No. 25-1079

In the Supreme Court of the United States

RMS OF GEORGIA, LLC, D/B/A CHOICE REFRIGERANTS,

Petitioner,

v.

U.S. ENVIRONMENTAL PROTECTION AGENCY, *ET AL.*,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF OF *AMICUS CURIAE* MOUNTAIN STATES LEGAL FOUNDATION IN SUPPORT OF PETITIONER

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IDENTITY AND INTEREST OF *AMICUS CURIAE*[1]

Mountain States Legal Foundation is a nonprofit, public-interest legal foundation organized under the laws of the State of Colorado. Founded in 1977, Mountain States is dedicated to individual liberty, the right to own and use property, limited and ethical government, and free enterprise.

Mountain States recently launched the Center for American Prosperity & Energy (we call it CAPE), which is a dedicated legal center focused on protecting energy producers, energy users, landowners, and every American from government overreach. Wearing our CAPE, we fight against the systemic disregard of our Nation's Constitution and laws, and against the weaponization of those same laws against the Nation's prosperity.

This case falls squarely within CAPE's mission. The AIM Act's standardless delegation to EPA to reorder a multibillion-dollar energy-commodity market with no limiting principle enacted by Congress

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[1] Pursuant to the Court's rules, we can say that *amicus curiae* affirms that no counsel for a party authored this brief in whole or in part, and no person other than *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission. Further, counsel of record received timely notice of the intent to file the brief.

is precisely the kind of unlawful federal overreach that CAPE confronts. We want the separate branches of government to do their jobs—not more, and as here, not less. If Congress wants to make a plan that phases out certain compounds, empower EPA to implement that plan, and punish noncompliance, then Congress must say clearly where EPA's authority ends and give everyone a guiding principle on how to see that limit. When Congress fails to do so, the federal courts must fix the mistake.

SUMMARY OF ARGUMENT

In the AIM Act, Congress granted to the Environmental Protection Agency some authority to allocate "allowances" in a multibillion-dollar market for hydrofluorocarbons. The statute prescribes a phasedown schedule and a baseline calculation, but it is silent on the most consequential economic question the delegation entails: how is the agency supposed to distribute the valuable allowances among market participants? Because of that silence, it is unconstitutional.

The nondelegation doctrine should mean something. In this case, it means that Congress should have put boundaries on the federal regulators before Congress let them loose. But Congress did not do that—so the AIM Act is unconstitutional. The fundamental flaw in the proceedings leading to the

request for review here is that the lower court tried to salvage an ***intelligible principle*** where none existed in the first place. The lower courts should not try so hard to save Congress from itself. And that is why this Court should step in now: if Congress does not put the limiting ***intelligible principle*** in the statute itself, then the lower courts should not invent that principle on Congress's behalf. But someone—this Court—needs to tell those lower federal judges how to do it.

ARGUMENT

Can Congress turn federal regulators loose in the way it has done via the AIM Act? To its credit and understandably, the petitioner in this case focuses on Congress and the Executive Branch. But what is the role for the lower federal courts? For a court reviewing the Act, what do you do with this? Where is the boundary? Using the term of art, what is the limiting ***intelligible principle*** that can tell the people of this Nation where the federal regulators must stop? What if the people want to stop the regulators?

Beyond a narrow mandate to reserve roughly two percent of allowances for "essential uses," 42 U.S.C. § 7675(e)(4)(B), the AIM Act provided no textual criteria—no standard, no guidepost, no limiting principle—for the allocation of the vast remainder. Congress gave EPA a blank check to reorder an entire industry.

Can Congress do that? The petitioners rightly focus on Congress and the Executive Branch. But what is the role for the lower federal courts? What is the limiting ***intelligible principle*** that tells the people of this Nation where federal regulators must stop?

When Congress empowers regulators, it must provide an "intelligible principle" that limits what those regulators can do, *J.W. Hampton, Jr., & Co. v. United States*, 276 U.S. 394, 409 (1928), so that they implement Congress's will rather than exercise their own unbounded discretion. But when Congress does not put that limit in the statute, can a court—like the lower court here—invent an intelligible principle to save an overreaching government from itself?

No. When Congress delegates its power to make the laws, it must be clear about the limits it imposes on those receiving that power. On its face, this is a Congress-and-EPA problem. But it is really a federal-courts problem: the lower court went beyond the statute to invent an intelligible principle where none existed. That was error, and the Court should take this case to correct it.

This Court can help the lower courts understand their roles vis-à-vis the other branches. *Seven County Infrastructure Coalition v. Eagle County*, 605 U.S. 168 (2025); *Loper Bright Enters. v.*

Raimondo, 603 U.S. 369 (2024). Accordingly, Mountain States writes as *amicus curiae* in support of the petitioner's request that the Court take this case.

I. The Nondelegation Doctrine Should Mean Something.

The ***intelligible-principle*** requirement is a constitutional command, not a suggestion. Yet in the nearly nine decades since this Court struck down a statute on nondelegation grounds, *see A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935); *Panama Refining Co. v. Ryan*, 293 U.S. 388 (1935), the doctrine has atrophied into a formality. Lower courts treat it as a threshold cleared by any statute that gestures toward a vaguely discernible principle. The result is a constitutional guide rail that everyone acknowledges but no one enforces—a structural safeguard that protects nothing.

That situation is untenable. A constitutional requirement that is by practice impossible to violate is no requirement at all. As five sitting Justices have recognized, the nondelegation doctrine must do real work if Article I's vesting of legislative power is to retain meaning. *See Gundy v. United States*, 588 U.S. 128, 148–68 (2019) (Gorsuch, J., joined by Roberts, C.J., and Thomas, J., dissenting); *id.* at 148 (Alito, J., concurring in the judgment); *see also FCC v. Consumers' Rsch.*, 606 U.S. 656, 672–73 (2025). This case presents the Court with an opportunity—not to

revolutionize the doctrine, but to ensure that the standard it has already articulated is faithfully applied. The intelligible-principle test should not be more demanding; but lower courts cannot render it meaningless in their attempts to enable more government.

II. The Intelligible-Principle Inquiry Is a Structural Constitutional Requirement.

A. The nondelegation inquiry is distinct from ordinary statutory construction.

The Constitution's first substantive statement is uncompromising: "All legislative Powers herein granted shall be vested in a Congress of the United States." U.S. Const. art. I, § 1. This Vesting Clause carries a corollary structural limitation that is absolute: Congress may not transfer to another branch the power to make the law. As this Court recently reaffirmed, the legislative power "belongs to the legislative branch, and to no other." *FCC v. Consumers' Rsch.*, 606 U.S. at 672. That limitation is not a mere formalism; "the structural principles secured by the separation of powers protect the individual as well." *Dep't of Transp. v. Ass'n of Am. R.R.*, 575 U.S. 43, 55 (2015), *quoting Bond v. United States*, 564 U.S. 211, 222 (2011). To protect this boundary, this Court has consistently held that when Congress confers decision-making authority, it must "lay down by legislative act an intelligible principle to

which the person or body authorized to [act] is directed to conform." *J.W. Hampton, Jr. & Co.*, 276 at 409; *see also Mistretta v. United States*, 488 U.S. 361, 371–72 (1989). That principle must reflect Congress's own policy judgment—not leave it to the executive branch or the courts to supply the missing boundaries. *Panama Refining Co. v. Ryan*, 293 U.S. 388, 421 (1935) (emphasizing that Congress itself must "lay down its policies" and could not transfer unfettered discretion to make policy choices absent standards); *A.L.A. Schechter Poultry Corp.*, 295 U.S. at 529–30.

This constitutional character distinguishes the nondelegation inquiry from every other question of statutory meaning. When a court interprets a statute—whether under the former *Chevron* framework or the independent-judgment standard restored by *Loper Bright*—it asks: *what does this statute mean?* That is a question about legal content, properly informed by text, structure, context, purpose, and history. The underlying assumption is that Congress has successfully enacted a valid law, and the court's task is to discern its meaning.

But when a court evaluates a nondelegation challenge, it asks a categorically different question: *did Congress make a policy choice at all?* That question is about legislative accountability. It cannot be answered by judicially reconstructing a policy choice that Congress itself declined to make. As this

Court explained in *Marbury v. Madison*, it is "emphatically the province and duty of the judicial department to say what the law is." 5 U.S. (1 Cranch) 137, 177 (1803). But the nondelegation inquiry highlights what Congress did *wrong* or failed to say—rather than salvaging something that Congress never *said*.

Deciding whether an intelligible principle exists is therefore a binary structural threshold. At minimum, Congress must "provide[] sufficient standards to enable both 'the courts and the public [to] ascertain whether the agency' has followed the law." *Consumers' Rsch.*, 606 U.S. at 673 quoting *Opp Cotton Mills, Inc. v. Adm'r of Wage & Hour Div.*, 312 U.S. 126, 144 (1941). Either Congress clearly stated an intelligible principle in the text, or it did not. If Congress failed to make the policy choice explicitly, it has failed to execute its constitutional duty, and the federal courts cannot let extratextual context supply the missing content.

The distinction matters because the tools of ordinary statutory construction are designed to identify meaning—not to measure legislative responsibility. A court may properly consult legislative history to determine what a statutory term means. But if the question is whether Congress enacted a standard constraining executive discretion, the answer must come from what Congress enacted,

not from what a court can assemble from the surrounding legislative record. "It is the hard choices, and not the filling in of the blanks, which must be made by the elected representatives of the people." *Indus. Union Dep't, AFL-CIO v. Am. Petroleum Inst.*, 448 U.S. 607, 687 (1980) (Rehnquist, J., concurring in the judgment). If the judiciary must sift through un-enacted committee hearings to cobble together a guiding standard, then it is the judiciary—not Congress—that is legislating. To hold otherwise would permit courts to cure the very constitutional defect the nondelegation doctrine exists to prevent.

B. Whitman *forecloses judicial reconstruction of an intelligible principle that Congress failed to enact.*

This Court's decision in *Whitman v. American Trucking Associations*, 531 U.S. 457 (2001), establishes the dispositive principle. There, EPA argued that even if the Clean Air Act lacked an intelligible principle, the agency could cure the constitutional defect by declining to exercise some of the sweeping power it was granted. This Court unanimously rejected that premise: an agency may not "cure an unlawful delegation of legislative power by adopting in its discretion a limiting construction of the statute." *Id.* at 472.

The Court's reasoning was structural, not merely doctrinal. The constitutional defect lies in the

statute itself—in what Congress failed to do at the moment of enactment—not in how the delegated power is subsequently exercised. "The very choice of which portion of the power to exercise—that is to say, the prescription of the standard that Congress had omitted—would itself be an exercise of the forbidden legislative authority." *Id.* at 473. The Constitution does not permit Congress to delegate standardless power on the promise that the recipient will exercise it responsibly.

The logic of *Whitman* extends inexorably to courts. If an agency cannot cure a defective delegation by voluntarily narrowing its own authority, neither can a court cure it by interpretively narrowing the statute's scope through contextual inference. The constitutional question is the same regardless of the institutional actor attempting the rescue: did Congress supply the constraint? If the answer depends on materials that Congress did not enact—inferences from statutory context, divinations from legislative history, or reconstructions of legislative purpose—then the constraint is judicially supplied, not congressionally enacted. That is precisely the constitutional defect *Whitman* identified and foreclosed.

The case against judicial reconstruction is in one respect stronger than the case against agency self-restraint. When an agency declines to exercise some

of its delegated power, it at least acts within the institutional channel Congress designated—an executive body exercising executive discretion. The constitutional defect, as *Whitman* explained, is that the "prescription of the standard" is itself an exercise of legislative authority. *Id.* at 473. But when a court supplies the missing standard, the institutional transgression is compounded: the judiciary exercises legislative authority from a branch that is neither the designated delegate nor the original delegator. The result is a separation-of-powers violation that is not merely equivalent to the agency-cure scenario *Whitman* rejected—it is worse. The agency at least has a colorable claim that it is implementing the statute Congress passed. A court that reconstructs the missing principle from legislative history and unincorporated statutes is writing new law under the guise of constitutional adjudication.

Nor can the constitutional-avoidance canon justify the lower court's approach. This Court has recognized that courts should, where possible, construe statutes to avoid constitutional difficulties. *See, e.g., CFTC v. Schor*, 478 U.S. 833, 841 (1986). But there are limits: a court "must not and will not carry this to the point of … judicially rewriting" the statute. *Id.* When the claimed constitutional defect is that Congress failed to enact a constraining standard, "avoiding" the problem by judicially supplying the missing standard does not construe the statute—it

amends it. To invent a standard that is not present in the text is to "graft something on the statute that is not there." *Smietanka v. First Tr. & Sav. Bank*, 257 U.S. 602, 606 (1922). The avoidance canon assumes that Congress enacted a law that can bear a narrowing construction. When Congress enacted no constraining principle at all, there is nothing for the canon to narrow.

C. Gundy *does not authorize courts to rescue standardless delegations through broad statutory context.*

The lower court drew heavily on *Gundy v. United States*, 588 U.S. 128 (2019), for the proposition that courts may "utilize all the tools of statutory interpretation" to locate an intelligible principle. App. at 2. But *Gundy* does not support so sweeping a conclusion.

There is a fine but constitutionally significant distinction between two propositions: (1) that a court must construe a statute before evaluating a nondelegation challenge, and (2) that broad statutory context can rescue an otherwise standardless grant of discretion. *Gundy* stands for the first proposition, not the second.

The first proposition is uncontroversial. A court must know what the statute means before it can determine whether the statute supplies a sufficient

standard. Statutory construction is the necessary predicate. But the second proposition—that the process of construing a statute can itself *generate* the intelligible principle that the statute's operative text fails to supply—converts a threshold step into a substantive rescue operation. Under this approach, a court faced with a standardless delegation could always find an intelligible principle lurking somewhere in the statutory scheme: in a statement of purpose, a congressional finding, a legislative report, or the general design of the regulatory program. That approach would render the nondelegation doctrine a nullity, because no federal statute exists in a contextual vacuum.

Gundy did not endorse that result. The plurality found the intelligible principle in SORNA's own enacted terms—in what the statute's text required the Attorney General to do—not in a legislative purpose reconstructed from extrinsic sources. *Id.* at 137–41. The plurality nowhere suggested that context or history may supply a principle Congress omitted. As Justice Gorsuch noted in dissent, "if the separation of powers means anything, it must mean that Congress cannot give the executive branch a blank check to write a code of conduct governing private conduct." *Id.* at 171 (Gorsuch, J., dissenting). Lower courts that read *Gundy* as a license to mine statutory context for intelligible principles where the operative text

supplies none have misread the opinion and collapsed the nondelegation inquiry into ordinary statutory interpretation.

D. This Court should step in to correct the lower court's error.

The AIM Act is silent on the most consequential economic question: how EPA is to allocate the newly created, highly valuable allowances to market participants. Aside from a narrow mandate to cover "essential uses" (roughly two percent of the market), *id.* § 7675(e)(4)(B), Congress provided no statutory criteria for how EPA should distribute most of these allowances. The allowance-allocation provision, 42 U.S.C. § 7675(e), contains no textual guideposts on how to distribute or reallocate allowances that are now indispensable for companies that produce or consume those substances. The statute thus transfers legislative power rather than merely authorizing executive implementation. *See Am. Power & Light Co. v. SEC*, 329 U.S. 90, 105 (1946) (Congress must "clearly delineate[] the general policy" and "the boundaries of th[e] delegated authority").

The deficiency is not a matter of degree; it is categorical. This Court has required that a delegation provide "ascertainable and meaningful guideposts" for the exercise of discretion. *Consumers' Rsch.*, 606 U.S. at 681. The AIM Act's allowance-allocation provision contains none. It does not specify whether EPA should

allocate allowances on the basis of historical market share, competitive bidding, environmental performance, first-come-first-served, or some other criterion. It does not establish priorities among competing claimants. It does not prescribe a method for adjusting allocations over time as the phasedown proceeds. It does not even identify the universe of factors EPA must consider in making allocation decisions. These are not regulatory details that Congress left to agency judgment; they are the fundamental policy choices that determine which companies survive, which lose market access, and how billions of dollars in economic value are distributed. They are, in short, precisely the kind of "hard choices" that "must be made by the elected representatives of the people." *Am. Petroleum Inst.*, 448 U.S. at 687 (Rehnquist, J., concurring in the judgment).

Faced with this textual vacuum, the lower court did not confront the defect. Instead, the court set out to ***fix*** the statute to align with the court's preferences. Invoking its own circuit precedent, the panel declared that it would "not confine [itself] to the isolated phrase in question, but utilize all the tools of statutory construction, including the statutory context and, when appropriate, the factual background of the statute to determine whether the statute provides the bounded discretion that the Constitution requires." App. at 15. Relying on this framework, the court scoured legislative history, cited statements from a

subcommittee hearing, and inferred that Congress "intended" EPA to model its cap-and-trade program on Title VI of the Clean Air Act. Because Title VI contained a specific historical market-share allocation metric, 42 U.S.C. § 7671d(b), the lower court divined that the AIM Act must implicitly contain the same intelligible principle—even though Congress never wrote it into the text.

The panel's methodology is itself revealing. Rather than applying this Court's controlling decisions—which ask whether *Congress* supplied the constraint, *Whitman*, 531 U.S. at 472—the lower court invoked its own circuit-level precedent as the governing framework. That circuit precedent, in turn, articulated a standard that this Court has never endorsed: the proposition that courts may look to "the factual background of the statute" to determine whether "bounded discretion" exists. This formulation subtly but fundamentally shifts the constitutional inquiry.

Under this Court's precedents, the question is whether Congress put a clear limit in the statute. Under the lower court's formulation, the question becomes whether a court, deploying an unbounded array of "interpretive" tools, can reconstruct a plausible account of what Congress maybe intended the agency to do—or, worse, what the *court* itself wishes the law said notwithstanding the text. The

former is a test of legislative performance; the latter is a test of judicial ingenuity. They are not the same inquiry, and they will not produce the same results.

Building on that, the lower court's approach is further wrong for at least three reasons.

First, this Court has repeatedly warned that "legislative history is not the law." *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 523 (2018). Once Congress enacts a statute, courts "do not inquire what the legislature meant; only what the statute means." *Id.* The Constitution gives legal effect only to text that passed both houses of Congress and was signed by the President. By elevating a subcommittee hearing statement over the enacted text, the lower court treated the un-enacted hopes of a few legislators—the ones that matched the court's own preferences—as the law of the land.

Second, the lower court's approach violates the bedrock principle that courts should not "read into statutes words that aren't there." *Romag Fasteners, Inc. v. Fossil, Inc.*, 590 U.S. 212, 215 (2020). If Congress intended to mandate a historical market-share allocation for HFCs in the AIM Act, it could do so, as evidenced by Title VI itself.

Congress chose not to enact that language. "Differences in language like this convey differences

in meaning." *Henson v. Santander Consumer USA Inc.*, 582 U.S. 79, 86 (2017).

Third, the AIM Act incorporates specific provisions of the Clean Air Act, including penalty, recordkeeping, and judicial review provisions. *See* 42 U.S.C. § 7675(k)(1)(C). Conspicuously absent from that list is Title VI's market-share allocation scheme. This Court "do[es] not lightly assume that Congress has omitted from its adopted text requirements that it nonetheless intends to apply, and [its] reluctance is even greater when Congress has shown elsewhere in the same statute that it knows how to make such a requirement manifest." *Jama v. ICE*, 543 U.S. 335, 341 (2005). The canon of *expressio unius est exclusio alterius* suggests that Congress's incorporation of certain Clean Air Act provisions—and its conspicuous omission of Title VI's allocation standard—was deliberate.

By mining legislative history to import constraints from a wholly different statute, the lower court really just drafted legislation that Congress did not write. This collapses the nondelegation inquiry into purposivism. If courts can borrow intelligible principles from other statutes whenever Congress passes a blank-check delegation, then the nondelegation doctrine has no constitutional function. Instead, it becomes a presumption of constitutionality untethered from its structural moorings—and

Article I's vesting of legislative power becomes, for all practical purposes, a dead letter.

E. The lower court's approach will have nationwide implications.

The consequences of the lower court's approach extend well beyond this case. If adopted as the governing methodology, it would ensure that no nondelegation challenge could ever succeed. The reason is straightforward: no federal statute is enacted in a vacuum. Every statute has a legislative history. Every statute exists within a broader statutory context. Every statute was passed for some discernible purpose. If these materials are sufficient to supply the intelligible principle that the operative text omits, then any delegation—no matter how standardless—can be sustained by a sufficiently creative judicial opinion. The nondelegation doctrine would become not merely deferential but functionally null: a constitutional requirement that is, by design, impossible to violate.

That result cannot be squared with this Court's precedents. In *Panama Refining* and *Schechter Poultry*, the Court struck down delegations precisely because Congress had failed to make the fundamental policy choices itself—even though both the National Industrial Recovery Act and its surrounding legislative history reflected a discernible congressional purpose of combating the Great

Depression. 293 U.S. at 430; 295 U.S. at 529–30. Purpose alone was not enough. Congress had to enact the standard, not merely harbor the intention. If the lower court's approach had governed in 1935, both *Panama Refining* and *Schechter Poultry* would have come out the other way—because the NIRA's legislative history was replete with evidence of congressional purpose. This Court rightly held that purpose without enacted constraint is not enough.

The doctrinal concern is inseparable from a structural one. The nondelegation doctrine exists not merely as a formal limit on legislative drafting but as a guarantee of democratic accountability. When Congress writes the intelligible principle into the statute's text, the political process can function as the Framers intended: voters can read the law, evaluate the choices Congress made, and hold their representatives accountable at the ballot box for the consequences of those choices. The legislative process itself—bicameralism, presentment, public debate, recorded votes—ensures that the hard policy tradeoffs are made through a process that is transparent and politically answerable. *See INS v. Chadha*, 462 U.S. 919, 951 (1983) (emphasizing that the "prescribed procedures" of bicameralism and presentment are essential to "the exercise of legislative power").

When courts supply the intelligible principle from extratextual materials, this accountability

mechanism breaks down entirely. No one voted for a subcommittee hearing statement. No one cast a recorded vote on the proposition that the AIM Act should be governed by Title VI's market-share methodology.

The legislative history on which the lower court relied did not pass through the Article I, Section 7 process that the Constitution prescribes for the making of law. By allowing this material to supply the governing standard, the court below permitted Congress to enjoy the best of both worlds: it enacted a statute that delegates enormous economic power, while avoiding the political cost of making the hard allocation choices that delegation entails. As Justice Gorsuch observed in his *Gundy* dissent, the nondelegation doctrine "ensure[s] that the lines of accountability would be clear: The sovereign people would know, without ambiguity, whom to hold accountable for the laws they would have to follow." 588 U.S. at 155 (Gorsuch, J., dissenting). When a court reconstructs the governing standard from materials no voter ever endorsed, those lines of accountability are severed.

The erosion of accountability carries a further practical consequence for the regulated parties who must order their affairs under the statute. When Congress enacts an intelligible principle in the statutory text, market participants can read the law

and know—before the agency acts, and before a court is called upon to review the agency's action—what standard constrains the agency's discretion. That *ex ante* notice is a core function of the rule of law. But when the intelligible principle exists only in a judicial opinion reconstructing what Congress might have intended, regulated parties have no way to know in advance what standard governs. They must wait for litigation to reveal the constraint, if one can be found at all. In a market like HFCs, where allowances are indispensable for ongoing business operations and companies have invested billions of dollars in reliance on the regulatory framework, this uncertainty imposes real and substantial costs. The nondelegation doctrine is, among other things, a protection for the governed: it ensures that the rules of the game are set by Congress, in advance, through the constitutionally prescribed process—not manufactured after the fact by judges interpreting the tea leaves of a subcommittee hearing.

III. This Court Should Clarify the Standard and Remand for Reconsideration.

Mountain States here does not ask this Court to overturn the nondelegation doctrine itself or to impose a more demanding standard than this Court's precedents already require. We ask only that the Court clarify for lower courts the proper method for evaluating nondelegation challenges. This Court's

recent decisions confirm both the need for such clarification and the appropriateness of providing it.

A. Loper Bright *instructs lower courts on the duty to judge, not to legislate.*

In *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), this Court overruled *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), and held that courts must exercise independent judgment in determining the meaning of federal statutes. *Loper Bright*, 603 U.S. at 392.

Loper Bright's relevance here is structural, not doctrinal. The decision did not address the nondelegation doctrine. But it reflects this Court's recognition that lower courts had been applying a standard—there, *Chevron* deference—that distorted the judicial role in reviewing agency action, and that the correction required explicit instruction from this Court.

The parallel to the present case is precise. Lower courts have been applying the intelligible-principle standard in a way that collapses it into ordinary statutory interpretation, stripping the nondelegation doctrine of its independent constitutional function. And *Loper Bright* made clear that courts must exercise judgment based on "the traditional tools of statutory construction, not individual policy preferences." *Id.* at 403. But the

requirement that courts interpret the law does not grant them license to *create* the law when Congress has remained silent. Here, the lower court did not defer to the agency as under *Chevron*. Instead, it went ***even further***: it acted as a proxy legislature, constructing a law that Congress did not enact. The distortion is different, but the structural consequence is the same: a lower court fails to discharge its constitutional duty because it applies the wrong standard.

The whole point of *Loper Bright* is that "the interpretation of the meaning of federal statutes . . . is exclusively a judicial function." *Id.* at 387. Interpretation is the province of the judiciary; legislation is not. When a court identifies an intelligible principle in the enacted text, it interprets. When a court constructs an intelligible principle from un-enacted legislative history and an unincorporated statute, it legislates. *Loper Bright* tells lower courts to do the former, not the latter.

B. Seven County *instructs lower courts on not over-assuming their roles.*

Seven County Infrastructure Coalition v. Eagle County, 605 U.S. 168 (2025), reinforces the point from the opposite direction. Although arising under NEPA, its teaching on judicial role applies directly to the nondelegation context. The Court emphasized that courts "play only a limited role" in reviewing agency

decisions and must not substitute their own policy preferences, micromanage agency choices, or interject themselves into areas of agency discretion. *Id.* at 177, 182–83. The Court further stressed that courts must not impose extratextual requirements on agencies "under the guise" of judicial review. *Id.* at 184 quoting *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 558 (1978). "The political process, and not judicial review, provides the appropriate forum in which to air policy disagreements." *Id.* at 192 (internal quotation marks omitted). NEPA itself "does not authorize a court to 'interject itself within the area of discretion . . . as to the choice of the action to be taken' by the agency." *Id.* at 185 quoting *Strycker's Bay Neighborhood Council, Inc. v. Karlen*, 444 U.S. 223, 227–28 (1980).

Seven County's central principle is that judicial review respects allocation of authority: Congress makes the legislative choices; agencies implement within those bounds; courts ensure the bounds are respected. When a lower court supplies an intelligible principle from materials Congress did not enact, it does not respect those boundaries—it rewrites them. Judges should not assume non-judge jobs, nor should they write legal fiction. That is precisely the kind of judicial overreach *Seven County* cautioned against.

C. This case provides closure for judges.

Together, *Loper Bright* and *Seven County* supply the two structural bookends of this brief's argument—and this case presents the missing third panel. *Loper Bright* holds that courts must not abdicate their interpretive duty by deferring to agencies. *Seven County* holds that courts must not usurp the agency's procedural discretion by imposing extratextual requirements when the agency acts within valid statutory bounds. The missing piece is the proper instruction on the nondelegation doctrine: courts must not usurp the *legislature's* duty to make the law when performing a nondelegation analysis.

The three principles are complementary and mutually reinforcing. Each corrects a distinct pathology in lower-court practice; taken together, they provide a comprehensive account of the judicial role in cases involving agency action: interpret the law independently (*Loper Bright*); do not micromanage agencies acting within the law (*Seven County*); and do not rewrite the law to save it from constitutional infirmity (this case).

This case is an appropriate vehicle because the question it presents is methodological, not substantive. Mountain States, here, does not ask the Court to decide whether the AIM Act's delegation survives or fails the intelligible-principle test.

No, Mountain States asks the Court to help the lower courts understand how to do their jobs; it is a question of constitutional methodology that will guide every future nondelegation challenge and that leaves the merits to the lower court on remand. When a lower court encounters a statute that transfers massive regulatory power without any guiding standard, the court's job is to recognize the constitutional defect—not to paper over it. By permitting Congress to punt hard choices to unaccountable agencies and then constructing intelligible principles out of legislative history to validate that punt, the lower court subverted the very accountability that Article I demands. As Justice Thomas recently observed, "The Constitution's separation of powers forbids Congress from delegating core legislative power to the President." *Learning Res., Inc. v. Trump*, 607 U.S. 680 (2026) (Thomas, J., dissenting). It similarly forbids the Judiciary from assisting in that delegation by manufacturing standards that Congress omitted.

The lower court's decision did the opposite of what *Loper Bright* and *Seven County* require. By "utiliz[ing] all the tools of statutory interpretation" to salvage an ***intelligible principle*** where none existed, the lower court compounded the separation-of-powers violation: Congress failed its Article I duty; the court supplied the choice anyway. That misapplication requires correction.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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