**

This Court has jurisdiction under 28 U.S.C. § 1254(1). The *en banc* Fifth Circuit entered its judgment on July 24, 2024.



## STATEMENT

Petitioners in this case were intervenors below in the Fifth Circuit; for clarity, they will be referred to as “Intervenors” here. The respondents in the Fifth Circuit were the Federal Communications Commission and the United States, which filed their own petition for a writ of certiorari from the decision below on September 30, 2024. *See FCC v. Consumers’ Research*, No. 24-354. On October 1, 2024, Respondents here (“the Challengers”) filed a response to the government’s petition in No. 24-354, agreeing that the questions presented warrant this Court’s review, but contending that the Court should grant the Challengers’ own pending petitions for writs of certiorari arising out of the Sixth and Eleventh Circuits, respectively, *see Consumers’ Research v. FCC*, Nos. 23-456 & 23-743, and either consolidate with the government’s petition or hold the government’s petition pending merits decisions in Nos. 23-456 and 23-743.

## DISCUSSION

The Court should hold Intervenors’ petition (No. 24-422) pending full resolution of the petitions in Nos. 23-456 and 23-743 (and also No. 24-354 if the Court grants the government’s petition, too).

There is no reason to grant merits review of Intervenors’ petition, as their interests are adequately represented by the government, which is directly involved in the three previously-filed and still-pending petitions for writs of certiorari on the

questions presented. In the lower courts, Intervenors have always ceded their oral argument time to the government. And in one of the related challenges still pending below, the Fifth Circuit denied Intervenors leave to intervene altogether, finding their interests were not sufficiently distinct from the government's. “[W]here, as here, the existing representative in the suit is the government, there is a presumption of adequate representation which may be overcome ... only upon a showing of adversity of interest, the representative's collusion with the opposing party, or nonfeasance by the representative.’ [Intervenors] have made no such showing here.” *Consumers’ Research v. FCC*, No. 23-60525, 2023 WL 11951690, at \*1 (5th Cir. Oct. 30, 2023) (Wilson, J., in chambers) (quoting *Texas v. U.S. Dep’t of Energy*, 754 F.2d 550, 553 (5th Cir. 1985)).

The Challengers have since filed several more lawsuits on these issues, as a new Universal Service Fund rate is set each quarter—yet Intervenors have not sought leave to intervene in subsequent cases, apparently confirming their interests are adequately represented by the government. And their petition to this Court directly tracks the government's petition in No. 24-354. The Challengers hereby incorporate by reference their response to that petition.

Accordingly, although the Challengers agree that the questions presented warrant review, the Court should do so by granting the petitions in Nos. 23-456 & 23-743, consider granting and consolidating No. 24-354, and holding this case (No. 24-422) pending resolution of those cases.

**CONCLUSION**

The Court should hold the petition in this case for resolution of the petitions in Nos. 23-456 and 23-743 (and No. 24-354 if the Court grants the government's petition, too).

ROBERT HENNEKE  
CHANCE WELDON  
TEXAS PUBLIC POLICY  
FOUNDATION  
901 Congress Avenue  
Austin, TX 78701  
(512) 472-2700  
rhenneke@texaspolicy.com

R. TRENT MCCOTTER  
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JONATHAN BERRY  
MICHAEL BUSCHBACHER  
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JAMES R. CONDE  
ADAM H CHAN  
BOYDEN GRAY PLLC  
800 Connecticut Ave. NW,  
Suite 900  
Washington, DC 20006  
(202) 706-5488  
tmccotter@boydengray.com

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