No. 25-1422

IN THE
Supreme Court of the United States

SPRINT CORPORATION, NOW KNOWN AS SPRINT LLC, AND T-MOBILE USA, INC.,
Petitioners,
v.

FEDERAL COMMUNICATIONS COMMISSION AND UNITED STATES OF AMERICA,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the D.C. Circuit

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

JORDAN L. VON BOKERN
MARIEL A. BROOKINS
U.S. CHAMBER LITIGATION CENTER
1615 H Street, NW
Washington, D.C. 20062
(202) 463-5337

CHRISTOPHER J. WALKER
Counsel of Record
UNIVERSITY OF MICHIGAN LAW SCHOOL
625 South State Street
Ann Arbor, Michigan 48109
(734) 763-3812
chris.j.walker@umich.edu

Counsel for the Chamber of Commerce of the United States of America

July 27, 2026

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

INTEREST OF *AMICUS CURIAE*[1]

The Chamber of Commerce of the United States of America ("Chamber") is the world's largest business organization. As the nation's leading advocate for business, the Chamber represents companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community.

In *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 412–13 (2024), the Court eliminated *Chevron* deference and held that courts must exercise independent judgment when reviewing agency statutory interpretations. Given the breadth of its membership and its long history of challenging regulatory overreach, the Chamber has a strong interest in how courts review agency statutory interpretations and is uniquely positioned to speak to the effects of *Loper Bright*. Indeed, the Chamber has filed numerous *amicus* briefs on the impact of *Loper Bright* in courts across the country. *See, e.g.*, U.S. Chamber *Amicus* Br., *FedEx Corp. v. United States*, No. 25–5694 (6th Cir., filed Mar. 29, 2026); U.S. Chamber *Amicus* Br., *Relentless*

---

[1] Pursuant to Supreme Court Rule 37.6, *amicus curiae* states that no counsel for any party authored this brief in whole or in part and no entity or person, aside from amicus curiae, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief. Pursuant to Rule 37.2, counsel for *amicus* represent that all parties were provided notice of *amicus*'s intention to file this brief at least 10 days before its due date.

v. Dep't of Com., No. 25–1845 (1st Cir., filed Jan. 23, 2026); U.S. Chamber *Amicus* Br., *Lesko v. United States*, No. 23–1823 (Fed. Cir., filed May 29, 2025); U.S. Chamber *Amicus* Br., *Coca-Cola Co. v. Comm'r*, No. 24–13470 (11th Cir., filed Mar. 18, 2025); U.S. Chamber Supp. *Amicus* Br., *3M Co. v. Comm'r*, No. 23–3772 (8th Cir., filed Oct. 2, 2024).

INTRODUCTION AND SUMMARY

After *Loper Bright*, courts must exercise independent judgment when it comes to the meaning of statutes that govern federal agencies. That means courts must use all of the traditional tools of statutory interpretation to arrive at the statute's "best" reading. 603 U.S. at 400. To be sure, the best reading could be that Congress authorized the agency to exercise a degree of policymaking discretion. *Loper Bright* recognizes two categories of such delegations: (1) when Congress specifically instructs the agency to define or give meaning to a statutory term; and (2) when Congress grants the agency rulemaking authority, and the agency "fills up the details" of a statutory scheme or regulates subject to the limits imposed by a flexible statutory term, such as "appropriate" or "reasonable." *Id.* at 394–95 & nn.5–6.

This case presents an ideal vehicle for the Court to provide critical guidance on how courts should discern when Congress has delegated policymaking authority to federal agencies. For ease of reference, *amicus* refers to this inquiry as "*Loper Bright* delegation."

I. While courts are well positioned to engage in ordinary statutory interpretation under *Loper Bright*, they have struggled to implement *Loper Bright* delegation. Some courts have questioned whether a statute's general rulemaking provision per se constitutes a policymaking delegation—a position agencies at times have incorrectly asserted. Other courts—like the D.C. Circuit here—have abandoned their duty to exercise independent judgment to interpret statutory terms, finding instead that statutory language is ambiguous enough to allow the agency to give meaning to the statute under the guise of "filling up the details."

II. This Court should reject such "*Loper Bright* avoidance." *Am. Gas Ass'n* v. *Dep't of Energy*, 157 F.4th 476, 506 (D.C. Cir. 2025) (Rao, J., dissenting), *vacated and remanded*, 608 U.S. ___ (2026). And it should clarify the proper bounds of *Loper Bright* delegation—in at least four ways.

First, the Court should hold that a statute's general rulemaking provision—without more—does not constitute a *Loper Bright* delegation. For an agency to be authorized to give meaning to a statutory term, the statute must expressly charge the agency with defining that term. To hold otherwise would reinvent *Chevron* under a new name.

Second, the Court should underscore that a reviewing court must exercise independent judgment to arrive at the best meaning of the statute. To do so, the court must use all of the traditional tools of statutory interpretation. The court should not shirk its duty to apply all of these tools by claiming the statute is ambiguous enough for the agency to fill up the details. In overruling *Chevron* deference, *Loper Bright* rejects that approach.

Third, the Court should emphasize that *Loper Bright* "fill up the details" delegation is limited to just that—details. Agencies do not have license to engage in substantial policymaking under the guise of filling up the details.

Fourth, the Court should reinforce that even when the statute's best reading is that Congress has delegated policymaking authority, the reviewing court must ensure that the agency's policymaking does not exceed the bounds of the statutory delegation.

III. This case provides a compelling opportunity for the Court to clarify the bounds of *Loper Bright* delegation. Here, the D.C. Circuit avoided answering a pure legal question—whether petitioners' failure to immediately terminate a certain program amounted to one "continuing violation" or many under the statute—by finding that the question is committed to the FCC's discretion and subject only to deferential review.

In imposing more than $80 million in penalties on T-Mobile and more than $12 million on Sprint, the FCC circumvented a $1,000,000 statutory cap by defining each petitioner's single failure to immediately terminate a program as dozens of separate "continuing violations"—one for each entity that participated in the program. *See* 47 U.S.C. § 503(b)(2)(B) ("[T]he amount assessed for any continuing violation shall not exceed a total of $1,000,000 for any single act or failure to act . . . ."). The D.C. Circuit deferred to the FCC's approach as "reasonable" and observed that the FCC had "interpreted section 503(b) as giving it 'discretion' to determine 'the number of violations' represented by a carrier's conduct." App. 37a & n.6.

This is a textbook example of *Loper Bright* avoidance. The D.C. Circuit should have exercised independent judgment to determine the best interpretation of "continuing violation," which plainly is not the FCC's interpretation. The best interpretation, moreover, is not that Congress delegated to the FCC the authority to define the statutory phrase "continuing violation." Nor does the FCC's interpretation merely fill up the details of the statutory scheme, or fall within the bounds of any statutory delegation. The D.C. Circuit essentially reinstituted *Chevron* deference, which is particularly egregious when it comes to an agency's attempt to circumvent a $1,000,000 statutory cap to impose millions and millions of dollars in penalties.

ARGUMENT

I. Federal Courts Have Struggled To Discern When Congress Has Delegated Policymaking Discretion Under *Loper Bright*.

For decades, this Court had instructed courts to defer to agencies' reasonable interpretations of ambiguous statutes they administer. *See Chevron v. NRDC*, 467 U.S. 837, 842–43 (1984). In recent years, however, the Court began retreating from that approach, culminating with the elimination of *Chevron* deference in *Loper Bright*.

Judicial review now requires courts to follow "the APA's demand that courts exercise independent judgment in construing statutes administered by agencies." *Loper Bright*, 603 U.S. at 406; *see also* 5 U.S.C. § 706 (instructing courts to "decide all relevant questions of law"). In other words, courts do what they otherwise would do in an ordinary statutory-interpretation case: "use every tool at their disposal to determine the *best* reading of the statute and resolve the ambiguity"—"'the reading the court would have reached' if no agency were involved." *Loper Bright*, 603 U.S. at 400 (emphasis added) (quoting *Chevron*, 467 U.S. at 843 n.11).

When it comes to agency policymaking discretion, *Loper Bright* instructs:

> In a case involving an agency, of course, the statute's meaning may well be that the agency is authorized to exercise a degree of discretion. Congress has often enacted such statutes. For example, some statutes "expressly delegate[]" to an agency the authority to give meaning to a particular statutory term. *Batterton v. Francis*, 432 U.S. 416, 425 (1977) (emphasis deleted). Others empower an agency to prescribe rules to "fill up the details" of a statutory scheme, *Wayman v. Southard*, 10 Wheat. 1, 43 (1825), or to regulate subject to the limits imposed by a term or phrase that "leaves agencies with flexibility," *Michigan v. EPA*, 576 U.S. 743, 752 (2015), such as "appropriate" or "reasonable."

603 U.S. at 394–95 (important footnotes 5 and 6 omitted).

Courts are well equipped to engage in ordinary statutory interpretation to arrive at the best reading of statutes. They were already doing so long before *Loper Bright* in countless cases each year. But Courts have struggled to apply the paragraph of *Loper Bright* dealing with policymaking delegation. This difficulty of identifying and bounding delegations is apparent in several cases since *Loper Bright* in which the Chamber has participated as *amicus*.

In *Lesko v. United States*, the Federal Circuit en banc recognized the difficulty of the *Loper Bright* delegation inquiry and ordered supplemental briefing. Among other things, the court asked whether a general rulemaking provision authorizes the Office of Personnel Management (OPM) to define "officially ordered or approved" in 5 U.S.C. § 5542(a) to require that overtime be approved in writing. 161 F.4th 1352, 1357 (Fed. Cir. 2025) (en banc) (citing 5 U.S.C. §§ 1104, 5548).

Ultimately, the Federal Circuit concluded that the statutory "delegation is a fill-up-the-details delegation because the overtime statute is silent regarding the formalities required for overtime to be 'officially ordered or approved,' despite the plain meaning of the phrase requiring such formalities." *Id.* at 1360 (citation omitted). The court further held that one of the general rulemaking provisions at issue "provides OPM flexibility to regulate as 'necessary' for administering the overtime statute." *Id.* (quoting 5 U.S.C. § 5548(a)). As such, the court upheld an OPM regulation requiring that overtime approvals be in writing to be "officially ordered or approved." *Id.* (quoting 5 U.S.C. § 5542(a)).

Judge Stoll, joined by Judges Reyna, Cunnington, and Stark, dissented, "see[ing] no such delegation in the statutory language." *Id.* at 1364 (Stoll, J., dissenting). The dissent argued—correctly in the Chamber's view—that the general rulemaking provision does not "give OPM discretion to define or interpret statutory terms," *id.* at 1367, and that "officially ordered or approved" is not a flexible phrase or the sort of language authorizing the agency to fill up the details. *See id.* at 1366–69. The dissent concluded that "it is up to Congress, not OPM, to impose a writing requirement. Congress chose not to limit the statutory phrase 'officially ordered or approved' to 'in writing,' despite imposing such a limit in another subsection of the same statute." *Id.* at 1370.

The IRS has been front and center in many of these *Loper Bright* delegation disputes. In *Schwarz v. Commissioner*, for example, the Tax Court, like the Federal Circuit in *Lesko*, recognized the difficulty of the delegation inquiry and ordered supplemental briefing. Among other things, the court asked whether a general rulemaking provision, 26 U.S.C. § 7805(a), authorizes the IRS to give meaning to particular statutory terms. The case is still pending, but the Chamber filed an *amicus* brief arguing that the general rulemaking provision does not provide such definitional authority and that the statutory phrase at issue—"activity not engaged in for profit," 26 U.S.C. § 183—does not trigger *Loper Bright* delegation. It is the type of statutory language subject to ordinary statutory interpretation. *See* U.S. Chamber *Amicus* Br., *Schwarz v. Comm'r*, No. 12347–20, at 21–25 (Tax Ct., filed July 10, 2025), https://perma.cc/Z7YE-4M96.

In *3M Co. v. Commissioner*, 154 F.4th 574 (8th Cir. 2025), the Eighth Circuit rejected the IRS's attempt to salvage its blocked-income regulation after *Loper Bright* rendered unavailable the agency's past reliance on deference. "When the case started," the court explained, "it was all about the blocked-income regulation that it claimed was a reasonable interpretation of a silent statute." *Id.* at 581. "In its post-*Loper Bright* supplemental briefing," however, "the IRS argues that [26 U.S.C.] § 482 does the same thing by 'delegat[ing] discretionary authority to' make the proposed reallocation." *Id.* at 582 (quoting *Loper Bright*, 603 U.S. at 395). The Eighth Circuit made quick work of this argument, holding that "the statute has another 'be[tter] reading" and that even if the statute delegated discretion, "it is still our job to 'fix[] the boundaries of [that] delegated authority' based on the statute's text, as we have done today." *Id.* (quoting *Loper Bright*, 603 U.S. at 395, 400). The Eleventh Circuit is currently considering a similar challenge to the blocked-income regulation. *See* U.S. Chamber *Amicus* Br., *Coca-Cola Co. v.*

Comm'r, No. 24–13470 (11th Cir., filed Mar. 18, 2025), https://perma.cc/97D6-EAVB.

And in *FedEx Corp. v. United States*, pending in the Sixth Circuit, the IRS has invoked three general rulemaking provisions in the Tax Code for the authority to redefine statutory terms involving foreign tax credits. The Chamber has argued that the IRS has no policymaking discretion under the statute and that the district court correctly concluded that the statute unambiguously precludes the IRS's interpretation. *See* U.S. Chamber *Amicus* Br., *FedEx Corp. v. United States*, No. 25–5694, at 23–32 (6th Cir., filed Mar. 29, 2026), https://perma.cc/982M-SERQ.

Finally, take *Loper Bright*'s companion case on remand, *Relentless v. Department of Commerce*. The Magnuson Stevens Act does not authorize the Department of Commerce to require certain companies to pay for government-mandated at-sea monitors on their U.S. fishing vessels. Among other things, Congress expressly authorized the agency to require certain domestic and foreign vessels to pay for such monitors, but Congress did not do so for the vessels at issue in *Loper Bright* and *Relentless*. *Compare* 16 U.S.C. § 1853(b)(8), *with id.* §§ 1862(a), 1853a(e)(2), 1821(h).

Nevertheless, the district court on remand held that a general rulemaking provision granted the agency "a large degree of discretionary authority" to impose a cost-shifting mechanism that is found nowhere in the statutory text. *Relentless v. Dep't of Com.*, 2025 WL 1939025, at *4 (D.R.I. July 15, 2025). While *Loper Bright* recognizes that agencies with general rulemaking authority have some discretion to fill up the details, adopting a cost-shifting regime goes far beyond that limited delegation. The case is back on appeal before the First Circuit. *See* U.S. Chamber *Amicus* Br., *Relentless v. Dep't of Com.*, No. 25–1845 (1st Cir., filed Jan. 23, 2026), https://perma.cc/EKN4-NU6U.

As these cases illustrate, much confusion exists among the lower courts—and federal agencies—on how to approach *Loper Bright* delegation. Courts question whether a statute's general rulemaking provision constitutes a *Loper Bright* delegation to give meaning to statutory terms—a position agencies at times have incorrectly asserted. Courts have avoided their duty to exercise independent judgment to interpret statutory terms, finding instead that statutory language is ambiguous enough to allow the agency to give meaning to the statute under the guise of "filling up the details." And courts have failed to fix the boundaries of any such delegations.

II. The Court Should Clarify How *Loper Bright* Cabins Agencies' Policymaking Discretion.

Loper Bright rejects *Chevron*'s holding that statutory ambiguity authorizes agencies to exercise discretion. Statutory ambiguity calls for judicial interpretation, not agency policymaking. Thus, if agencies are to exercise policymaking discretion, it must be because the statute's best reading directs them to do so. *Loper Bright* identifies two categories of statutory language—specific and general—that can mean Congress has delegated a degree of discretion to an agency. Even when Congress has delegated such authority, *Loper Bright* makes clear that courts must enforce preexisting guardrails on such discretion.

This case presents the Court with a compelling opportunity to clarify the following principles of *Loper Bright* delegation.

A. Congress Can Specifically Delegate Authority To Agencies To Define Statutory Terms.

Loper Bright recognizes that Congress may vest in "an agency the authority to give meaning to a particular statutory term." 603 U.S. at 394. In announcing this rule, the Court relied on *Batterton v. Francis* and cited two statutes that specifically grant an agency definitional authority. *See id.* at 395 & n.5 (citing *Batterton*, 432 U.S. at 425; 29 U.S.C. § 213(a)(15); 42 U.S.C. § 5846(a)(2)).

In *Batterton*, a pre-*Chevron* case, the Court assessed the meaning of "unemployment" in a section of the Social Security Act. *See* 432 U.S. at 418–19. The Court explained that "[o]rdinarily, administrative interpretations of statutory terms are given important but not controlling significance"; they are entitled to "mere deference or weight." *Id.* at 424, 425. The provision in *Batterton*, however, did not raise an ordinary statutory-interpretation question. Instead, "Congress in [42 U.S.C. § 607(a)] expressly delegated to the Secretary the power to prescribe standards for determining what constitutes 'unemployment' for purposes of AFDC-UF eligibility." *Id.* at 425. The provision provided that "[t]he term 'dependent child' shall . . . include a needy child . . . who has been deprived of parental support or care by reason of the unemployment (*as determined in accordance with standards prescribed by the Secretary*) of his father . . . ." *Id.* at 418 n.2 (quoting 42 U.S.C. § 607 (1977)) (emphasis added). Because of this specific delegation, "Congress entrusts to the Secretary, rather than to the courts, the primary responsibility for interpreting the statutory term." *Id.* at 425.

To be sure, *Batterton* was decided in a different era of statutory interpretation—nearly half a century ago and some seven years before *Chevron* itself. As such, the *Batterton* Court's use of "interpret" was understandably antiquated. When Congress has specifically charged an agency to define terms in a statute, the agency's subsequent definition is not an act of interpretation, but one of policymaking. *Loper Bright* appreciates this nuance, by reframing the statutory provision in *Batterton* as an example of Congress's "'expressly delegat[ing]' to an agency the authority to *give meaning* to a particular statutory term." 603 U.S. at 394–95 (quoting *Batterton*, 423 U.S. at 425) (emphasis added). *Loper Bright* invokes two other examples of specific delegations; these examples similarly concern instances where Congress has specifically tasked the agency with defining certain terms in a statute. *See id.* at 395 n.5.

It is important to underscore what *Loper Bright* does *not* categorize as a specific delegation to define statutory terms: provisions that generally authorize the agency to engage in rulemaking or adjudicative activities. When Congress wants to authorize an agency to give meaning to statutory language, it must expressly direct the agency to define, or give meaning to, certain terms. And the agency must follow the procedures Congress requires—such as rulemaking or formal adjudication—to promulgate those definitions.

A contrary holding would effectively gut *Loper Bright*'s overruling of *Chevron* deference. Congress has given most agencies general rulemaking authority. *See* Jennifer L. Selin & David E. Lewis, *Sourcebook of United States Executive Agencies* 118–19 (Admin. Conf. of U.S., 2d ed. 2018). If that were enough to justify judicial deference to an agency's reading of a statute, courts would not be permitted to exercise "independent judgment" in most cases. That is not what this Court intended when it identified the narrow circumstances in which courts should respect the discretion statutes provide to agencies. Moreover, reading a general rulemaking provision in this way would effectively eliminate *Loper Bright*'s specific delegation category as well as render superfluous each statutory provision in which Congress has specifically delegated definitional authority to an agency.

B. When Congress Grants General Rulemaking Authority, Agencies May Be Authorized To Fill Up Details And Regulate Subject To The Limits Of Flexible Terms.

The fact that general rulemaking provisions do not authorize agencies to define statutory terms does not mean those provisions are irrelevant after *Loper Bright*. They simply serve a different purpose: giving agencies authority to "fill up the details" of a statutory scheme and to "regulate subject to the limits imposed by a term or phrase that 'leaves agencies with flexibility,' such as 'appropriate' or 'reasonable.'" *Loper Bright*, 603 U.S. at 395 (citations omitted).

1. Fill Up The Details. When Congress enacts a regulatory scheme, it typically charges an agency with implementing Congress's policy decisions. That implementation often requires agencies to fill up the minor details in the statutory scheme. To vest an agency with this implementation authority, Congress includes a general rulemaking provision in the statute. *See, e.g.*, 16 U.S.C. § 1853(b)(14) (providing the agency at issue in *Loper Bright* with authority to "prescribe such other measures, requirements, or conditions and restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery”). *Loper Bright* recognizes that when Congress has granted an agency general rulemaking authority, a court exercising independent judgment may conclude that the statute’s best interpretation authorizes the agency to fill up certain implementation details. *See* 603 U.S. at 394–96.

With respect to filling up the details, *Loper Bright* refers to *Wayman v. Southard*, 23 U.S. 1 (1825). As Justice Gorsuch has explained, “[i]n *Wayman v. Southard*, this Court upheld a statute that instructed the federal courts to borrow state-court procedural rules but allowed them to make certain ‘alterations and additions.’” *Gundy v. United States*, 588 U.S. 128, 157 (2019) (Gorsuch, J., dissenting). Since “Congress had announced the controlling general policy when it ordered federal courts to follow state procedures,” Justice Gorsuch observed, “the residual authority to make ‘alterations and additions’ did no more than permit courts to fill up the details.” *Id.* at 157–58. Or as the *Wayman* Court put it, the Constitution draws a line between “important subjects, which must be entirely regulated by the legislature itself, from those of less interest, in which a general provision may be made, and power given to those who are to act under such general provisions to fill up the details.” 23 U.S. at 43.

In his *Gundy* dissent, Justice Gorsuch provided several helpful examples of fill-up-the-details delegations, including for the IRS “to design tax stamps for margarine packages” and the USDA “to adopt rules regulating the ‘use and occupancy’ of public forests to protect them from ‘destruction’ and ‘depredations.’” 588 U.S. at 158 (Gorsuch, J., dissenting) (footnotes omitted). “Through all these cases,” he explained, "runs the theme that Congress must set forth standards 'sufficiently definite and precise to enable Congress, the courts, and the public to ascertain' whether Congress's guidance has been followed." *Id.* (footnote omitted).

2. Flexible Terms. *Loper Bright* also recognizes that Congress sometimes uses capacious statutory terms like "appropriate" or "reasonable" that "'leave[] agencies with flexibility.'" 603 U.S. at 395 (quoting *Michigan v. EPA*, 576 U.S. at 752). For example, the Court referred to a provision of the Clean Air Act, construed in *Michigan v. EPA*, that directs EPA to regulate power plants only "if the Administrator finds such regulation is appropriate and necessary." 42 U.S.C. § 7412(n)(1)(A). With respect to "appropriate and necessary," the Court has observed that "[o]ne does not need to open up a dictionary in order to realize the capaciousness of this phrase." *Michigan v. EPA*, 576 U.S. at 752. In other words, the best interpretation of "appropriate and necessary" is that Congress has delegated a degree of policymaking authority to the agency in deciding whether to regulate, subject to a court's independent judgment of the limits of what "appropriate and necessary" means.

C. Even When Congress Has Delegated Policymaking Discretion, *Loper Bright* Requires Courts To Fix The Boundaries Of Statutory Delegations.

If a court determines that Congress has delegated policymaking authority to an agency—whether by directing the agency to define a statutory term, to fill up the details of a statutory scheme, or to regulate subject to limits like "reasonable" or "appropriate"—that is not the end of the matter.

Loper Bright makes clear that the independent judgment inquiry extends beyond courts' determining the statute's best meaning. When a court determines the best interpretation is that Congress has delegated a degree of discretion to the agency, the court must then "exercise [] independent judgment in deciding whether an agency has acted within its statutory authority, as the APA requires." *Loper Bright*, 603 U.S. at 412; *see also* 5 U.S.C. § 706(2)(C) (directing courts to set aside any agency action "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right").

In articulating this principle, *Loper Bright* invokes Henry Monaghan's assertion that courts must "fix the boundaries of delegated authority." 603 U.S. at 395 (quoting Henry P. Monaghan, Marbury *and the Administrative State*, 83 Colum. L. Rev. 1, 27 (1983)) (cleaned up). As Professor Monaghan explained, this "judicial role" involves courts "defining the range of permissible criteria" and "specify[ing] what the statute cannot mean, and some of what it must mean, but not all that it does mean." Monaghan, *supra*, at 27.

Revisiting *Loper Bright*'s examples of statutory delegations helps underscore that judicial role. With respect to specific delegations for agencies to define statutory terms, agencies' discretion is not boundless. For instance, in *Batterton*, if the agency had defined "unemployment" to include a parent who had a full-time, full-salaried job, a court would have to exercise independent judgment to declare that the agency's policymaking exceeded its statutory authority. *See Batter-*

ton, 432 U.S. at 418 n.2 (providing that "[t]he term 'dependent child' shall . . . include a needy child . . . who has been deprived of parental support or care by reason of the unemployment . . . of his father . . . . (quoting 42 U.S.C. § 607 (1977))). The Court said as much in *Batterton*: "Of course, the Secretary's statutory authority to prescribe standards is not unlimited. He could not, for example, adopt a regulation that bears no relationship to any recognized concept of unemployment or that would defeat the purpose of the AFDC-UF program." *Id.* at 428.

The same is true with respect to delegations based on general rulemaking authority. Applying the traditional tools of statutory interpretation, courts must ensure agencies use their general rulemaking authority to truly fill up minor details, details of implementation, in their statutory scheme and that such interstitial gap-filling is permissible under "the particular statutory language at issue, as well as the language and design of the statute as a whole." *Kmart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988).

When it comes to flexible statutory terms, the court must exercise independent judgment to ensure the agency "regulate[s] subject to the limits imposed by a term or phrase." *Loper Bright*, 603 U.S. at 395. *Loper Bright*'s invocation of *Michigan v. EPA* is instructive. *See id.* In *Michigan v. EPA*, this Court reviewed a statutory delegation that commanded "EPA to add power plants to [a regulatory] program if (but only if) the Agency finds regulation 'appropriate and necessary.'" 576 U.S. at 752 (quoting 42 U.S.C. § 7412(n)(1)(A)). The Court concluded that the term "appropriate" is capacious and "leaves agencies with flexibility," but that "an agency may not 'entirely fai[l] to consider an important aspect of the problem' when deciding whether regulation is appropriate." *Id.* (quoting *Motor Vehicles Mfrs. Ass'n v. State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). "Read naturally in the present context," the Court held, "the phrase 'appropriate and necessary' requires at least some attention to cost." *Id.* It was thus "unreasonable for EPA to read § 7412(n)(1)(A) to mean that cost is irrelevant to the initial decision to regulate power plants." 576 U.S. at 759.

III. This Case Presents An Ideal Vehicle For The Court To Provide Critical Guidance On *Loper Bright* Delegation.

This case affords an excellent opportunity for this Court to clarify how to discern when Congress has delegated policymaking discretion to a federal agency under *Loper Bright*. The D.C. Circuit failed to follow any of the guidance articulated in Part II, and, as shown in Part I, other courts are likely to repeat those errors.

The Communications Act imposes a cap on the total penalty amount for a continuing violation: "[T]he amount assessed for any continuing violation shall not exceed a total of $1,000,000 for any single act or failure to act . . . ." 47 U.S.C. § 503(b)(2)(B).[2] Yet here the D.C. Circuit allowed the FCC to exceed this statutory cap to impose more than $80 million in forfeiture penalties on T-Mobile and more than $12 million on Sprint.

Petitioners argued before the D.C. Circuit that the forfeiture penalties exceeded that cap as a matter of law. After all, the forfeiture orders described only one

[2] The statute adjusts this $1,000,000 statutory cap for inflation, which was set at $2,048,915 for 2020 when the relevant notices of apparent liability were issued. 34 FCC Rcd 12824, 12828 (2019).

"continuing violation"—that each petitioner had allegedly "placed its customers' location information at continuing risk of unauthorized access through its failure to terminate its program or impose reasonable safeguards to protect its customers' location information." App. 122a, 125–27a, 235a, 237–39a.

The FCC, by contrast, argued that this failure to act consisted of dozens of separate "continuing violations" under § 503(b)(2)(B)—one for every service provider that was allowed to continue offering services to customers under the program after the petitioner failed to terminate the program.

Under *Loper Bright*, the D.C. Circuit should have exercised independent judgment to arrive at the statute's "best" reading. This involves "us[ing] every tool at [the court's] disposal to determine the best reading of the statute and resolve the ambiguity." 603 U.S. at 400. The court failed to do so. Instead, it deferred to the FCC's interpretation of the phrase "continuing violation." The D.C. Circuit concluded that the FCC had "interpreted section 503(b) as giving it 'discretion' to determine 'the number of violations' represented by a carrier's conduct," App. 37a n.6, and that "it was reasonable for the Commission to conclude that each third-party relationship" with a petitioner "formed the basis of a distinct violation." App. 38a.

The D.C. Circuit flunked the *Loper Bright* delegation inquiry. Critically, this case does not implicate any of three exceptions *Loper Bright* identifies for policymaking discretion. The D.C. Circuit, moreover, failed to fix the boundaries of the purported agency discretion, as *Loper Bright* requires.

1. Specific Definitional Authority. In enacting 47 U.S.C. § 503(b)(2)(B), Congress did not "expressly delegate to [the FCC] the authority to give meaning to

[the] particular statutory" phrase "continuing violation." *Loper Bright*, 603 U.S. at 394–95 (cleaned up). The statutory text reads in relevant part: "[T]he amount assessed for any continuing violation shall not exceed a total of $1,000,000 for any single act or failure to act . . . ." 47 U.S.C. § 503(b)(2)(B).

As detailed in Part II.A, for this to be a specific delegation to give meaning to a statutory term, Congress would have needed to include a command that the phrase "continuing violation" shall be defined by the FCC. *See Loper Bright*, 603 U.S. at 394–95 & n.5; *see also Batterton*, 432 U.S. at 418 n.2 ("as determined in accordance with standards prescribed by the Secretary" (quoting 42 U.S.C. § 607(a) (1977))); 29 U.S.C. § 213(a)(15) ("as such terms are defined and delimited by regulations of the Secretary"); 42 U.S.C. § 5846(a)(2) ("as defined by regulations which the Commission shall promulgate"). No such command is found in § 503(b).

Nor has Congress elsewhere specifically authorized the FCC to give meaning to the phrase "continuing violation." To be sure, Congress has provided that the FCC "may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this chapter, as may be necessary in the execution of its functions." 47 U.S.C. § 154(i). Such a general rulemaking provision is necessary for an agency to have policymaking discretion to fill up the details in a statutory scheme or to regulate subject to the limits of a flexible term. But *Loper Bright* makes clear that Congress must specifically charge the agency to define the statutory phrase "continuing violation" before a court may conclude the agency has this kind of authority. Congress has not done so here.

2. Fill Up the Details. While the FCC has authority under the statute's general rulemaking provision to fill up certain details in the regulatory scheme, defining the statutory phrase "continuing violation" does not fall within the *Loper Bright* "fill up the details" category. As detailed in Part II.B.1, "fill up the details" delegation involves interstitial gap filling. It does not concern fixing the meaning of particular terms in a statute. Congress knows how to specifically delegate such definitional authority to an agency. And *Loper Bright* makes clear that Congress has to do so explicitly in order to assign that task to the agency rather than a reviewing court.

This remains true even if the phrase is susceptible to more than one meaning. If giving meaning to ambiguous statutory terms amounted to "filling up the details," it would reinvent *Chevron* deference under a different name. That would conflict with the holding in *Loper Bright* that "*Chevron* is overruled" and that "courts need not and under the APA may not defer to an agency interpretation of the law simply because a statute is ambiguous." 603 U.S. 412–13.

3. Flexible Terms. The phrase "continuing violation" is not the type of capacious phrase that *Loper Bright* recognizes as "leav[ing] agencies with flexibility." 603 U.S. at 395 (quoting *Michigan v. EPA*, 576 U.S. at 752). This is not an open-ended term like "appropriate" or "reasonable." *See id.* at 395 & n.6; *cf. Michigan v. EPA*, 576 U.S. at 752. If flexibility were triggered whenever a statutory term were susceptible to multiple meanings—i.e., when there is an ambiguity—that too would resurrect *Chevron* deference.

4. Boundaries Fixing. Even if it were correct that the statute's best reading delegated some degree of discretion to the FCC, the D.C. Circuit did not even attempt to "police" or "fix the boundaries of the delegated authority." *Loper Bright*, 603 U.S. at 395, 405 (cleaned up). And the FCC exceeded any such boundaries. As Commissioner Simington observed in dissent, "It is simply not plausible that Congress intended that the Commission may arrive at forfeitures of any size simply by disaggregating an 'act' into its individual constituent parts" and "counting the members of whatever class of objects may be related to the alleged violation." App. 169a (Simington, dissenting).

But there is no need to fix such boundaries as Congress did not delegate discretion to the FCC. Instead, the phrase "continuing violation" in § 503(b)(2)(B) is the type of language subject to ordinary statutory interpretation. Courts are fully equipped to exercise independent judgment to arrive at the phrase's best meaning, after exhausting all of the traditional tools of statutory interpretation. That is what *Loper Bright* requires. And that best reading is not that the FCC can treat "a single, systemic failure to follow the Commission's rules" as "however many separate and continuing violations the Commission chooses to find on the basis of the whole-cloth creation of a novel legal ontology." App. 168a (Simington, dissenting).

The D.C. Circuit has provided this Court with an ideal vehicle to provide critical guidance on *Loper Bright* delegation. The FCC proclaimed it had authority to impose more than $80 million in penalties despite a $1,000,000 statutory cap. The D.C. Circuit agreed that the FCC had such discretion and that the FCC reasonably exercised it. In so doing, the D.C. Circuit misapplied *Loper Bright* and reinstated *Chevron* deference under the guise of *Loper Bright* delegation.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

CHRISTOPHER J. WALKER
Counsel of Record
UNIVERSITY OF MICHIGAN LAW SCHOOL
625 South State Street
Ann Arbor, Michigan 48109
(734) 763-3812
chris.j.walker@umich.edu
* *Institutional affiliation is provided for identification purposes only. Professor Walker is also Of Counsel and Consultant at the U.S. Chamber Litigation Center.*

JORDAN L. VON BOKERN
MARIEL A. BROOKINS
U.S. CHAMBER LITIGATION CENTER
1615 H Street, NW
Washington, D.C. 20062
(202) 463-5337

Counsel for the Chamber of Commerce of the United States of America

July 27, 2026