

## Comments

# The FCC Is Not a Rubber Stamp: Preserving Democratic Accountability in the Universal Service Fund Through Agency Independence

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### ABSTRACT

The Federal Communication Commission's Universal Service Fund (USF) supports access to communications and telecommunications services for rural and low-income areas, schools, libraries, and rural health care facilities. In 2023, the organizations Consumers' Research and Cause Based Commerce petitioned the Fifth, Sixth, and Eleventh Circuit Courts to review the constitutionality of the USF's administration. Each circuit court found the USF constitutional. On a rehearing in 2024, the Fifth Circuit en banc found the USF's administration under a "double-layered" delegation scheme unconstitutional.

The Supreme Court reversed this decision, finally upholding the USF's administration as constitutional. This Comment analyzes the

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Supreme Court’s decision through the lens of the public and private nondelegation doctrines, giving special consideration to the Court’s comments on separation of powers and the applicability of intelligible principles.

This Comment then analyzes the historical and current state of executive agency independence from presidential influence through the lens of for-cause removal protections. This Comment analyzes Supreme Court case law and recent Executive Order 14215 concerning agency independence and the constitutionality of for-cause removal protections in consideration of the separation of powers doctrine. This Comment then argues that current case law and the executive order misinterpret the meaning of democratic accountability of executive agencies. This Comment then suggests Congress should codify the private, non-profit administrator structure to preserve democratic accountability in the USF.

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## I. INTRODUCTION

Have you ever wondered what the “USF” or “Universal Service Fee” charge is on your phone bill?<sup>1</sup> The Universal Service Fee helps to support the Universal Service Fund (USF), which provides telecommunications services to rural and low-income areas, schools, libraries, and health care facilities.<sup>2</sup> From 2022 to 2024, the USF provided internet access to 54,367,186 students across 106,000 schools and 12,597 libraries.<sup>3</sup> From 2021 to 2023, the USF provided 16,089 healthcare providers with internet.<sup>4</sup> In March 2024 alone, the USF assisted 7,596,720 people in receiving discount phone and internet service.<sup>5</sup> In 2023, the USF provided over \$4 million to connect rural households to high-speed internet.<sup>6</sup>

This Comment analyzes the constitutionality of the USF’s administration and the fund’s ability to further democratic accountability. Part II of this Comment explains the background of the USF. Part II first describes the federal agency and independent company that administer the USF.<sup>7</sup> Part II then explains the petitions that questioned the constitutionality of the USF and the resulting court decisions.<sup>8</sup> Part II goes on to describe the historical and current landscape of agency independence through an analysis of for-cause removal case law.<sup>9</sup>

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1. *See Federal Universal Service Fee*, AT&T (Jan. 4, 2024), <https://perma.cc/2TGS-U2EM>.

2. *See Universal Service*, FED. COMM’NS COMM’N (Oct. 16, 2024), <https://perma.cc/MKA3-SLT5>.

3. *See The Universal Service Fund: How It Impacts the United States*, FED. COMM’NS COMM’N (Aug. 8, 2024), <https://perma.cc/U7MK-6BH9>.

4. *See id.*

5. *See id.*

6. *See id.*

7. *See infra* Sections II.A–C.

8. *See infra* Sections II.D–E.

9. *See infra* Section II.F.

In Part III, this Comment argues that current Supreme Court case law and an executive order pertaining to agency independence misinterpret the meaning of democratic accountability.<sup>10</sup> Part III then argues that the Federal Communications Commission's (FCC) delegation of responsibility to a private, non-profit organization furthers democratic accountability.<sup>11</sup> Part III then proposes that Congress should protect and support the private, non-profit delegation model by amending the universal service telecommunications statute to codify the model's application to the USF.<sup>12</sup>

## II. BACKGROUND

This Part introduces the FCC, the USF, and the Universal Service Administration Company (USAC). This Part then explains the petitions against the constitutionality of the USF and examines the Supreme Court's decision on the petitions and the Fifth Circuit's en banc ruling. Finally, this Part transitions to an examination of the historical and current agency independence landscape through a review of case law and a recent executive order.

### A. *The Federal Communications Commission*

The FCC is a government agency that “regulat[es] interstate and foreign commerce in communication by wire and radio” to create “a rapid, efficient, nationwide, and world-wide wire and radio communication service with adequate facilities at reasonable charges.”<sup>13</sup> The FCC regulates communication by implementing and enforcing the nation's communications laws and regulations.<sup>14</sup> Congress passed the Telecommunications Act of 1996 to add telecommunications services—television, satellite, and cable—to the FCC's responsibilities.<sup>15</sup> In including telecommunications in the FCC's responsibilities, Congress intended to lower prices, improve the quality of existing services, and expand access to new technology.<sup>16</sup> Structurally, the FCC has five commissioners who are appointed by the President.<sup>17</sup> The number of commissioners who may share the same political party is statutorily

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10. See *infra* Section III.A.

11. See *infra* Section III.B.

12. See *infra* Section III.C.

13. 47 U.S.C. § 151.

14. See *The FCC's Mission*, FED. COMM'NS COMM'N, <https://perma.cc/7FH3-JKY7> (last visited Mar. 22, 2026, at 13:33 ET).

15. See Telecommunications Act of 1996, Pub. L. No. 104-104, § 1, 110 Stat. 56, 56 (1996); see also FED. COMM'NS COMM'N, *supra* note 2.

16. See Telecommunications Act of 1996, Pub. L. No. 104-104, § 1, 110 Stat. 56, 56 (1996).

17. See 47 U.S.C. § 154(a).

limited to the least number of commissioners that constitute a majority of the full membership of the Commission.<sup>18</sup>

### B. *Universal Service*

In an effort to fulfill its congressionally delegated responsibilities, the FCC has placed the Universal Service principle “that all Americans should have access to communications services” at the core of the agency’s mission.<sup>19</sup> By introducing telecommunications services to the FCC’s responsibilities, Congress also expanded the purpose of universal service. Consequently, the FCC must strive to provide affordable access to telecommunications and advanced services, like high-speed internet, to all customers.<sup>20</sup> The FCC meets this goal through the USF.<sup>21</sup>

### C. *The Universal Service Fund*

The USF is an FCC program that increases access to communications and telecommunications services for customers in rural and low-income areas and supports high-speed internet access in schools, libraries, and rural health care facilities.<sup>22</sup> The USF provides access to these services through four main programs: the Connect America Fund,<sup>23</sup> and the Lifeline,<sup>24</sup> E-rate,<sup>25</sup> and Rural Health Care programs.<sup>26</sup> Each program supports the principles of universal service set out by Congress.<sup>27</sup>

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18. *See id.* § 154(b)(5).

19. *Universal Service*, FED. COMM’NS COMM’N (Oct. 16, 2024), <https://perma.cc/MKA3-SLT5>.

20. *See id.*

21. *See id.*

22. *See id.*

23. *See Connect America Fund (CAF)*, FED. COMM’NS COMM’N (Feb. 2, 2017), <https://perma.cc/C8KT-9K2B> (explaining that the CAF supports reform that “will expand the benefits of high-speed internet to millions of consumers”).

24. *See Lifeline Program for Low-Income Consumers*, FED. COMM’NS COMM’N (Oct. 15, 2024), <https://perma.cc/8422-WVZD> (explaining that the Lifeline Programs provides discounted phone service for qualifying low-income consumers).

25. *See E-Rate – Schools & Libraries USF Program*, FED. COMM’NS COMM’N (Oct. 10, 2024), <https://perma.cc/7VMJ-JWAU> (explaining that E-Rate helps bring affordable broadband access to schools and libraries).

26. *See Rural Health Care Program*, FED. COMM’NS COMM’N (Oct. 16, 2024), <https://perma.cc/BZU2-F83L> (explaining that the Rural Health Care Program “provides funding to eligible health care providers for telecommunications and broadband services necessary for the provision of health care”).

27. *See* 47 U.S.C. § 254(b); *see also infra* text accompanying notes 74–80.

### 1. The Universal Service Administrative Company

USAC is an independent, non-profit organization<sup>28</sup> that the FCC appointed as the permanent administrator of universal service programs.<sup>29</sup> The FCC selects USAC's directors, and the FCC Chairman appoints USAC's Chief Executive Officer.<sup>30</sup> The FCC directed USAC to establish a 20-member Board of Directors with three committees: (1) the Schools and Libraries Committee, (2) the Rural Health Care Committee, and (3) the High Cost and Low Income Committee.<sup>31</sup> Industry representatives and USAC's Chief Executive Officer serve on the committees.<sup>32</sup> The FCC also directed USAC to establish three corresponding divisions of the same names.<sup>33</sup> The three committees oversee the duties and functions of their corresponding divisions.<sup>34</sup> In turn, the divisions' duties and functions support their respective universal service programs.<sup>35</sup>

### 2. Funding the Universal Service Fund

Telecommunications providers' contributions fund the USF.<sup>36</sup> Each quarter, USAC must calculate the total contribution base from telecommunications providers based on each provider's interstate and international end-user revenue reported on FCC Telecommunications Reporting Worksheets.<sup>37</sup> USAC submits the calculated contribution base to the FCC Office of the Managing Director (OMD).<sup>38</sup> USAC also submits the projected costs of the USF based on demonstrated need for program support and administrative costs to the OMD.<sup>39</sup> Then, the OMD calculates the ratio of the contribution base of telecommunications providers' revenue to the USF cost projections collected by USAC, minus the providers' anticipated contributions to the USF.<sup>40</sup> This calculated ratio is the quarterly contribution factor—the percentage of revenue that individual telecommunications providers must pay USAC to fund the USF.<sup>41</sup>

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28. See *About USAC*, UNIVERSAL SERV. ADMIN. CO., <https://perma.cc/3F2B-5UTS> (last visited Mar. 22, 2026, at 13:36 ET).

29. See 47 C.F.R. § 54.701 (2024).

30. See 47 C.F.R. § 54.703(b)–(c) (2024).

31. See *id.* §§ 54.701(b)(1)(i)–(iii).

32. See *id.* § 54.705.

33. See *id.* §§ 54.701(c)(1)(i)–(iii).

34. See *id.* §§ 54.701(b)(1)(i)–(iii).

35. See FED. COMM'NS COMM'N, *supra* notes 23–26 and accompanying text.

36. See *Contribution Methodology & Administrative Filings*, FED. COMM'NS COMM'N (Oct. 10, 2024), <https://perma.cc/G9JK-W4PP>.

37. See 47 C.F.R. § 54.709(a)(3) (2024).

38. See *id.*

39. See *id.* § 54.709(a)(2).

40. See *id.*

41. See *id.*

The FCC then announces USAC's projected program demand costs, administrative expenses, and the contribution factor in a public notice and on the FCC website.<sup>42</sup> Within 14 days of releasing the public notice, the FCC reserves the right to adjust the projections of demand and administrative expenses at amounts it determines will best serve the public interest.<sup>43</sup> If the FCC does not act within 14 days, the FCC deems the expenses and contribution factor approved.<sup>44</sup> Once the FCC approves the contribution factor, USAC applies the factor to telecommunications providers' interstate and international end-user revenues to calculate their individual contribution requirements.<sup>45</sup> USAC then collects the contributions for the USF under the direction of the FCC.<sup>46</sup> USAC decisions, including projected USF demands, are subject to requests for review by the Wireline Competition Bureau.<sup>47</sup> If the request raises novel question of fact, law, or policy, then the full Commission considers the request.<sup>48</sup>

#### *D. Procedural History*

In August 2021, USAC submitted its fourth quarter projected USF demands and administrative expenses to the FCC.<sup>49</sup> In September 2021, USAC submitted the contribution base it calculated from U.S. telecommunications providers' projected and actual revenue reported on FCC Telecommunications Reporting Worksheets.<sup>50</sup> On September 10, the FCC published a Public Notice that reported the proposed contribution factor for the fourth quarter as 29.1% and included USAC's projections and data.<sup>51</sup>

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42. *See id.* § 54.709(a)(3).

43. *See id.*

44. *See id.*

45. *See id.*

46. *See Universal Service*, FED. COMM'NS COMM'N (Oct. 16, 2024), <https://perma.cc/MKA3-SLT5>.

47. *See* 47 C.F.R. § 54.722(a) (2024).

48. *See id.*

49. *See Federal Universal Service Support Mechanisms*, UNIVERSAL SERV. ADMIN. CO. (Sep. 1, 2021), <https://perma.cc/X84G-K8HJ>.

50. *See id.*

51. *See* Public Notice: Proposed Fourth Quarter 2021 Universal Service Contribution Factor, FED. COMM. COMM'N (Sep. 10, 2021), <https://perma.cc/74VX-UHJH>.

On September 23, the organizations Consumers' Research<sup>52</sup> and Cause Based Commerce<sup>53</sup> (the "Petitioners") filed a comment requesting that the FCC set the contribution factor at 0%.<sup>54</sup> The comment cited the Petitioners' belief that the USF violates the nondelegation doctrine and the private nondelegation doctrine, among other things.<sup>55</sup> Not yielding to the Petitioners' request, the FCC approved the fourth quarter contribution rate at the initial 29.1%.<sup>56</sup> Consumers' Research and Cause Based Commerce filed a Petition for Review of the FCC Order in the Fifth Circuit Court of Appeals, the Sixth Circuit Court of Appeals, and the Eleventh Circuit Court of Appeals.<sup>57</sup>

*E. Consumers' Research and Cause Based Commerce Petition the Courts*

In 2023, each reviewing circuit court respectively published a decision denying Consumers' Research and Cause Based Commerce's Petitions for Review because each circuit court found the USF constitutional under the public and private nondelegation doctrines.<sup>58</sup> In July 2024, the Fifth Circuit reheard Consumers' Research and Cause Based Commerce's petition en banc.<sup>59</sup> Despite the Fifth Circuit's extensive en banc opinion on the practical structure of the FCC and USAC's calculation and collection methods for the USF,<sup>60</sup> the court said it did not need to reach the merits of the Petitioners' delegation arguments.<sup>61</sup> The Fifth Circuit believed that, regardless of the constitutionality of the USF under the nondelegation doctrines, the USF

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52. "Consumers' Research is an independent, educational 501(c)(3) nonprofit organization whose mission is to increase the knowledge and understanding of issues, policies, products, and services of concern to consumers and to promote the freedom to act on that knowledge and understanding." *Home, CONSUMERS' RSCH.*, <https://perma.cc/7LYH-L44L> (last visited Mar. 22, 2026, at 13:45 ET).

53. "Cause Based Commerce provides like-minded partners with alternatives to everyday communications services." *CAUSE BASED COM.*, <https://perma.cc/QV9G-5BF9> (last visited Mar. 22, 2026, at 13:46 ET).

54. *See* Comments and Objections of Consumers' Rsch., et al., CC Docket No. 96-45 (Sep. 23, 2021), <https://perma.cc/2XZ6-GDVZ>.

55. *See id.*

56. *See* Public Notice: Proposed Fourth Quarter 2021 Universal Service Contribution Factor, FED. COMM. COMM'N (Sep. 10, 2021), <https://perma.cc/74VX-UHJH>.

57. *See* *Consumers' Rsch. v. FCC*, 67 F.4th 773, 773 (6th Cir. 2023); *see also* *Consumers' Rsch. v. FCC*, 63 F.4th 441, 441 (5th Cir. 2023); *see also* *Consumers' Rsch. v. FCC*, 88 F.4th 917, 917 (11th Cir. 2023).

58. *See* *Consumers' Rsch.*, 67 F.4th at 783; *see also* *Consumers' Rsch.*, 88 F.4th at 921; *see also* *Consumers' Rsch.*, 63 F.4th at 448.

59. *See* *Consumers' Rsch. Cause Based Com., Inc. v. FCC*, 109 F.4th 743, 748 (5th Cir. 2024).

60. *See* *Consumers' Rsch.*, 109 F.4th at 749–52 (discussing the structure of the FCC and USAC's collection methods for USF fees).

61. *See* *Consumers' Rsch.*, 109 F.4th at 756.

could not be held constitutional because Congress delegated its legislative power broadly to the FCC, then in turn the FCC subdelegated the power to a private entity.<sup>62</sup> The court found that this type of “double-layered delegation” violates the Constitution.<sup>63</sup>

In October 2024, the Supreme Court of the United States granted certiorari and heard an appeal of the Fifth Circuit’s en banc decision.<sup>64</sup> In June 2025, the Supreme Court reversed and remanded the decision in *FCC v. Consumers’ Research*.<sup>65</sup> The Court rejected both arguments from the Petitioners that Congress’s delegation of power to the FCC, and in turn, the FCC’s delegation of power to USAC violate the Constitution.<sup>66</sup> The Supreme Court also rejected the Fifth Circuit’s theory that the combination of the delegations of power violates the Constitution.<sup>67</sup> The Court did not address the circuit court’s reasoning that the combination undermines democratic accountability.<sup>68</sup>

### 1. The Public Nondelegation Doctrine

The nondelegation doctrine is “the principle that Congress cannot delegate its legislative powers . . . to other entities” without an intelligible principle.<sup>69</sup> This Comment calls it the public nondelegation doctrine to distinguish it from the private nondelegation doctrine discussed later herein.<sup>70</sup> An intelligible principle is a legal framework that Congress lays out to constrain the authority of the entity to which they are delegating power.<sup>71</sup> Intelligible principles help protect the separation of powers by ensuring Congress has set out an appropriate guide for agencies to assist Congress in exercising its constitutionally granted legislative powers.<sup>72</sup>

In reviewing the Fifth Circuit’s en banc decision, the Supreme Court found that the USF was constitutional under the public nondelegation doctrine because Congress provided the FCC with “ascertainable and meaningful” guidelines to follow “when carrying out its delegated function” in implementing the USF.<sup>73</sup> Telecommunications statute 47

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62. *See id.*

63. *See id.* at 777.

64. *See FCC v. Consumers’ Rsch.*, 606 U.S. 656, 671–72 (2025).

65. *See id.* at 672.

66. *See id.*

67. *See id.*

68. *See infra* text accompanying notes 227–28.

69. *Nondelegation Doctrine*, LEGAL INFO. INST. (July 2023), <https://perma.cc/CK78-5QV5>.

70. *See infra* text accompanying note 113.

71. *See Artl.S1.5.3 Origin of Intelligible Principle Standard*, CONST. ANNOTATED, <https://perma.cc/LE26-NFBY> (last visited Mar. 22, 2026, at 14:04 ET).

72. *See Consumers’ Rsch.*, 606 U.S. at 672.

73. *See Consumers’ Rsch.*, 606 U.S. at 681.

U.S.C. § 254 governs the FCC's administration of universal service.<sup>74</sup> The intelligible principles in § 254 include general principles, limiting principles, and additional principles.<sup>75</sup> Under § 254(b), Congress provided the FCC with the general principle to create "policies for the preservation and advancement of universal service."<sup>76</sup> Section 254(b)(5) additionally limits the mechanisms the FCC creates to support the USF to be "specific, predictable, and sufficient . . . to preserve and advance universal service."<sup>77</sup> The additional principles provision of § 254(b)(7) allows the FCC to create policies that are deemed "necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with [47 U.S.C. §§ 151 et seq.]."<sup>78</sup> The Supreme Court found that the precedential intelligible principles in § 254 appropriately instruct the FCC "to provide an identified set of recipients a defined sort of benefit—widely used, generally affordable, and essential telecommunications services."<sup>79</sup> The Court reasoned that Congress "struck a balance" in allowing the FCC room to adapt the USF to technological developments, while still following the guidelines and principles set out by the guiding statute.<sup>80</sup>

Despite the intelligible principles of § 254, Petitioners argued that the statute does not appropriately limit the FCC's power to collect money for the USF because there are no specific financial constraints.<sup>81</sup> First, Petitioners argued the term "sufficient" in § 254(b)(5) does not provide an upper threshold on the amount the FCC can collect.<sup>82</sup> However, the Supreme Court countered that "sufficient" represents a floor and a ceiling: if the FCC does not collect enough money to cover the costs of the USF, then the amount is not sufficient; if the FCC collects too much money, then the amount becomes excessive and violates the statute.<sup>83</sup>

Petitioners then argued that § 254 does not appropriately limit the FCC's financial discretion because it does not provide a definite or objective limit, via a numeric cap or fixed rate, on how much money the FCC can collect for the USF.<sup>84</sup> Petitioners claimed that without such a cap, no intelligible principles are appropriately limiting.<sup>85</sup> However, the Supreme Court explicitly rejected Petitioners' cap theory, pointing to

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74. 47 U.S.C. § 254.

75. *See Consumers' Rsch.*, 88 F.4th at 924.

76. 47 U.S.C. § 254(b).

77. *Id.* § 254(b)(5).

78. *Id.* § 254(b)(7).

79. *See Consumers' Rsch.*, 606 U.S. at 683–85.

80. *See id.* at 667.

81. *See id.* at 681.

82. *See id.*

83. *See id.* at 681–82.

84. *See Consumers' Rsch.*, 606 U.S. at 673–74.

85. *See id.* at 674.

precedent in *Skinner v. Mid-America Pipeline Co.*<sup>86</sup> and *J.W. Hampton, Jr. & Co. v. United States*,<sup>87</sup> in which the statutes at issue survived unconstitutional delegation accusations.<sup>88</sup>

a. *Skinner v. Mid-America Pipeline Co.*

In *Skinner*, the Supreme Court considered § 7005 of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985, which directed the Secretary of Transportation to establish a system of user fees to fund federal pipeline safety programs.<sup>89</sup> The Court held that COBRA did not violate the nondelegation doctrine because Congress gave the Secretary of Transportation guiding standards to follow in collecting the necessary fees for administering the safety programs.<sup>90</sup> Congress provided the Secretary with guiding standards by specifying which organizations the Secretary could collect fees from, the purposes the fees were to be used for, criteria to apply in setting fees, and a percentage “cap” on the amount of fees the Secretary could collect.<sup>91</sup>

b. *J.W. Hampton, Jr., & Co. v. United States*

In the statute at issue in *J.W. Hampton*, Congress delegated to the President the power to increase or decrease duties on items of foreign commerce to match the production costs in the United States with production costs in competing foreign countries.<sup>92</sup> In delegating this power, Congress set out guidelines for the President to follow in adjusting duty rates.<sup>93</sup> Specifically, the President needed to consider differences in production conditions between the U.S. and competing foreign countries, differences in prices of items between the U.S. and competing foreign countries, advantages foreign producers may have been granted from the producer’s government or other entities, and other competitive advantages.<sup>94</sup> Congress also prescribed that rate changes should not exceed 50% of the rates specified in the original statute.<sup>95</sup> Along with the aforementioned considerations, Congress mandated that the President could not adjust duty rates until the United States Tariff Commission (USTC) investigated why the costs of products differed between the U.S.

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86. *Skinner v. Mid-America Pipeline Co.*, 490 U.S. 212, 212 (1989).

87. *J.W. Hampton, Jr., & Co. v. U.S.*, 276 U.S. 394, 394 (1928).

88. *See Skinner*, 490 U.S. at 224; *see also J.W. Hampton*, 276 U.S. at 413.

89. *See Skinner*, 490 U.S. at 214.

90. *See id.* at 212, 218–20.

91. *See id.* at 219–20.

92. *See J.W. Hampton*, 276 U.S. at 401.

93. *See id.* at 401–02.

94. *See id.* at 402.

95. *See id.*

and foreign competing countries.<sup>96</sup> When the USTC conducted investigations, Congress required it to give reasonable public notice of the investigative hearings and allow interested parties to raise concerns.<sup>97</sup>

The President assessed a duty of two cents per pound more than the rate specified by statute on J.W. Hampton, Jr. & Company's ("the Company") import.<sup>98</sup> The Company appealed this decision through the court system and the Supreme Court granted certiorari.<sup>99</sup> The Company argued that delegating Congress' power to increase duty rates was unconstitutional because the delegation was, among other things, a delegation of Congress' power to tax.<sup>100</sup> Responding to the Company's argument, the Court found that Congress clearly described its policy and plan when enacting the statute at issue and delegated part of its power to the President because he could make the changes to duty rates more accurately and adapt to changing conditions quicker.<sup>101</sup> Relying on its precedent, the Court re-established that Congress may delegate a portion of its power to an authorized person or body within the constraints of rules, known as intelligible principles, Congress sets out to apply in certain situations.<sup>102</sup>

### c. The Supreme Court Upholds the Intelligible Principles Standard

In *FCC v. Consumers' Research*, Petitioners argued to the Supreme Court that statutes delegating taxing powers must satisfy a different nondelegation standard than the intelligible principles standard.<sup>103</sup> The Court rejected this argument, affirming that its decisions in *Skinner* and *J.W. Hampton* explicitly denied the theory that cases concerning delegated taxing power require applying a different nondelegation standard.<sup>104</sup> The Supreme Court emphasized that the intelligible principles doctrine applies to the delegations of power underlying the USF.<sup>105</sup> The Court also explained that applying a stricter standard to taxing power delegations would cast doubt on other federal statutes with similar schemes.<sup>106</sup> The Court offered the Federal Reserve Board, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation's Deposit

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96. *See id.*

97. *See id.*

98. *See id.* at 400.

99. *See id.* at 401.

100. *See J.W. Hampton*, 276 U.S. at 404.

101. *See id.* at 404–05.

102. *See id.* at 409.

103. *See FCC v. Consumers' Rsch.*, 606 U.S. 656, 673–74 (2025).

104. *See id.* at 674–75.

105. *See id.*

106. *See id.* at 675–76.

Insurance Fund as examples of statutes that would be on the “constitutional chopping block.”<sup>107</sup>

Petitioners suggested that the Court’s list of statutes that would be endangered by a stricter standard should be considered as collecting fees, and providers’ contributions to the USF should be considered taxes, and only taxes then should be subject to the suggested nondelegation standard.<sup>108</sup> The Supreme Court ultimately rejected Petitioners’ argument because the argument is contrary to the above precedent, unconvincing as to why the distinction between fee and tax matters, and difficult to apply in practice—including to the USF.<sup>109</sup> The Court contended that Petitioners’ suggested nondelegation standard “does nothing to vindicate the nondelegation doctrine or, more broadly, the separation of powers.”<sup>110</sup> The Supreme Court thus held the USF constitutional under the public nondelegation doctrine.<sup>111</sup>

## 2. The Private Nondelegation Doctrine

The Supreme Court also held the USF constitutional under the private nondelegation doctrine because USAC is broadly subordinate to the FCC.<sup>112</sup> The private nondelegation doctrine refers to the application of the nondelegation doctrine specifically to private entities.<sup>113</sup> In *FCC v. Consumers’ Research*, Petitioners argued that the USF violates the private delegation doctrine because the FCC gives USAC complete discretion to set the contribution factor and decide which providers must contribute to the USF.<sup>114</sup> In disagreement, the Supreme Court offered *Sunshine Anthracite Coal Co. v. Adkins* as precedential support for the validity of USAC’s role in administering the USF.<sup>115</sup> In *Sunshine Anthracite*, the Supreme Court found that a statute did not violate the private nondelegation doctrine when a government agency accepted proposed minimum coal prices from coal companies, while maintaining authority and surveillance over the companies.<sup>116</sup>

In *FCC v. Consumers’ Research*, the Supreme Court explained that the *Sunshine Anthracite* holding allows an agency to accept recommendations from private parties as long as the agency retains

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107. *See id.*

108. *See id.* at 676–77.

109. *See id.* at 677–79.

110. *See id.* at 680.

111. *See id.* at 691 (“And so the main delegation at issue here, from Congress to the Commission, does not offend the Constitution.”).

112. *See Consumers’ Rsch.*, 606 U.S. at 693, 695.

113. *See Consumers’ Rsch. v. FCC*, 67 F.4th 773, 795 (6th Cir. 2023).

114. *See id.* at 692.

115. *See id.*

116. *See Sunshine Anthracite Coal Co. v. Adkins*, 310 U.S. 381, 399 (1940).

decision-making power.<sup>117</sup> The Supreme Court found that the relationship between the FCC and USAC fits the *Sunshine Anthracite* model.<sup>118</sup> The FCC appoints USAC's Board of Directors and approves its budget.<sup>119</sup> USAC must follow the FCC's rules, "orders, written directives, and other instructions."<sup>120</sup> And anyone with a complaint about a USAC decision can seek *de novo* review by the FCC.<sup>121</sup> Most importantly, the FCC retains sole decision-making authority: USAC simply adds together the providers' projected contributions on the FCC forms and works within the FCC's rules to estimate the USF's cost.<sup>122</sup> USAC then publicly reports the estimate to the FCC at least 30 days before a quarter on the revenue side and at least 60 days on the expense side.<sup>123</sup> This prior reporting allows the FCC to review and, if necessary, revise the projections.<sup>124</sup> Ultimately, the Supreme Court concluded that USAC makes suggestions and the FCC decides whether or how to use those suggestions to set providers' USAC contribution factor—keeping final authority with the FCC.<sup>125</sup>

Contrary to the Court's confirmation that the FCC retains appropriate authority over USAC, Petitioners contended that the FCC often acted as a "rubber stamp"<sup>126</sup> to automatically approve USAC's projections.<sup>127</sup> The Court rejected this argument, again citing *Sunshine Anthracite* to affirm that delegating responsibility to a private party is appropriate as long as the private party's recommendation cannot go into effect without the agency's approval.<sup>128</sup> Considering USAC's limited accounting functions and the FCC's ultimate control, the Supreme Court found that the delegation of the FCC's powers to USAC offered no reason to hold the USF contribution scheme invalid.<sup>129</sup>

### 3. The Supreme Court Rejects Fifth Circuit's en banc

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117. *See Consumers' Rsch.*, 606 U.S. at 692.

118. *See id.* at 692–94.

119. *See id.* at 692–93.

120. *See id.* at 693.

121. *See id.*

122. *See id.*

123. *See id.* at 693–94.

124. *See id.* at 694.

125. *See id.*

126. "[A] mostly powerless yet officially recognized body or person that approves or endorses programs and policies initiated usually by a single specified source." *Rubber stamp*, MERRIAM-WEBSTER DICTIONARY, <https://perma.cc/F9H6-2H6C> (last visited Mar. 22, 2026, at 14:31 ET).

127. *See Consumers' Rsch.*, 606 U.S. at 695.

128. *See id.* at 695 (citing *Sunshine Anthracite Coal Co. v. Adkins*, 310 U.S. 381, 399 (1940)).

129. *See id.* at 695.

## Unconstitutional Combination of Delegations Theory

The Supreme Court additionally found no merit in the Fifth Circuit's en banc unconstitutional combination theory.<sup>130</sup> In its decision, the Fifth Circuit offered *Free Enterprise Fund v. Public Co. Accounting Oversight Board*<sup>131</sup> to illustrate how two constitutional provisions combined can violate the Constitution.<sup>132</sup> *Free Enterprise Fund* “held that the combination of two separate layers of removal protections created ‘a new situation not yet encountered by the Court,’” which violated the Constitution.<sup>133</sup> To the Fifth Circuit, this case demonstrated how the “double removal scheme” authorizing the USF did not comport with Supreme Court precedent.<sup>134</sup>

However, the Supreme Court reasoned that the Fifth Circuit misapplied the case to the USF delegation scheme.<sup>135</sup> Instead, the Supreme Court explained, *Free Enterprise Fund* differs from *FCC v. Consumers' Research* because the two layers of protection at issue in *Free Enterprise Fund* exacerbated each other; whereas the two instances of delegation underlying the USF are wholly separate.<sup>136</sup> The Supreme Court further supported its reasoning by pointing again to *Sunshine Anthracite*, where the Court struck down a public nondelegation challenge and a private nondelegation challenge, then stopped without considering whether a combination of the two valid delegations was unconstitutional because the analysis was not required.<sup>137</sup> Addressing the Fifth Circuit's argument briefly, the Supreme Court found that the unconstitutional combination theory held no precedential merit.<sup>138</sup>

Ultimately, the Supreme Court reversed the Fifth Circuit's en banc decision and remanded the case for further proceedings consistent with the Court's opinion.<sup>139</sup> The Supreme Court found that Congress provided the FCC clear guidance to follow in administering the USF, including “the ‘general policy’ to be achieved, the ‘principle[s]’ and standards the FCC must use in pursuing that policy, and the ‘boundaries’ the FCC may not cross.”<sup>140</sup> Consequently, the Supreme Court found that no precedent

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130. *See id.* at 696–98; *see also* text accompanying notes 134–37.

131. *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 477 (2010).

132. *See Consumers' Rsch.*, 109 F.4th at 779.

133. *See id.* (citing *Free Enter. Fund*, 561 U.S. at 483 (2010)).

134. *See id.*

135. *See Consumers' Rsch.*, 606 U.S. at 696–97.

136. *See id.*

137. *See id.* at 697 (citing *Sunshine Anthracite Coal Co. v. Adkins*, 310 U.S. 381, 397–99 (1940)).

138. *See Consumers' Rsch.*, 606 U.S. at 696–98.

139. *See id.* at 660.

140. *See id.* at 698 (citing *J.W. Hampton*, 276 U.S. at 409; *American Power & Light Co. v. SEC*, 329 U.S. 90, 105 (1946)).

prevented the FCC from obtaining USAC's assistance.<sup>141</sup> The Court found that, "[f]or nearly three decades, the work of Congress and the [FCC] in establishing universal-service programs has led to a more fully connected country. And it has done so while leaving fully intact the separation of powers integral to our Constitution."<sup>142</sup>

#### F. *Democratic Accountability*

The public nondelegation doctrine is a question of whether an entity in one branch of the government unconstitutionally delegated its power to an entity in a different branch, thus violating the separation of powers.<sup>143</sup> Congress has often given executive agencies independence from presidential influence through for-cause removal protection.<sup>144</sup> These for-cause removal protection provisions have also been questioned for their constitutionality as a violation of the separation of powers because Congress, the legislative branch, is attempting to prevent the President from certain controls as the head of the executive branch.<sup>145</sup> However, as Supreme Court precedent suggests, agency independence is constitutional and often used as a tool to further democratic accountability.<sup>146</sup> As is, this Comment argues, the FCC's private delegation of responsibility to USAC.<sup>147</sup>

This section is a chronological overview of some of the major Supreme Court cases that considered the validity of agency independence from presidential influence. This section reviews the Supreme Court cases through the lens of the constitutionality of Congress's codified for-cause removal protections in agency statutes. Subsection 1 reviews prior cases from 1935 through 2021. Subsection 2 then reviews cases decided in 2025 and an executive order signed in 2025.

##### 1. The History of Agency Independence

The question of whether Article II grants the President power to remove executive officials without congressional interference "has a claim to being one of the oldest constitutional debates in American law."<sup>148</sup> This subsection 1 examines some of the "well-known and significant

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141. *See Consumers' Rsch.*, 606 U.S. at 698.

142. *See id.*

143. *See supra* text accompanying notes 69, 71–72.

144. *See generally infra* Section II.F.1.

145. *See infra* text accompanying note 148.

146. *See infra* Section II.F.1.

147. *See infra* Section III.B.

148. *See* Aditya Bamzai & Peter M. Shane, *The Removal Question: A Timeline and Summary of the Legal Arguments*, 78 STANFORD L. REV. 1, 1 (July 2025), <https://perma.cc/SA9X-U33A>.

precedents”<sup>149</sup> underlying this debate. This examination demonstrates the Supreme Court’s evolving attitude toward agency independence spanning several decades.

a. *Humphrey’s Executor v. United States* (1935)

In *Humphrey’s Executor v. United States*,<sup>150</sup> the Supreme Court considered whether Congress wrote the Federal Trade Commission (FTC) Act intending to protect FTC Commissioners from presidential removal, except if for a cause enumerated in the Act and, if so, whether such a provision was constitutional.<sup>151</sup> The Court answered yes to both questions.<sup>152</sup> First, the government in *Humphrey’s Executor* argued that prior Supreme Court precedent counseled against finding Congress intended to allow for-cause removal of FTC Commissioners.<sup>153</sup> In response, the Court distinguished *Humphrey’s Executor* from *Shurtleff v. United States*. The Supreme Court explained that the FTC Act provides a fixed-term for Commissioners, whereas the statute at issue in *Shurtleff* would have allowed lifetime tenure if read to provide only for-cause removal—an outcome too extreme for the *Shurtleff* Court to allow.<sup>154</sup>

The government next argued that the phrase “continue in office” in § 1 of the FTC Act had no legal significance and applied only to the first Commissioners.<sup>155</sup> The Court disagreed, reasoning instead that it is not easy to assume Congress would only intend to provide for-cause removal to the first Commissioners.<sup>156</sup> The Court further reasoned that, regardless of the phrase, Congress providing fixed terms subject to for-cause removal was enough to establish Congress’s legislative intent.<sup>157</sup> The Court supported its point by examining the legislative history of the FTC Act.<sup>158</sup> The Court found that the congressional legislative reports “clearly reflect the view that a fixed term was necessary to the effective and fair administration of the law.”<sup>159</sup> The Court went on to discuss the Senate Committee on Interstate Commerce’s report to the Senate. The report declared that an advantage of the FTC is its independence and “that it was essential that the [FTC] should not be open to the suspicion of partisan

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149. *Id.*

150. *Humphrey’s Executor v. U.S.*, 295 U.S. 602, 602 (1935).

151. *See id.* at 619.

152. *See id.* at 621–22.

153. *See id.* (citing *Shurtleff v. United States*, 189 U.S. 311, 311 (1903)).

154. *See id.* at 623.

155. *See id.*

156. *See id.*

157. *See id.*

158. *See id.* at 624.

159. *See Humphrey’s Executor*, 295 U.S. at 624.

direction,” including by the President.<sup>160</sup> The Court found that combined, the language of the Act, the legislative reports, and the general purpose of the legislation suggested Congress intended the FTC to be a body of experts, independent of executive authority, whose experience should come from length of service.<sup>161</sup>

In answering the second question on the constitutionality of for-cause removal, the Supreme Court distinguished *Humphrey's Executor* from *Myers v. United States*, in which the Court held that only the President had the power to remove a postmaster of the first class.<sup>162</sup> The Court explained that a postmaster is an executive officer who is restricted to performing executive functions, whereas the Court considered the FTC “an administrative body created by Congress to carry into effect legislative policies embodied in the statute in accordance with the legislative standard therein prescribed.”<sup>163</sup> In supporting Congress’s authority to codify for-cause removal for FTC Commissioners, the Court noted that a person who holds their office only at the behest of another cannot maintain independence from that person’s will.<sup>164</sup> The Court concluded that nothing in the *Myers* precedent counseled a contrary conclusion in *Humphrey's Executor*.<sup>165</sup> Ultimately, the Court held that *Myers* would remain strictly applicable to executive officers and the *Humphrey's Executor* decision would protect statutory for-cause removal provisions for officers similar to FTC Commissioners, who have fixed terms.<sup>166</sup>

b. *Morrison v. Olson* (1988)

Later, in *Morrison v. Olson*,<sup>167</sup> the Supreme Court clarified its distinction between which officials the Constitution allows Congress to provide with for-cause removal.<sup>168</sup> The Court conceded that in *Humphrey's Executor* and *Weiner v. United States*,<sup>169</sup> it used the terms ‘quasi-legislative’ and ‘quasi-judicial’ to describe officials that Congress could constitutionally provide for-cause removal and in *Myers*, the Court used the term “purely executive” for officials Congress could not protect from removal.<sup>170</sup> However, the Court explained in *Morrison* that its prior decisions were not meant to provide “rigid categories” of officials who

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160. *See id.* at 625.

161. *See id.*

162. *See id.* at 626 (citing *Myers v. United States*, 272 U.S. 52, 52 (1926)).

163. *See id.* at 628.

164. *See id.* at 629.

165. *See id.* at 630.

166. *See id.* at 631–32.

167. *Morrison v. Olson*, 487 U.S. 654, 654 (1988).

168. *See Morrison*, 487 U.S. at 689.

169. *See Weiner v. United States*, 357 U.S. 349, 349 (1958).

170. *See Morrison*, 487 U.S. at 689.

Congress could provide for-cause removal.<sup>171</sup> Instead, the prior decisions were meant to demonstrate whether the removal restrictions are of such a nature that they prevent the President from performing his constitutional duty to “take care that the laws be faithfully executed.”<sup>172</sup> The Court emphasized that the President still retains his authority because an agency officer can still be held to competently perform his statutory responsibilities for fear of being removed for cause otherwise.<sup>173</sup> The Court noted that Congress found it essential to grant some officers removal protection to establish the independence of the office served.<sup>174</sup>

c. *Seila Law LLC v. Consumer Financial Protection Bureau* (2020)

Then, in *Seila Law LLC v. Consumer Financial Protection Bureau*,<sup>175</sup> the Supreme Court held that the structure of the Consumer Financial Protection Bureau (CFPB)—for-cause removal protection of a single director—violated the separation of powers.<sup>176</sup> The Director of the CFPB had the sole responsibility of administering consumer-protection statutes that could affect millions of private citizens and businesses and impose billion-dollar penalties through administrative adjudications and civil actions.<sup>177</sup> The Supreme Court’s concern with insulating this level of power from at-will removal was that the President would not be able to influence the agency head via election, as the head is not elected nor directly accountable to someone who is.<sup>178</sup> The Court was also concerned that the President could not appoint other leaders to check the single head’s authority or help keep the agency aligned with the President’s preferred policies.<sup>179</sup> The Court also feared the President would be “saddled” with an agency head from a different political party who would not support the President’s agenda.<sup>180</sup> Ultimately, the Supreme Court declined to extend previously upheld limits on the President’s removal power to sole principal officers who wield significant executive power.<sup>181</sup>

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171. *See id.* at 689–91.

172. *See id.* (citing U.S. CONST. art. II, § 1, cl. 1).

173. *See Morrison*, 487 U.S. at 692.

174. *See id.* at 693.

175. *See Seila L. LLC v. Consumer Fin. Prot. Bureau*, 591 U.S. 197, 197 (2020).

176. *See id.* at 205.

177. *See id.* at 219–20.

178. *See id.* at 224–25.

179. *See id.* at 225.

180. *See id.*

181. *See id.* at 238.

d. *Collins v. Yellen* (2021)

Finally, in *Collins v. Yellen*,<sup>182</sup> the Supreme Court held that the Recovery Act's for-cause removal restriction violated the separation of powers.<sup>183</sup> The Court found that *Seila Law* was dispositive in deciding *Collins*, as the Court did not find sufficient distinctions between the CFPB in *Seila Law* and the Federal Housing Finance Agency (FHFA) in *Collins*.<sup>184</sup> *Seila Law* and *Collins* demonstrates the Court's evolving view of statutory removal protections. The *Collins* Court opined that the President's authority to remove executive officials allows him to exercise control over those who assist him in carrying out his duties as head of the executive branch, ensuring the officials act consistently with the public interest and the policies the President was presumably elected to promote.<sup>185</sup>

2. The Recent State of Agency Independence

Authors to an adversarial collaboration in the *Stanford Law Review* opined that “[f]ew constitutional issues have been as significant to the first 100 days of the second Trump Administration as the question whether the President may fire the heads of agencies subject to statutory protection from removal.”<sup>186</sup> This subsection 2 reviews some of the Supreme Court decisions that may inform the answer to that significant question.

a. *Trump v. Wilcox* (2025)

In September 2023, Gwynne Wilcox was nominated by President Biden and confirmed by the Senate to a second five-year term on the National Labor Relations Board (NLRB).<sup>187</sup> On January 27, 2025, President Trump terminated Wilcox via an email that cited only political motivations.<sup>188</sup> Following her termination, Wilcox filed suit in the United States District Court for the District of Columbia challenging her removal and requesting injunctive relief so she could remain in her position.<sup>189</sup> The D.C. District Court held that Wilcox's termination was unlawful because it violated the National Labor Relations Act.<sup>190</sup> The district court also held that Wilcox remained a member of the NLRB and could be removed by

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182. *Collins v. Yellen*, 594 U.S. 220, 220 (2021).

183. *See id.* at 250.

184. *See id.* at 251.

185. *See id.* at 252.

186. Aditya Bamzai & Peter M. Shane, *The Removal Question: A Timeline and Summary of the Legal Arguments*, 78 *STANFORD L. REV.* 1, 1 (July 2025), <https://perma.cc/SA9X-U33A>.

187. *See Wilcox v. Trump*, 775 F. Supp.3d 215, 222 (D.D.C. 2025).

188. *See id.* at 222.

189. *See id.*

190. *See id.* at 240.

the President only “upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.”<sup>191</sup>

On June 1, 2022, Cathy Harris was appointed to the Merit Systems Protection Board (MSPB) for a term through March 1, 2028.<sup>192</sup> On March 14, 2024, Harris was confirmed by the Senate and sworn in as an MSPB Chairman.<sup>193</sup> On February 10, 2025, President Trump terminated Harris via email without any given reason.<sup>194</sup> Harris filed for a preliminary injunction in the D.C. District Court to prevent her termination from taking effect.<sup>195</sup> Following a hearing with both parties, the district court held that Harris remained a member of the MSPB and that she could only be removed by the President for inefficiency, neglect of duty, or malfeasance in office.<sup>196</sup>

In *Trump v. Wilcox*, the Government applied to the Supreme Court for a stay of orders from the D.C. District Court’s decisions in *Wilcox* and *Harris*.<sup>197</sup> In its May 2025 decision, the Supreme Court granted the stays, pending appeals in the D.C. Circuit Court of Appeals.<sup>198</sup> The Court cited *Seila Law* in finding that the Court’s precedent offers narrow exceptions to the President’s removal powers.<sup>199</sup> The Court noted that “the stay reflects [its] judgment that the Government is likely to show that both the NLRB and MSPB exercise considerable executive power,” though the Court declined to decide whether the agencies fit within prior recognized exceptions.<sup>200</sup> In September 2025, the Supreme Court denied petition for a writ of certiorari before judgment.<sup>201</sup>

#### b. Executive Order 14215 (2025)

President Trump signed Executive Order (EO) 14215 on February 18, 2025.<sup>202</sup> EO 14215 § 1 details the President’s constitutional powers and duty to faithfully execute the laws.<sup>203</sup> The Constitution allows the President’s subordinate officers to assist him in his executive duties because, as the EO reasons, “it would be impossible for the President to single-handedly perform all the executive business of the Federal

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191. *See id.* (citing 29 U.S.C. § 153(a)).

192. *See Harris v. Bessent*, 775 F. Supp.3d 164, 169 (D.D.C. 2025).

193. *See id.* at 171.

194. *See id.*

195. *See id.* at 171–72.

196. *See id.* at 172, 189 (citing 5 U.S.C. § 1202).

197. *See Trump v. Wilcox*, 145 S. Ct. 1415, 1416 (2025).

198. *See id.* at 1417.

199. *See id.* at 1416.

200. *See id.*

201. *See Wilcox v. Trump*, 2025 U.S. LEXIS 2796, 2796 (2025).

202. *See Exec. Order No. 14,215*, 90 Fed. Reg. 10447 (Feb. 18, 2025).

203. *See id.*

Government.”<sup>204</sup> The subordinate officers remain subject to the President’s supervision and control.<sup>205</sup> In turn, the President is accountable to the American people who elected him.<sup>206</sup> In EO 14215, President Trump considers this “one of the structural safeguards . . . by which the Framers created a Government accountable to the American people.”<sup>207</sup>

EO 14215 contends that previous presidential administrations allowed independent regulatory agencies to operate with minimal supervision and insufficient accountability to the President and, thus, the American people.<sup>208</sup> The EO further contends that previous administrations permitted independent regulatory agencies to promulgate significant regulations without review by the President.<sup>209</sup> Section 1 closes by commenting, “[f]or the Federal Government to be truly accountable to the American people, officials who wield vast executive power must be supervised and controlled by the people’s elected President.”<sup>210</sup> Following this policy, the EO requires all executive departments and agencies, including independent agencies, to submit all proposed and final significant regulatory actions for review by the Office of Information and Regulatory Affairs within the Executive Office of the President before publication in the Federal Register.<sup>211</sup> The Definitions section of the EO does not include a definition for “significant” regulatory actions.<sup>212</sup> However, the section does assign “independent regulatory agency” the definition given to the term in 44 U.S.C. § 3502(5).<sup>213</sup> Section 3502(5) lists 19 agencies, including the FCC, and includes “any other similar agency designated by statute as a Federal independent regulatory agency or commission.”<sup>214</sup>

The EO includes additional potential requirements for independent regulatory agencies, such as: (1) review of the agencies’ obligations for consistency with the President’s policies and priorities; (2) adjusted apportionments to advance the President’s policies and priorities; (3) prohibition from expending appropriations on particular activities, functions, projects, or objects; and (4) requirements to employ a White House Liaison.<sup>215</sup> The final section of the EO mandates that the President and the Attorney General shall provide authoritative interpretations of law

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204. *See id.*

205. *See id.*

206. *See id.*

207. *See id.*

208. *See id.*

209. *See id.*

210. *See id.*

211. *See id.*

212. *See generally* Exec. Order No. 14,215.

213. *See id.*

214. 44 U.S.C. § 3502(5).

215. *See* Exec. Order No. 14,215.

for the executive branch, which agency employees cannot contradict in regulations, guidance, or litigation.<sup>216</sup>

c. *Trump v. Slaughter* (2025)

In 2018, Rebecca Slaughter was nominated by President Trump to a seven-year term as an FTC Commissioner and confirmed by the Senate.<sup>217</sup> In February 2023, Slaughter was renominated by President Biden and confirmed to another seven-year term.<sup>218</sup> In March 2025, President Trump terminated Slaughter via email because her “continued service on the FTC [was] inconsistent with [his] Administration’s priorities.”<sup>219</sup> Slaughter filed for a permanent injunction in the D.C. District Court.<sup>220</sup> The district court granted Slaughter’s Motion for Summary Judgment and held that she could only be removed as FTC Commissioner by the President for “inefficiency, neglect of duty, or malfeasance in office.”<sup>221</sup>

In *Trump v. Slaughter*, decided September 22, 2025, the Supreme Court stayed the D.C. District Court’s decision.<sup>222</sup> In her dissent, Justice Kagan emphasized that the Court’s emergency docket should not be used “to transfer government authority from Congress to the President, and thus to reshape the Nation’s separation of powers.”<sup>223</sup> The Court also treated the application for stay as a writ of certiorari, which it granted.<sup>224</sup> The Court directed the parties to brief and argue two questions: “(1) [w]hether the statutory removal protections for members of the Federal Trade Commission violate the separation of powers and, if so, whether [*Humphrey’s Executor*] should be overruled;” and “(2) [w]hether a federal court may prevent a person’s removal from public office, either through relief at equity or at law.”<sup>225</sup> The Supreme Court heard oral arguments in *Trump v. Slaughter* in December 2025.<sup>226</sup> As of March 2026, the Court has not published a decision for the case.

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216. *See id.*

217. *See Slaughter v. Trump*, 791 F. Supp.3d 1, 7 (D.D.C. 2025).

218. *See id.* at 8.

219. *See id.*

220. *See id.* at 8–9.

221. *See id.* at 29 (citing 15 U.S.C. § 41).

222. *See Trump v. Slaughter*, 146 S. Ct. 18, 18 (2025).

223. *See id.* at 19 (Kagan, J., dissenting).

224. *See id.*

225. *See id.*

226. *See* No. 25-332, SUPREMECOURT.GOV, <https://perma.cc/HAP3-7R45> (last visited Mar. 22, 2026, at 15:32 ET).

### 3. The Fifth Circuit's En Banc Opinion: Democratic Accountability

In the Fifth Circuit's en banc decision, reversed by the Supreme Court in *FCC v. Consumers' Research*, the circuit court argued that the USF's combination of broad congressional delegation and private delegation undermines democratic accountability.<sup>227</sup> In reviewing the decision, the majority Supreme Court opinion did not address this argument.<sup>228</sup> However, the circuit court's opinion included three reasons why the congressional delegation undermines democratic accountability.<sup>229</sup> First, the delegation of power from Congress to the FCC allows Congress to avoid accountability.<sup>230</sup> Second, the "lines of accountability the Framers intended to be clear" may be obscured by the delegation from Congress to the FCC.<sup>231</sup> Third, reviewing courts will not be able to compare the agency's actions with what was required of the elected congressional representatives.<sup>232</sup>

The circuit court also found that private delegation alone undermines democratic accountability because private entities are not accountable to the government.<sup>233</sup> The court opined that delegating congressional power to private entities allows government officials to wield power without accountability to constituents who might not associate the entities' actions with the government.<sup>234</sup> The Fifth Circuit thus found that the USF allows USAC to be unaccountable to the government and shield government officials from constituents' frustrations relating to the USF.<sup>235</sup> The court further stated that constituents cannot tell if the FCC or USAC are charging them.<sup>236</sup> The court opined that USAC carries out important governmental responsibilities with the goal of earning profits, rather than serving the public.<sup>237</sup> This situation also leaves reviewing courts without a course to redress aggrieved constituents.<sup>238</sup> For those reasons, the Fifth Circuit en banc found that the USF's underlying scheme of public and private delegations of power undermines democratic accountability.

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227. *See supra* text accompanying note 68.

228. *See generally* *FCC v. Consumers' Rsch.*, 606 U.S. 656, 671, 696 (2025).

229. *See id.* at 783.

230. *See id.*

231. *See id.*

232. *See Consumers' Rsch.*, 109 F.4th at 783 (referencing *L.M.A.W. v. State*, 588 U.S. 128, 155 (2019) (Gorsuch, J., dissenting)).

233. *See id.* at 783.

234. *See id.* at 784.

235. *See id.*

236. *See id.*

237. *See id.*

238. *See id.*

### III. ANALYSIS

The delegation of power from the FCC to USAC furthers, rather than undermines, democratic accountability. USAC is constitutionally subordinate to the President, but insulated from excessive influence that would prevent USAC from carrying out the USF's purpose as prescribed by Congress.<sup>239</sup> This Part argues that democratic accountability means an agency acting consistently with Congress's intentions, not changing administrations' political agendas.<sup>240</sup> This Part then suggests Congress codify a private, non-profit administrator to protect this interpretation of democratic accountability in the USF.<sup>241</sup>

#### A. *Current Case Law and Executive Order 14215 Misinterpret the Meaning of Democratic Accountability*

Recent Supreme Court opinions and EO 14215 misinterpret the concept of democratic accountability as solely applying to the President's duty to his elected people.<sup>242</sup> Instead, democratic accountability should be understood to mean consistency in agencies' purposes as prescribed by Congress in agencies' organic<sup>243</sup> and supporting statutes. Earlier Supreme Court precedent supports this interpretation.<sup>244</sup> For example, in *Humphrey's Executor*, the Supreme Court included mention of the Senate Committee on Interstate Commerce's report to the Senate in support of the bill that would become the FTC Act.<sup>245</sup> In the report, the Committee emphasized that it was essential that the FTC is free of influence from all partisan direction, including the President's.<sup>246</sup> The Supreme Court emphasized that the Committee report and other legislative history of the FTC Act reflected Congress's intention for the FTC to be independent from executive authority, and instead be a body of experts.<sup>247</sup> In upholding the constitutionality of Congress's codification of for-cause removal for FTC Commissioners, the Court emphasized that FTC Commissioners could not maintain impartial independence if the President could threaten them with removal from office for partisan reasons.<sup>248</sup>

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239. See *infra* text accompanying notes 264–65.

240. See *infra* Section III.A.

241. See *infra* Section III.C.

242. See *supra* Section II.F.2.

243. "Agencies are created through their own organic statutes, which establish new laws, and in doing so, create the respective agencies to interpret, administer, and enforce those new laws." *administrative law*, LEGAL INFO. INST., <https://perma.cc/U52T-6LBC> (last visited Mar. 22, 2026, at 17:11 ET).

244. See *supra* Section II.F.1.

245. See *supra* text accompanying note 158.

246. See *supra* text accompanying note 160.

247. See *supra* text accompanying note 161.

248. See *supra* text accompanying note 164.

Further, in *Morrison* the Court clarified that for-cause removal protection allowances did not fit into rigid categories of who exercises executive power or not.<sup>249</sup> Instead, for-cause removal was determined based on whether the protections would prevent the President from performing his constitutional duty.<sup>250</sup> The Court found that for-cause removal protections did not hinder the President because he can still remove an officer for cause if the officer does not competently perform his *statutory* responsibilities.<sup>251</sup> Here, the operative term is “statutory,” suggesting agency officers are responsible for fulfilling the intelligible principles set out to them by Congress,<sup>252</sup> and only in failing that responsibility should the President remove them. Again, in *Morrison* the Court supported Congress’s intention to ensure agency independence through for-cause removal protections.<sup>253</sup>

*Seila Law* and *Collins* support agency independence from presidential influence when other balances are in place to protect the President’s ability to fulfill his constitutional duty. Examples of such balances from *Seila Law* include multiple agency heads with shared responsibility and differing political parties.<sup>254</sup> *Collins* was decided on similar facts to *Seila Law*.<sup>255</sup> However, the Court’s dicta began to shift in 2020 with *Seila Law* and *Collins*, as the Court started to view at-will removal as a tool for the President to uphold democratic accountability to his constituents.<sup>256</sup> *Seila Law*, *Collins*, and EO 14215 emphasize the President’s duty to his constituents because the President is elected.<sup>257</sup> However, the Court and President fail to consider that the Congress members who enact agencies’ organic statutes are also elected<sup>258</sup> and thus have an equal duty to the American people.

In discussing agency independence through for-cause removal protections, the Supreme Court’s analysis has often turned on the separation of powers.<sup>259</sup> In *FCC v. Consumers’ Research*, the Supreme Court reminded Petitioners that Congress may seek executive agencies’ assistance in exercising its legislative powers, without violating the separation of powers doctrine.<sup>260</sup> Thus, when an agency is following its organic statute as codified by Congress, it is reasonable to understand that

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249. See *supra* text accompanying note 171.

250. See *supra* text accompanying note 172.

251. See *supra* text accompanying note 173 (emphasis added).

252. See, e.g., *supra* text accompanying notes 75–78.

253. See *supra* text accompanying note 174.

254. See *supra* text accompanying notes 178–80.

255. See *supra* text accompanying note 184.

256. See *supra* text accompanying notes 180, 185.

257. See *supra* text accompanying notes 179–80, 185, 206.

258. See U.S. CONST. art. I, § 4, cl. 1.

259. See, e.g., *supra* text accompanying notes 110, 161, 172, 176, 183, 200, 225.

260. See *supra* text accompanying 117.

the agency is assisting Congress in fulfilling a constitutional legislative duty. In turn, it is reasonable to understand that the separation of powers would require that Congress have control over how that duty is fulfilled, by whom, and when those standards are not being met so as to require for-cause removal. These controls prevent Congress from unconstitutionally delegating its power to the executive branch and violating the public nondelegation doctrine by retaining control over the agency's assistance in exercising Congress's legislative powers. The President's ability to ensure the laws are faithfully executed is not hindered because for-cause removal protections are a mechanism for the President to ensure the laws, as passed by Congress, are fulfilled.<sup>261</sup> If an executive officer is not fulfilling the laws as passed by Congress, then the President may still remove him.<sup>262</sup> The President's constitutional duty is to ensure the laws are faithfully executed, not write them.<sup>263</sup> Therefore, adherence to Congress's intentions in creating an agency through its organic statute offers the American people proper separation of powers between the Government's branches and thus true democratic accountability.

*B. USAC Furthers Democratic Accountability*

The unique relationship of an independent non-profit administering the USF furthers, rather than undermines, democratic accountability. The Fifth Circuit en banc worries that the FCC will use USAC as a scapegoat to avoid constituent complaints and court reviews.<sup>264</sup> The circuit court argued that constituents will not know who is responsible for the USF—the FCC or USAC.<sup>265</sup> To answer this question, constituents and reviewing courts merely need to turn to the rule, which prescribes that the FCC is responsible for carrying out congressional principles regarding which services the USF provides and the means of calculating the telecommunications providers' contributions.<sup>266</sup> The circuit court should also consider that constituents may believe that the USF is administered by providers themselves, as the fee is often passed on to consumers' phone bills.<sup>267</sup> The court further contended that USAC carries out important government responsibilities with only the goal of making a profit.<sup>268</sup> Here, the court simply needs to turn to USAC's designation as non-profit,

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261. *See supra* text accompanying note 172–73.

262. *See supra* text accompanying note 173.

263. *See supra* text accompanying notes 172, 203.

264. *See supra* text accompanying notes 234–38.

265. *See supra* text accompanying note 236.

266. *See* 47 C.F.R. § 54.709(a).

267. *See supra* text accompanying note 1.

268. *See supra* text accompanying note 237.

meaning USAC does not make a profit for their administration of the USF.<sup>269</sup>

Instead, USAC furthers democratic accountability due to the company's status as an independent non-profit. USAC can be influenced by the FCC and, in turn, the President through his influence over FCC Commissioners by proper for-cause removal,<sup>270</sup> so USAC is not unconstitutionally isolated from presidential influence.<sup>271</sup> However, as an independent non-profit company, USAC is insulated from influence by financial incentive. As USAC's members, directors, and officers cannot profit from the organization's activities, USAC faces no obvious financial incentive to change course from its statutorily and regulatorily prescribed duties.<sup>272</sup> Therefore, regardless of the acting President, U.S. citizens can be assured that USAC will be held democratically accountable to fulfill the USF as Congress intended when writing § 254: supporting millions of citizens in rural and low-income areas, schools, libraries, and healthcare facilities.<sup>273</sup> Regardless of the President's agenda and preferred policies, experts like the industry representatives that serve on the USAC committees, will continue to administer the USF.<sup>274</sup> EO 14215's reasoning supports expert-run agencies, as President Trump explained in the EO that it would be impossible for him to run the executive branch alone.<sup>275</sup> As such, he must rely on agency experts to assist him in faithfully executing the laws as passed by Congress.

*C. Congress Should Codify a Private, Non-Profit Universal Service Fund Administrator*

Currently, USAC is designated as the USF's administrator by an FCC regulation.<sup>276</sup> Congress should amend 47 U.S.C. § 254(a) to codify the requirement that a private, non-profit organization administer the USF. A proposed amendment is:

- (1) The Administrator of the federal universal service support mechanisms shall be a private, non-profit company appointed by the Federal Communications Commission.

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269. See *supra* text accompanying note 28; see also *Non-profit Organizations*, CORNELL L. SCH., LEGAL INFO. INST., <https://perma.cc/6W5N-P6MA> (last visited Mar. 22, 2026, at 17:16 ET) (“A non-profit organization is a group for purposes other than generating profit and in which no part of the organization's income is distributed to its members, directors, or officers.”).

270. See *supra* text accompanying notes 30, 17.

271. See generally Section II.F.1.a.

272. See *supra* text accompanying note 28.

273. See *supra* text accompanying notes 2–6.

274. See *supra* text accompanying note 32.

275. See *supra* text accompanying note 204.

276. See *supra* text accompanying note 29.

This suggested amendment would keep the authority to appoint the Administrator with the FCC and prevent Congress from overstepping its role in the administration of the USF. Codifying the private delegation structure would also prevent changes in Supreme Court and administration attitudes from hindering the FCC's ability to administer the USF as Congress intended when the statute was enacted, rather than at the whim of each passing presidential administration. Codifying the structure would further protect a delegation scheme the Supreme Court found constitutional.<sup>277</sup> Statutorily requiring the Administrator to be a non-profit company would prevent the possibility of the Fifth Circuit's concern en banc that the USF Administrator carries out important government responsibilities with only the goal of making a profit.<sup>278</sup> Congress would support democratic accountability by ensuring consistency in how the agency delivers ongoing services to the American people.

#### IV. CONCLUSION

The FCC's USF provides telecommunications services to rural and low-income areas, schools, libraries, and rural health care facilities.<sup>279</sup> In 2023, the organizations Consumers' Research and Cause Based Commerce filed petitions challenging the USF's funding mechanism and underlying delegations of power in the Fifth, Sixth, and Eleventh Circuit Courts of Appeals.<sup>280</sup> Each reviewing circuit court found the USF constitutional under the public and private nondelegation doctrines.<sup>281</sup> In 2024, the Fifth Circuit reheard the petition en banc and found the USF unconstitutional under a "double-layered" delegation scheme.<sup>282</sup> Despite the multiple petitions against the USF, the Supreme Court found the USF's administration scheme constitutional and rejected the Fifth Circuit's en banc unconstitutional "double-delegation" theory.<sup>283</sup>

The Fifth Circuit en banc also found the USF's underlying delegations of power undermined democratic accountability because it isolated USAC from the President's removal powers.<sup>284</sup> Recent Supreme Court case law and Executive Order 14215 support this interpretation of democratic accountability.<sup>285</sup> However, an evaluation of precedential Supreme Court case law and a consideration of Congress's duty to its constituents suggest that democratic accountability in executive agencies

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277. *See supra* text accompanying notes 141–42.

278. *See supra* text accompanying note 237.

279. *See supra* text accompanying note 22.

280. *See supra* text accompanying notes 54–57.

281. *See supra* text accompanying note 58.

282. *See supra* text accompanying notes 59–63.

283. *See supra* text accompanying notes 66–67.

284. *See supra* text accompanying note 233.

285. *See supra* Section III.A.

means ensuring agencies follow the intelligible principles set out by Congress in fulfilling their statutory requirements.<sup>286</sup> Congress should support this interpretation of democratic accountability, and in turn the private, non-profit administration scheme which furthers democratic accountability, by codifying the scheme into the telecommunications universal service statute.<sup>287</sup>

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286. *See supra* Section II.F.1.

287. *See supra* text accompanying note 74.