

No. 24-422

In the
Supreme Court of the United States

SHLB COALITION, ET AL.,

Petitioners,

v.

CONSUMERS' RESEARCH, ET AL.,

Respondents.

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

REPLY BRIEF FOR PETITIONERS

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REPLY BRIEF

The government recommends in its reply brief in support of its own petition for certiorari that the Court grant this petition and consolidate the two cases. Reply Br. 1, *FCC v. Consumers' Research*, No. 24-354 (filed Oct. 17, 2024) (“Government Reply”). Petitioners respectfully request that the Court follow that path and grant the petitions simultaneously, so that the cases can proceed on the same timeframe.

Non-government Respondents Consumers' Research et al. “agree that the questions presented” in this petition warrant review, but ask the Court to hold this petition pending the outcome of other cases addressing the same issues. Resp. Br. 3. In Non-government Respondents' view, Petitioners' “interests are adequately represented by the government,” which (like Petitioners) is a party in the other cases before this Court for potential merits review regarding the constitutionality of the Universal Service Fund. *Id.* at 2. That is both incorrect and an unsound basis for holding the petition rather than granting it.

In the Fifth Circuit, Petitioners intervened as of right under 28 U.S.C. § 2348, without opposition. Petitioners maintain distinct interests from those of the government, as they, their members, and those they represent participate in Universal Service Fund programs as service providers or benefit from the programs' existence. While the Fifth Circuit (in an order signed by a single judge) denied the intervention motion of a subset of Petitioners in one case, *see* Resp. Br. 3, the Fifth Circuit granted

intervention motions from each of Petitioners, in this case and several others.

Non-government Respondents' arguments are insubstantial and immaterial at this stage in the case. The fact that Petitioners did not seek oral argument time below (Resp. Br. 3) is irrelevant to whether the petition should be granted, and no decision on allocation of oral argument time in a merits case before this Court need be made at this point. It is likewise irrelevant that Petitioners have intervened in some, but not all, of the materially identical challenges Non-government Respondents have filed each quarter in the Fifth Circuit (*id.*)—nearly all of which are expressly stayed or held in abeyance pending the outcome of this case. This case has for years been the lead case in the Fifth Circuit regarding the challenge to the Fund's constitutionality, and Petitioners have been active participants representing their distinct interests.

Consistent with this Court's Rule 12.4, which permits "[p]arties" to "petition separately for a writ of certiorari," this Court often grants petitions for certiorari from both the government and intervenors. *See, e.g., Interim Storage Partners, LLC v. Texas*, --- S. Ct. ----, 2024 WL 4394130 (Oct. 4, 2024) (mem.) (granting petition for certiorari of party that intervened on side of government in court of appeals, alongside petition for certiorari of government); *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 543 U.S. 1018 (2004) (mem.) (same); *Sw. Bell Tel., L.P. v. Mo. Mun. League*, 539 U.S. 941 (2003) (mem.) (same); *see also* Government Reply at 3 (citing additional recent examples). The Court should do the same here.

CONCLUSION

This petition for a writ of certiorari should be granted and consolidated with the government's petition in Case No. 24-354.

Respectfully submitted,

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