

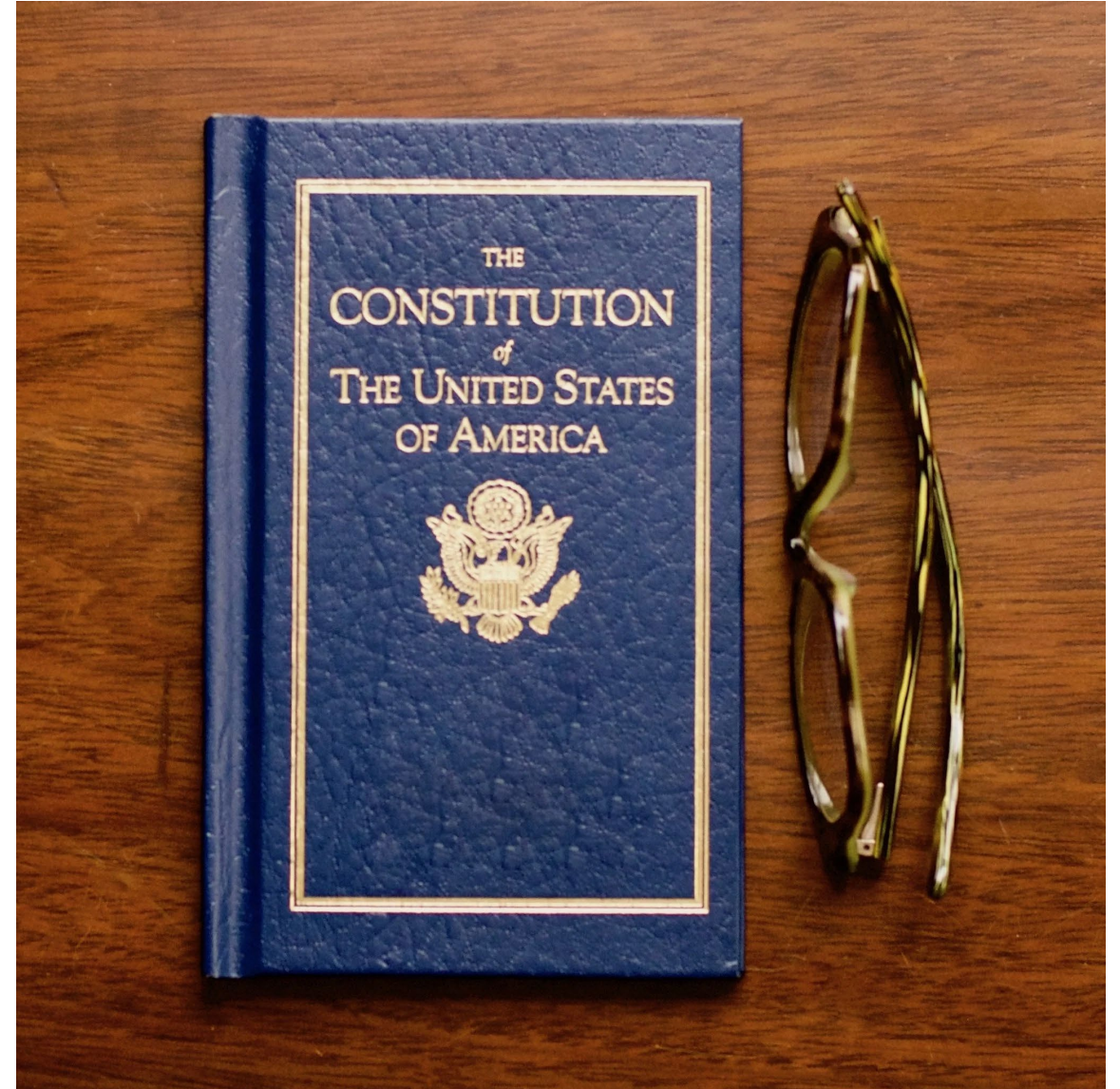
FCC v. Consumers' Research Service (2025)

The Universal Service
Fund Mechanism is not
an Unconstitutional
Delegation of Congress'
Taxing Authority



Article 1, Section 1 of the U.S. Constitution

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.



Federal Communications Commission v. Consumers' Research; Schools, Health & Libraries Broadband Coalition v. Consumers' Research, 606 U.S. ___, 145 S.Ct. 2482 (June 27, 2025)

- The Telecommunications Act of 1996 requires telecom companies to contribute to the Universal Service Fund, administered by the FCC through the Universal Service Administrative Co.
- USAC oversees the collection of the contributions and disbursement of USF money through four USF programs including E-Rate.
- E-Rate provides \$3.26 billion each year in discounts to schools and libraries to support broadband and Wi-Fi connectivity.



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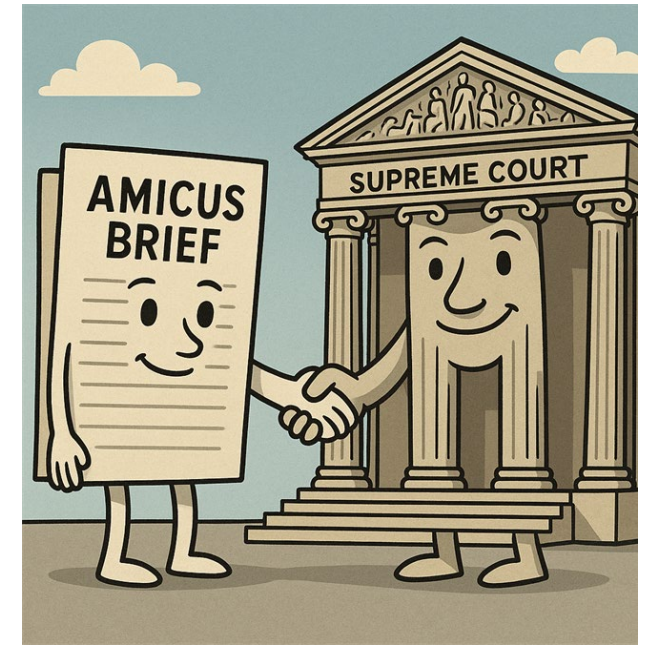
- Consumers' Research claimed that Congress impermissibly allowed the FCC too much latitude in establishing the universal service fund (USF) and its funding mechanism and that the FCC, in turn, had ceded too much authority to USF's administrator.
- The full U.S. Court of Appeals for the Fifth Circuit struck down the USF funding mechanism as a "misbegotten" and unconstitutional tax on consumers.
- SCOTUS was asked to revive the "nondelegation doctrine" -- the principle that Congress cannot delegate its lawmaking powers to other institutions.



AASA-led Amicus Brief joined by 21 educational, library, municipal organizations

AASA led a coalition of education and library groups, including NSAA, which filed an amicus brief asserting:

- The Fifth Circuit’s unprecedented decision invalidating the universal service fee jeopardizes **Congress’s longstanding mission** to provide telecommunications services to all Americans.
- Rural, poor, and underserved communities across the United States have depended for decades on programs funded by the universal service fee for access to affordable, reliable telecommunication services, including high-speed internet services.
- Congress may authorize executive agencies to exercise substantial “**discretion**” in implementing and enforcing the laws that Congress enacts. In carrying out those laws, agencies may also rely on assistance from private actors, so long as the actors remain subordinate to and under the agencies’ authority and supervision.
- The universal service fee mechanism follows these principles because Congress established multiple “**intelligible principles**” guiding the FCC in assessing the fee and administering the USF...



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6-3 opinion written by Justice Kagan:

“[N]o impermissible transfer of authority has occurred” under the Constitution.

- Congress sufficiently guided and constrained the discretion it gave the FCC to implement the universal-service contribution scheme.
- The FCC has retained all decision-making authority within that discretion sphere, relying on the Administrative Company only for non-binding advice.

“For nearly three decades, the work of Congress and the Commission 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.”





What you should know:

- The E-Rate funding mechanism is safe for now.
- This is great news for schools and libraries in rural areas.
- The “nondelegation” doctrine may arise in another context at another time. At least 4 justices are open to reviving the doctrine.
- This decision is part of a series in which the Court has grappled with the authority of federal agencies. Expect more.