No. 25-1140

FILED
MAR - 3 2026
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE
Supreme Court of the United States

MARK ANDREW BAUERSACHS
PETITIONER
v.
FEDERAL RESERVE BOARD OF GOVERNORS,
JEROME H. POWELL,
PHILIP N. JEFFERSON,
MICHAEL S. BARR,
MICHELLE W. BOWMAN,
LISA D. COOK,
ADRIANA D. KUGLER,
CHRISTOPHER J. WALLER

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

MARK A. BAUERSACHS
5 PATRIOT LANE
HUDSON, MA 01749
(978) 562-1734
PRO SE

February, 2026

QUESTIONS PRESENTED

In 12 U.S.C. § 225a, Congress commands the Federal Reserve to achieve stable prices using a legislative rule. The legislative rule eliminates price inflation caused by excessively rapid growth of the money supply. The Fed's final agency action titled *Flexible Average Inflation Targeting* (FAIT) set aside the legislative rule and unlawfully added 117 years' worth of money growth in only 60 days from April to May 2020. With this excessive money growth, FAIT pre-authorized 14.3% chain-type price inflation from 2021 to 2023, and 91% inflation through year 2049. FAIT violates the Equal Protection Clause through a perversion of law: Congress never intended the Cost-of-Living Adjustment (COLA) in 5 U.S.C. § 8462 to reimburse millions of public-sector pensions for FAIT's unlawful inflation, while FAIT cuts the purchasing power of fixed-income pensions in the private sector without reimbursement. FAIT fails the rational basis test by violating 12 U.S.C. § 225a, the Coinage Power, and the Nondelegation Doctrine.

The questions presented are:

1. Whether, for similarly situated pensioners aged 62 and older, FAIT plausibly fails the rational basis test and plausibly violates the Equal Protection Clause.

2. Whether the district court has jurisdiction over Petitioner's complaint for declaratory and injunctive relief under the Administrative Procedure Act (APA).

3. Whether a prayer for monetary COLA relief is specific relief and not "money damages" as that term is used in § 702 of the APA.

PARTIES TO PROCEEDING AND RELATED CASES

Petitioner Mark A. Bauersachs is the plaintiff-appellant in the court below.

Respondents are the Federal Reserve Board of Governors and each of the seven Governors in their official capacities as a Federal Reserve Governor and as a voting member of the Federal Open Market Committee (FOMC): Jerome H. Powell, Philip N. Jefferson, Michael S. Barr, Michelle W. Bowman, Lisa D. Cook, Adriana D. Kugler, and Christopher J. Waller.

The related cases are:

- *Bauersachs v. Federal Reserve Board of Governors, et. al.,* No. 1:24-cv-10869-RGS, U.S. District Court for the District of Massachusetts (Boston), Judgment entered August 26, 2024.
- *Bauersachs v. Federal Reserve Board of Governors, et. al.,* No. 24-1796, U.S. District Court of Appeals for the First Circuit, Judgment entered October 7, 2025. Petition for Rehearing denied December 9, 2025.

TABLE OF CONTENTS

QUESTIONS PRESENTED i

PARTIES TO THE PROCEEDING ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES vi

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL, STATUTORY AND REGULATORY PROVISIONS INVOLVED 2

INTRODUCTION 7

STATEMENT OF THE CASE 14

A. Background and Purpose of 12 USC §225a . 14

B. Congress Did Not Intend the FERS COLA to Reimburse for FAIT's Intentional Inflation. 17

C. FAIT Unlawfully Converts Emergency Money Growth into Permanent Growth 19

D. FAIT Harms Petitioner's Fixed-Income Pension 21

E. Lower Court Proceedings............................. 22

F. District Court Jurisdiction 25

REASONS FOR GRANTING THE PETITION...... 26

First Question Presented 26

I. FAIT's Plausible Failure of the Rational Basis Test and Plausible Violation of the Equal Protection Clause Merit This Court's Review... 26

A. The Decision Below Conflicts with the Plain Intention of Congress for §225a 26

B. The Decision Below Conflicts with the Coinage Power and Nondelegation Doctrine 28

C. Congress Intended Overshoot in the Money Supply to be Withdrawn Over the Long Run 30

D. The Decision Below Conflicts with Supreme Court Precedent in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).. 31

Second Question Presented.................................... 32

II. District Court Jurisdiction Over Petitioner's Complaint for Declaratory and Injunctive Relief Merits This Court's Review 32

Third Question Presented...................................... 33

III. Monetary COLA Relief as Specific Relief and not "Money Damages" Merits This Court's Review.. 33

CONCLUSION 36

APPENDIX – TABLE OF CONTENTS

Appendix A: JUDGMENT, U.S. Court of Appeals for the First Circuit (October 7, 2025) ... 1a

Appendix B: ORDER, U.S. District Court, Boston (August 26, 2024) 4a

Appendix C: ORDER, U.S. District Court, Boston (August 9, 2024) 6a

Appendix D: ORDER, U.S. Court of Appeals for the First Circuit (December 9, 2025) 10a

Appendix E: House Concurrent Resolution 133 (1975) 12a

Appendix F 12 U.S.C. § 225a 14a

Appendix G 5 U.S.C. § 8462 .... 16a

Appendix H Flexible Average Inflation Targeting (Final Agency Action) 21a

Appendix I Flexible Average Inflation Targeting and Prospects for U.S. Monetary Policy (Symposium Paper) 24a

Appendix J M1 Money Supply 26a

Appendix K Real Gross Domestic Product 27a

Appendix L PCE Chain-Type Price Inflation...... 28a

Appendix M The Federal Reserve After Fifty Years, Dr. Milton Friedman Testimony To Congress (1964) 29a

Appendix N Impact of the Federal Reserve Systems' Monetary Policies on the Nation's Economy (Committee Report).......... 34a

Appendix O Fed. Reserve Reform Act of 1977..... 38a

Appendix P Prayer for Relief (FAC-99) 45a

TABLE OF AUTHORITIES

CASES

Ashcroft v. Iqbal,
556 U.S. 662 (2009) 11, 29

Bolling v. Sharpe,
347 U.S. 497 (1954) 2, 23

Bowen v. Massachusetts,
487 U.S. 879 (1988) 11, 30, 31, 34, 2a

Clark v. Library of Congress,
750 F.2d 89 (D.C. Cir. 1984) 2a, 3a

Davallou v. United States,
998 F.3d 502, 504 (1st Cir. 2021) 7a

Department of Army v. Blue Fox, Inc.,
525 U.S. 255, 261 (1999) 2a

Dolan v. USP.,
546 U.S. 481, 489-90 (2006) 8a

Erickson v. Pardus,
551 U.S. 89, 94 (2007) 2a

FDIC v. Meyer,
510 U.S. 471, 475 (1994) 7a

Handy v. Bernanke,
2012 WL 7964216, at *2 (E.D. Va. Jan. 26, 2012) 8a

Love v. Federal Reserve Board of Governors,
No. 15-cv-1077, 2015 WL 3649376, at *1 (D. Kan. June 11, 2015) 8a

Murphy v. United States,
45 F.3d 520, 522 (1st Cir. 1995) 2a

Research Triangle Inst. v. Bd. Of Governors of the Fed. Reserve Sys.,
132 F.3d 985, 987-988 (4th Cir. 1997) 8a

Schneider v. Rusk,
377 U.S. 163 (1964) 2, 23

Trudeau v. Federal Trade Commission,
456 F.3d 178, 185 (D.C. Cir. 2006) 24

United States v. Nishnianidze,
342 F.3d 6, 18 (1st Cir. 2003) 3a

United States v. Nordic Village, Inc.,,
503 U.S. 30, 33-34 (1992) 8a

CONSTITUTION AND STATUTES

5 U.S.C. § 702 .... i, 5, 12, 25, 33, 36, 2a, 7a

5 U.S.C. § 706 .... 6, 22, 23, 7a

5 U.S.C. § 8462 i, 3, 10, 11, 18, 22, 23, 31, 33, 34, 35, 16a

12 U.S.C. § 225a i, 2, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 5a, 7a, 8a, 14a, 26a, 27a, 45a

15 U.S.C. § 1022a 18

15 U.S.C. § 1022e 18

28 U.S.C. § 1291 .... 1a

28 U.S.C. § 1331 26

28 U.S.C. § 2680(i) 24, 8a, 9a

U.S. Const. Art. I, § 1 .... i, 2, 12, 23, 28, 30, 32

U.S. Const. Art. I, § 8, CL 5 .. i, 2, 10, 23, 28, 32, 41a

U.S. Const. amend. XIV i, 2, 10, 11, 13, 22, 23, 25, 26, 27, 31, 7a

OTHER AUTHORITIES

Flexible Average Inflation Targeting (FAIT) i, 4, 7, 8, 10, 11, 12, 13, 14, 17, 19, 20, 21, 22, 23, 24, 26, 27, 29, 30, 31, 32, 34, 35, 5a, 7a, 22a, 24a, 26a, 28a, 45a

House Concurrent Resolution 133 (1975)... 15, 16, 23, 30

, 12a, 36a, 43a

The Federal Reserve After Fifty Years (Committee Hearing) 29a

Impact of the Federal Reserve Systems' Monetary Policies on the Nation's Economy (Committee Report).. 34a

Federal Reserve Reform Act of 1977, (Committee Hearing) 38a

OPINIONS BELOW

No opinion from the First Circuit has been reported (confirmed February 23, 2026). No opinion from the district court has been reported.

JURISDICTION

The judgment of the court of appeals was entered on October 7, 2025. App-1a. A petition for rehearing was denied on December 9, 2025. App-10a. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSITUTIONAL, STATUTORY AND REGULATORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides the following pertinent part: "nor [shall any State] deny to any person within its jurisdiction the equal protection of the laws[1]."

Article I, §1 of the United States Constitution vests legislative power in Congress, including the Coinage Power, which falls under the Nondelegation Doctrine.

Article I, §8, Cl. 5 of the United States Constitution, also known as the "Coinage Power," provides "[The Congress shall have Power...] To coin Money, regulate the Value thereof, [...]"

12 U.S.C. § 225a: The Board of Governors of the Federal Reserve System and the Federal Open Market Committee shall maintain long run growth of the monetary and credit aggregates commensurate with the economy's long run potential to increase production, so as to promote effectively the goals of maximum employment, stable prices, and moderate long-term interest rates.

---

[1] As reverse incorporated to apply to final agency actions by U.S. Agencies. *See Bolling v. Sharpe,* 347 U.S. 497 (1954), *Schneider v. Rusk,* 377 U.S. 163 (1964), et al.

The Federal Employees Retirement System (FERS) 5 U.S.C. §8462: Cost-of-Living-Adjustment

See Appendix G. App-16a. Relevant portions:

§8462(b)(1): [...] [Each] annuity payable from the Fund under this chapter [...] shall be adjusted as follows:

(A) If the percent change in the price index for the year does not exceed 3 percent, each annuity [...] shall be increased by the lesser of—
 (i) The percent change in the price index [...]; or
 (ii) 2 percent.

(B) If the percent change in the price index for the year exceeds 3 percent, each annuity [...] shall be increased by the excess of—
 (i) The percent change in the price index [...], over
 (ii) 1 percent.

§8462(c)(3)(A): An adjustment under subsection (b) for any year shall not be effective with respect to the annuity of an annuitant who is under 62 years of age as of the date on which such adjustment would otherwise first take effect.

Federal Reserve's Final Agency Action titled *Flexible Average Inflation Targeting.*[2] *See* authorizing document in Appendix H ¶4 (App-22a):

> The inflation rate over the longer run is primarily determined by monetary policy, and hence the Committee has the ability to specify a longer-run goal for inflation. The Committee reaffirms its judgment that inflation at the rate of 2 percent, as measured by the annual change in the price index for personal consumption expenditures, is most consistent over the longer run with the Federal Reserve's statutory mandate. The Committee judges that longer-term inflation expectations that are well anchored at 2 percent foster price stability and moderate long-term interest rates and enhance the Committee's ability to promote maximum employment in the face of significant economic disturbances. In order to anchor longer term inflation expectations at this level, the Committee seeks to achieve inflation that averages 2 percent over time, and therefore judges that, following periods when inflation has been running persistently below 2 percent, appropriate monetary policy will likely aim to achieve inflation moderately above 2 percent for some time.

---

[2] The title "Flexible Average Inflation Targeting" does not appear in the August 2020 authorizing document, but this title became the *de facto* title for this final agency action. *See* First Amended Complaint (FAC), Exhibit #4, page FAC-120, by Richard H. Clarida, former Vice-Chair of the Federal Reserve Board of Governors, who explicitly ties the "FAIT" title to the authorizing act in August 2020. Excerpted herein as Appendix I, App-24a, *See* paragraph (bottom) and footnote #6 on App-25a.

Administrative Procedure Act (APA)
5 U.S.C. § 702 -- Right of Review

A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party. The United States may be named as a defendant in any such action, and a judgment or decree may be entered against the United States: Provided, That any mandatory or injunctive decree shall specify the Federal officer or officers (by name or by title), and their successors in office, personally responsible for compliance. Nothing herein (1) affects other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or (2) confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.

Administrative Procedure Act (APA)
5 U.S.C. § 706 – Scope of Review

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

(1) compel agency action unlawfully withheld or unreasonably delayed; and

(2) hold unlawful and set aside agency action, findings, and conclusions found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

(E) [...]

(F) [...]

[...]

INTRODUCTION

Before the COVID-19 emergency started in 2020, the Federal Reserve Board of Governors ("Fed") complied with 12 U.S.C. §225a ("§225a") and grew the elastic money supply at a slow and steady rate to achieve low inflation and stable prices. From 2008 to 2020, price inflation averaged 1.4% per year, with low unemployment and historically low interest rates. This was the economy the 95th Congress intended when §225a was passed into law in 1977, ending the "Great Inflation" of the 1970s. When COVID-19 struck, the Fed decided to set aside §225a and expand the money supply by extraordinary amounts without Congressional authorization. App-26a Note 1.

From April to May, 2020 the Fed's response to the COVID-19 emergency was to increase the M1 money supply by a massive 280%. The Fed grew the M1 money supply from $4.2 trillion to $16.2 trillion in only 60 days. This was $12 trillion in "new" money, amounting to 117 years' worth of normal money supply growth in only 60 days. The COVID-19 emergency ended by 2022, but the Fed did not return the money supply back to pre-COVID trend levels as commanded by Congress in §225a. App-26a Note 3.

Instead of complying with the law, the Fed approved a final agency action in August 2020 titled *Flexible Average Inflation Targeting* (FAIT). FAIT averages low inflation in the "past" with high inflation in the future. The result is to achieve an average inflation rate target of 2% per year. Under FAIT's *post facto* monetary policy, the chain-type price inflation from 2008 to 2020 was "too low" by a total of 8.3%. For the three years from January 2021 to December 2023, FAIT pre-authorized running price inflation at 8.3% plus 2% per year, for a total of

(8.3+2+2+2) or 14.3% chain-type price inflation. In hindsight, the actual chain price inflation over this 3-year period totaled 16.2%[3,4]. App-22a ¶4, App-28a.

FAIT's inflation is entirely due to the excessively rapid money supply growth at the start of the COVID-19 emergency. However, 16.2% is not the end of FAIT's inflation because the emergency $12 trillion in "new" money has still not been withdrawn from the economy. FAIT pre-authorized 91% "chain-type" price inflation from 2020 through 2049, the expected life span of a 62-year-old retiree. However, starting in 2024 and running to the present, the yearly price inflation is running at 3% per year and not 2%, and so FAIT will cause prices to double by 2049. Therefore, until the $12 trillion in emergency money growth is returned back to pre-COVID trend lines, FAIT will intentionally double consumer prices by year 2049, thereby cutting in half the purchasing power of fixed-income pensions during a pensioner's remaining life.

FAIT is expressly forbidden by §225a. App-14a. During the "Great Inflation" of the 1970s, Congress was at an end with the Fed's recurrent boom-bust cycles caused by massive over-expansion of the M1 money supply followed by zero percent expansion to deal with the resulting price inflation, leading to recurrent recessions. The inflation and recessions in these boom-bust cycles caused loss of employment and high interest rates, including high mortgage rates

---

[3] Inflation references herein refer to the Personal Consumption Expenditures (PCE) price index, the same index used by FAIT.

[4] The First Amended Complaint (FAC) states the actual price inflation was 13.9%; however, the "FRED" data has been revised since the FAC was filed and the total is now stated as 16.2%. *See* App-28a Note 1.

which were preventing access to basic housing. App-12a ("Whereas" no. 3).

As a result, in 1977 Congress enacted Dr. Milton Friedman's "k-percent" rule into statutory law in §225a. The stated intention in the Congressional Record is to eliminate that portion of price inflation which is directly caused by excessively rapid expansion of the money supply. Congress's intention was to eliminate such inflation "so as to" result in maximum employment, stable prices, and low interest rates[5]. App-14a.

The "k-percent" rule in §225a commands the Fed to grow the elastic money supply commensurate with the growth rate of inflation-adjusted Gross Domestic Product over the next 12 months, a number typically between 2% and 4% per year ("Real GDP"). Such a slow and steady rate of money growth results in zero percent inflation caused by execution of the monetary system itself, independent from exogenous sources of inflation such as wars or oil embargos which are out of the Fed's control. App-36a ¶¶2-4,App-37a bottom.

Not only is the Fed not authorized to grow the money supply by 280% over 60 days, but when GDP is expected to be negative during a global pandemic emergency, the Fed is not authorized by Congress under §225a to print a single new dollar. That is, when Real GDP growth over the next 12 months is expected to be negative, the Fed is not authorized to print any permanent "new" dollars or interchangeable

[5] The "k-percent" rule only eliminates inflation due to excessive money growth, not inflation due to exogenous sources out of the Fed's control, such as wars or oil embargoes. It is within reason to separate high inflation caused by 117 years' worth of money growth in 60 days, from exogenous sources of inflation amounting to less than 1.4% per year.

dollar coins. Any "new" money the Fed does print is therefore temporary, emergency growth which must be withdrawn over the long run to maintain stable prices. The law in §225a expressly contemplates over-expansion of the money supply followed by a "diminution" of monetary aggregates to achieve stable prices. App-27a ("Negative GDP for 2020"), App-13a ("diminution" over 12 months).

Besides violating §225a and Congress's Coinage Power, FAIT violates the Equal Protection Clause. Congress did not intend the Federal Employee's Retirement System (FERS) COLA in 5 U.S.C. §8462 (1986) to reimburse public-sector pensions for inflation intentionally caused by the Fed as a matter of official U.S. Government monetary policy under FAIT. Such price inflation caused by excessively rapid money supply growth was outlawed by §225a in 1977. The law in §225a contains a "shall maintain" command, which does not give the Fed discretion to deviate from Congress's command for any reason, including a pandemic emergency. Instead of violating the law, the Fed was obligated to seek Congressional authorization before expanding the money supply by $12 trillion in 60 days. FAIT bypassed the political process of the country, leaving fixed-income pensioners in the private sector out to dry[6].

Petitioner's defined-benefit pension plan dates back to 1984. Because the Fed is commanded to use the "k-percent" rule to prevent over-expansion of the money supply which causes price inflation, the

[6] It is reasonable to infer that if Congress voted on a $12 trillion money expansion in a 60-day period, they would have included COLA protection to fixed-income pensions in the private sector to match the FERS COLA, or else they would have been voted out of office. Therefore, FAIT bypassed the political process.

pension plan does not have a built-in COLA. The pension plan is exposed to exogenous sources of inflation, such as wars or oil embargoes. However, Petitioner's pension plan is not exposed to over-expansion of the money supply, which was outlawed by Congress in §225a. Over 25 million fixed-income pensions in the private sector depend on §225a remaining in force and commanding the Fed to conduct a slow and steady expansion of the money supply over their remaining life spans, thereby maintaining the purchasing power of their fixed-income pensions.

FAIT perverts the FERS COLA law and, for pensioners aged 62 and older, public pensions were immediately reimbursed by the FERS COLA for FAIT's unlawful inflation in 2021, 2022 and 2023[7]. Total FERS COLA reimbursements for these years was 14.8%. FAC-57 ¶120[8]. At the same time, pensions in the private sector were left without reimbursement and, as of 2025, have suffered a massive, 22% loss in purchasing power since 2020. This is unequal protection of the laws for similarly situated pensioners aged 62 and older. The loss in purchasing power repeats every year a pensioner remains alive: the retired Petitioner's total losses to FAIT over his remaining life amounts to over $1.4 million. FAC-148 Ex. #10, Chart 1, Ref. Line #2.

A logical question is: why haven't Congressional oversight functions enforced §225a since the end of the COVID-19 emergency, returning prices back to

---

[7] The 62-year age requirement for a FERS COLA is provided in 5 U.S.C. 8462(c)(3)(A). *See* App-18a bottom.

[8] First Amended Complaint (FAC), Docket #21, page 57, paragraph 120.

normal? The reason is plain: removing $12 trillion in emergency money growth from the economy may cause a recession, and with razor thin margins in Congress, the political party in power would be kicked out by the voters. As a result, the 119th Congress is choosing not to enforce §225a as intended by the 95th Congress, a *de facto* violation of the Nondelegation Doctrine which warrants judicial review to return the monetary system back to the rule of law. Similar to the "too-big-to-fail" problem for banks, FAIT has created a "too-much-money-to-withdraw" problem for Congress and fixed-income pensioners, who have no access to wage and salary increases.

Petitioner brings a complaint for declaratory and injunctive relief against FAIT under the APA, seeking: a) 20 lines of prospective relief against future harm caused by FAIT's 91% inflation through 2049, including a prayer to strike FAIT down as *ultra vires* (App-45a); and b) 2 lines of monetary COLA relief against the actual harm to date of 22% price inflation since 2020. FAC-99 items a through v. The COLA relief is specific relief because the "thing which is owed" by 12 U.S.C. § 225a is stable prices at zero percent inflation due to the expansion of the money supply under the legislative rule, i.e. the "k-percent" rule. This honorable Court may use its equity power to distinguish between exogenous inflation, which is out of the Fed's control and amounted to 1.4% per year from 2008 to 2020, and inflation directly caused by FAIT's excessively rapid growth of the money supply, amounting to 22% over the five years since 2020.

The Decision Below finds sovereign immunity has not been waived under the APA, citing the 2 lines of monetary COLA relief and the prohibition against "money damages" in § 702 of the APA. The Decision

Below strikes all 20 lines of prospective relief without stating grounds. App-45a. In addition to dismissal under Fed. R. Civ. P. 12(b)(1), the District Court also dismissed the action under Rule 12(b)(6), finding FAIT's excessive money growth and intentionally high inflation are "within [the] FOMC's powers under 12 U.S.C. § 225a." App-5a bottom.

Pursuant to Supreme Court Rule 10(c), the Decision Below conflicts with Supreme Court precedent in *Bowen v. Massachusetts*, 487 U.S. 879 (1988): a complaint for declaratory and injunctive relief is, on its face, not a complaint for money damages. Further, the District Court's finding under Rule 12(b)(6)—sanctioned by the First Circuit by striking all prospective relief without grounds—conflicts with Supreme Court precedent in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). Petitioner brings plausible allegations that FAIT fails the rational basis test and violates the Equal Protection Clause.

The law in §225a employs a "shall maintain" to remove all discretion from the Fed to deviate away from the "k-percent" rule. In short, the Decision Below misinterprets §225a in a way that nullifies the law as intended by the 95th Congress. Pursuant to Rule 10(c), the Decision Below's misinterpretation of the 95th Congress's intent merits this Court's review. Otherwise, FAIT will continue to operate and will continue to violate the Equal Protection Clause as public sector retirees remain unharmed by FAIT while the Petitioner and private-sector pensioners lose half of the purchasing power of their pensions.

In closing this Introduction, it is important to observe that almost no pensioner can accrue a 50% safety margin into their pension over a 40-year working life: they would have to work into their

eighties to gain such a safety margin, which means never retiring at all. And so FAIT's 22% inflation today, and 91% inflation through year 2049, represents an existential crisis for over 25 million fixed-income retirees and their dependent spouses. Therefore, it is an important issue to fixed-income retirees that this Court allow this case to proceed to the merits, striking FAIT down as *ultra vires*.

STATEMENT OF THE CASE

A. Background and Purpose of 12 U.S.C. § 225a

The Federal Reserve System was 50 years old in 1964 when Dr. Milton Friedman testified on the record to Congressman Henry S. Reuss. Congressman Reuss questioned Dr. Friedman about his 1962 paper titled "Should there be an Independent Monetary Authority?" Mr. Friedman argued for eliminating the Federal Reserve Board of Governor's discretion to grow the money supply at any rate the Board chooses. Mr. Friedman argued to replace the Board's discretion with a legislative growth-rate rule which would grow the money supply at a rate of 2% to 4% per year. Congressman Reuss asked Mr. Friedman what growth rate he would use in a law if they were writing the law then and there, presaging §225a thirteen years later in 1977. App-33a.

Eleven years later in 1975, Congressman Reuss became Chairman Reuss and was increasingly fed up with recurrent, inflationary boom-bust cycles caused by erratic monetary policy pumping too much "new" money into the economy and then halting expansion to zero to deal with the resulting price inflation, thereby causing recessions. The result of these boom-bust cycles was the Great Inflation of the 1970s, with

high unemployment, unstable prices and high interest rates. App-12a ("Whereas" nos. 1-4).

Chairman Reuss and Congress enacted Dr. Milton Friedman's "k-percent" rule into experimental practice in House Concurrent Resolution 133 (1975). This was the first time since 1913 when Congress chose to become directly involved in the conduct of the monetary system through a legislative rule. The resolution states up front that the growth rate of the money supply is expected to be brought under control by the resolution. App-12a ("Whereas" no. 4):

> "*Whereas the economy's performance in part is affected by changes in the rate of growth of the monetary and credit aggregates* [.]"

The Resolution is identically Dr. Milton Friedman's "k-percent" rule. App-13a item (2). The Congressional Record quotes Senators and Congressman as to the purpose of the "k-percent" rule in the resolution (App-36a, brackets added by Petitioner for clarity):

> SENATOR JAMES BUCKLEY: "Under the resolution [House Con. Res. 133] the Federal Reserve is directed to establish [monetary aggregate] targets which are in line with the economy's long-term ability to grow. Our problem in the past is that the Federal Reserve's monetary policy has been constructed along lines which were only haphazardly related to this fundamentally important guideline. Monetary targeting which is set independently of the economy's growth potential produces the kind of erratic monetary growth policies which take us from inflationary rates [of monetary growth] to a constricting zero level [rate of monetary growth], as was the case in the latter half of 1974."

CONGRESSMAN ADAMS: "What we need in money supply is a matching of the money supply to the real growth in the economy."

CHAIRMAN STEPHEN NEAL: "You would advocate a moderate and steady growth in the money supply."

SENATOR JAMES BUCKLEY. "...To match the average growth that we project for the economy."

The House resolution was not yet statutory law, and between 1975 and 1977, the Federal Reserve caused yet another boom-bust cycle, growing the M1 money supply by over 20% in a single year. App-44a ¶10. As a direct result of this excessive monetary growth, in 1977 Congress passed Dr. Milton Friedman's "k-percent" rule into statutory law in 12 U.S.C. § 225a, thereby removing the Federal Reserve's former discretion to grow the money supply at any rate the Board of Governors chooses. The result is to command a slow and steady rate of monetary growth between 2% and 4% per year for the express purpose of eliminating that component of price inflation caused by the execution of the monetary system itself. The law in §225a is identical to House Concurrent Res. 133 and states (App-14a):

> The Board of Governors of the Federal Reserve System and the Federal Open Market Committee shall maintain long run growth of the monetary and credit aggregates commensurate with the economy's long run potential to increase production, so as to promote effectively the goals of

maximum employment, stable prices, and moderate long-term interest rates[9].

In this law, Congress tied the growth rate of the money supply to the rate of growth of inflation-adjusted Gross Domestic Product ("Real GDP"). For reference, Real GDP averaged 2.4% per year from 2000 to 2020, precisely within the "k-percent" rule's expected growth rate to eliminate inflation caused by expansion of the money supply. FAC-134 Ex. #7. The Congressional Record proves it was Congress' intention that eliminating inflation is what results in maximum employment, stable prices and low interest rates. App-35a ¶2. Under §225a, the Fed now has a *ministerial* role with a single mandate, which is to grow the money supply at a slow and steady rate to eliminate inflation. FAC-32 ¶¶ 67-69.

B. Congress Did Not Intend the FERS COLA to Reimburse for FAIT's Intentional Inflation.

The next year in 1978, the same 95th Congress took up the Humphrey-Hawkins law, in which a minority in Congress proposed to scrap the "k-percent" rule in 12 U.S.C. § 225a and allow annual, excessive money supply growth to achieve 3 percent inflation per year, year in and year out without regard to economic conditions. The purpose was to trade such high inflation to lower the unemployment rate below 4% per year[10]. This trade-off was soundly rejected in Congressional committee votes. The final Humphrey-

---

[9] The subordinating conjunction "so as to" is not an independent grant of discretion to the Fed. Taken together, the law has a <u>single mandate</u>, which is to execute the "k-percent" rule.

[10] "High inflation" in the United States refers to annual inflation of 3% or more per year. FAIT intentionally caused high inflation in 2021, 2022 and 2023. *See* App-28a.

Hawkings law of 1978 left the "k-percent rule" in 12 U.S.C. § 225a unchanged and commanded the Federal Reserve to achieve zero percent inflation by 1988. 15 U.S.C. §§ 1022a & 1022e. FAC-138 Ex. #9. Humphrey-Hawkins effectively codified "stable prices" as zero percent inflation[11],[12].

In the same time period the Fed was commanded to achieve zero percent inflation under §225a and Humphrey-Hawkins, Congress passed the new Federal Employees' Retirement System (FERS) law in 1986, which included a FERS COLA for public-sector retirees over 62 years of age. 5 U.S.C. § 8462. App-16a. Importantly, Congress never intended the FERS COLA to reimburse public-sector pensions for inflation caused by the conduct of monetary policy itself: §225a commanded the elimination of inflation using the "k-percent" rule, and this command was re-confirmed by the Humphrey-Hawkins votes in 1978. Through use of the phrase "shall maintain" in §225a, the Fed was commanded to never again cause excessive money supply growth which, by itself, causes consumer price inflation.

As a result, from 1977 through 2020, the Fed complied with §225a and grew the money supply at a slow and steady rate. FAC-129 Ex.#5. This achieved the successful economy in the period of 2008 through

---

[11] Humphrey-Hawkins applies to fiscal and monetary policies working together. By commanding zero percent inflation for both fiscal and monetary policy, it is clear monetary policy acting alone must achieve zero percent inflation as intended by Congress in §225a.

[12] A close reading of Humphrey-Hawkins proves the inflation the law did allow, over the medium term, was <u>exogenous</u> sources of inflation unrelated to inflation caused by excessively rapid expansion of the money supply.

2020 as intended by the 95th Congress, with low unemployment, low interest rates, and stable prices. The success of §225a came to a sudden halt in 2020.

C. FAIT Unlawfully Converts Emergency Money Growth into Permanent Growth

The first case of COVID-19 in the United States occurred in January, 2020. By March, 2020 the pandemic virus had entered all fifty states, with over 2000 victims and counting. From April to May, 2020 the Fed expanded the M1 money supply by 280%, from $4.2 trillion to $16.2 trillion. Under the "k-percent" rule in §225a, with Real GDP growth averaging 2.4% per year, a 280% rate of growth is (280% / 2.4%) or 117 years' worth of monetary growth in only 60 days. FAC-134 Ex.#7, App-26a Note 3.

Further, because GDP growth over the 12 months following the start of COVID was expected to be negative due to the pandemic, the "k-percent" rule did not permit printing any permanent "new" dollars. Production (GDP) clearly had no potential to grow but was in fact contracting. The law under §225a expressly forbids *countercyclical* money supply growth, one of the factors that caused the Great Inflation of the 1970s. A key feature of the "k-percent" rule is to forbid countercyclical money growth[13]. App-27a ("negative"). This means all of the M1 money growth in 2020, amounting to $12 trillion in "new" money, was temporary, emergency growth

---

[13] Countercyclical money growth is what causes boom-bust cycles, where each new "pumping" of new money to recover from a recession is the seed for inflation in the next boom-bust cycle. The "k-percent" rule ends this vicious cycle. Following passage of §225a, it is now fiscal policy, and not monetary policy, which is intended to deal with economic emergencies, a clear break from prior practice of the Fed to conduct countercyclical growth.

which must be withdrawn over the long run under §225a to maintain stable prices.

Instead of complying with §225a, the Fed fully intended to make the $12 trillion in emergency growth a permanent increase to the money supply, such that it would never be withdrawn from the economy. It was clear to all that 117 years' worth of "new" money would cause massive price inflation. As a result, in August 2020 the Federal Reserve approved a final agency action titled *Flexible Average Inflation Targeting* (FAIT). The cynical purpose of FAIT was to "launder" the expected price inflation caused by the explosion in the M1 money supply from April to May 2020. App-22a ¶4. FAIT is a *post facto* monetary policy, pre-authorizing the Federal Reserve to use low and no inflation from 2008 to 2020 to achieve high inflation from 2021 to 2023 and onward. With FAIT, the Fed has flipped the will of Congress and §225a on its head, taking the law into their own hands to intentionally cause high inflation. App-28a.

Under FAIT, the Fed deems price inflation from 2008 through 2020 "too low" by a total of 8.3%, even though §225a and Humphrey-Hawkins expressly commands the Fed to achieve zero percent inflation. For the three years from January 2021 through December 2023, FAIT pre-authorized running price inflation at 8.3% plus 2% per year, or a total of (8.3+2+2+2) or 14.3%. In hindsight, the Fed achieved total inflation over this period of 16.2%, with an effective *post facto* inflation rate averaging 2% per year if the running average reaches backwards in time to start in the year 2008. App-28a.

Importantly, FAIT's inflation does not end in December 2023 because the emergency $12 trillion remains in the economy and continues to drive

inflation ever higher each year, without an end in sight. The total price inflation pre-authorized by the August 2020 vote on FAIT can be calculated precisely as follows for the time period of 2020 to 2049[14]:

$$[(1 + 0.143)(1+0.020)^{(2049-2023)} - 1]*100 = 91\%$$

With actual inflation since 2023 running persistently above 3% per year, and not 2%, FAIT will effectively double prices between 2020 and 2049, the expected life span of the Petitioner. When prices double, the purchasing power of a fixed-income pension is cut in half, and Petitioner's dependent spouse must survive on the shared pension in the years following 2049.

D. FAIT Harms Petitioner's Fixed-Income Pension

As of December 2023, FAIT has caused Petitioner's defined-benefit pension to lose $25,327.00 in purchasing power on a yearly basis, which is after taxes and excludes Social Security[15]. This harm grows exponentially each year as FAIT continues to achieve even more inflation without end into the future. The 62-year-old Plaintiff is expected to live through year 2049. In Exhibit #10 of the First Amended Complaint (FAC), the Complaint calculates the exponential loss of purchasing power for every year through 2049. The total harm is $1,474,887.00 as measured using 2020 dollars. FAC-148 Chart 1. This harm is caused by FAIT's excessively rapid money supply growth over and above the 1977 statutory growth rate rule, i.e. $12 trillion in "new" money in only 60 days at the start of COVID-19.

---

[14] Because FAIT uses a running average, an average rate of 2% per year can be precisely achieved by the Fed, and so this is an exact calculation for FAIT's inflation through 2049.

[15] All dollar values herein and in the FAC are given in January, 2020 dollars before the effects of FAIT's inflation.

The same Exhibit 10 in the complaint calculates Petitioner's loss to FAIT if he were a public-sector retiree reimbursed for FAIT's unlawful inflation through a perversion of the FERS COLA. Total losses would only be $377,761.00, a difference of over $1 million. This is clearly unequal protection of the laws. FAC-149 Chart 2.

E. Lower Court Proceedings

The retired Petitioner is adversely affected and aggrieved by the Fed's final agency action titled FAIT and has standing to bring an action under the Administrative Procedure Act. Equitable remedies are extraordinary remedies and may, at the discretion of the Court, be given to do equity not only for what is just between the Petitioner and Respondents but also what is just and right as regards the interests of the public. Petitioner's First Amended Complaint petitions the court to consider not just the Petitioner but also the estimated 25 million pensioners who are identical to the Plaintiff and whose fixed-income pensions have lost purchasing power to the Fed's patently unlawful FAIT regime. FAC-7 ¶8.

Petitioner brings Claims I-III for injunctive and declaratory relief against the Board's patently unlawful agency action titled FAIT. Three additional claims, brought in the alternative, are not argued herein (Claims IV-VI).

Claim I, APA Sections 706(1), 706(2)(c): FAIT is *ultra vires* and violates the unambiguous statutory command of §225a to grow the money supply commensurate with the growth rate of inflation-adjusted gross domestic product ("Real GDP"). To trained economists and the Fed, the "k-percent" rule in §225a is clearly stated and well understood, and

was tested under House Concurrent Resolution 133 before becoming statutory law. FAC-66 ¶¶140-148.

Claim II, APA Sections 706(1), 706(2)(b) and 706(2)(c): FAIT usurps Congress' power to set the value of the floating paper currency under the Coinage Power. Congress has already spoken under §225a and the Humphrey-Hawkins Full Employment Act of 1978, denying to the Board the authority to use monetary policy to intentionally run inflation above zero percent per year using excessively rapid expansion of the money supply. Humphrey-Hawkins ordered the Board to achieve zero percent inflation and left unchanged the "k-percent" rule passed in 1977 under 12 U.S.C. §225a. FAC-71 ¶¶149-159.

Claim III, APA Sections 706(1), 706(2)(b) and 706(2)(c): FAIT violates the Equal Protection Clause. For 2021, 2022 and 2023, public pensions have been reimbursed 14.8% for FAIT's intentional 16.2% inflation while private sector pensions have not been reimbursed at all, an unequal protection of the law for similarly situated pensioners aged 62 and older. Petitioner alleges FAIT fails the rational basis test by violating 12 U.S.C. §225a, Congress's Coinage Power, and a *de facto* violation of the Nondelegation Doctrine (*See* FAC-72 ¶154). Petitioner alleges FAIT perverts Congressional intent for the FERS COLA law under 5 U.S.C. §8462, which was never intended by Congress to reimburse for inflation intentionally achieved by the Fed as a matter of official U.S. government monetary policy, a policy which is proscribed by law under §225a. FAC-76 ¶¶160-170.

Petitioner's prayer for relief includes prospective relief: striking down FAIT as *ultra vires* and void; ordering the Board to comply with §225a and grow the money supply at a rate commensurate with the

growth rate of Real GDP; and enjoining the Board from using monetary policy to intentionally achieve annual consumer price inflation above zero percent. Petitioner's prayer for relief includes monetary COLA relief while the Fed takes time to return the money supply back to statutory requirements, which is likely to take 10 years or more and exceed the life span of many retirees. FAC-99 Items a through v., App-45a.

The District Court allowed a Fed. R. Civ. P. 12(b)(1) motion to dismiss on grounds that the Court lacked subject-matter jurisdiction, finding that sovereign immunity has not been waived. In allowing the motion, the District Court relied on the Federal Tort Claims Act (FTCA) in 28 U.S.C. §2680(i), which proscribes waiver of sovereign immunity for "Any claim for damages caused by the fiscal operations of the Treasury or by the regulation of the monetary system." However, Petitioner's complaint is not a complaint for money damages and the FTCA waiver exception does not apply.

Petitioner motioned to reconsider, arguing the District Court relied on errors of fact and errors of law. The court did not decide the motion to reconsider on the merits, stating (App-5a bottom):

> *Moreover, Bauersachs's complained of decision -- FOMC's approval in August of 2020 of [...] FAIT [...] are within FOMC's powers under 12 U.S.C. § 225a.*

In this finding, the District Court states the Fed's final agency action titled FAIT is not a violation of statutory law under 12 U.S.C. §225a. The Court's finding effectively dismisses the case under

Defendants' Rule 12(b)(6) motion in the alternative to dismiss for failure to state a claim[16]. Dkt #24.

On appeal to the 1st Circuit, the Appeals Court upheld the District Court's dismissal under Rule 12(b)(1) for lack of subject matter jurisdiction. The Appeals Court did not rely on waiver exceptions in the FTCA but simply cited the monetary COLA relief as reason enough to deny jurisdiction in accordance with §702 of the APA. The 1st Circuit did not just strike monetary COLA relief, but also struck all prospective relief without stating grounds. App-45a.

Upon petition for rehearing citing the Appeals Court's overreach by striking all prospective relief, rather than just the monetary COLA relief, the First Circuit denied rehearing without stating grounds. This was effectively sanctioning the district court's finding that Petitioner failed to state a claim under Rule 12(b)(6). In the motion for stay of mandate, Petitioner argued the First Circuit is improperly *gatekeeping* the "Dual Mandate" misinterpretation of §225a without support in the Congressional Record.

F. District Court Jurisdiction

The Equal Protection Clause of the 14th Amendment to the U.S. Constitution is reverse incorporated to apply to final agency actions by U.S.

---

[16] The district court did not grant reconsideration on the merits for the Rule 12(b)(1) finding. The effect was to dismiss the action for failure to state a claim. The First Circuit ultimately only reviewed the Rule 12(b)(1) finding and not the Rule 12(b)(6) finding; however, the Decision Below strikes all prospective relief without stating grounds, effectively sanctioning the district court's finding of failure to state a claim. This was a significant departure from the accepted and usual course of proceedings, which calls for sanction by this Court under Supreme Court Rule 10(a).

Agencies. *See Bolling v. Sharpe,* 347 U.S. 497 (1954), *Schneider v. Rusk,* 377 U.S. 163 (1964), et al.

The District Court has original subject matter jurisdiction for this action under 28 U.S.C. § 1331, which grants federal district courts original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States. "[S]ection 1331 is an appropriate source of jurisdiction for" APA, non-statutory, and constitutional claims. *Trudeau v. Fed. Trade Comm'n,* 456 F.3d 178, 185 (D.C. Cir. 2006).

REASONS FOR GRANTING THE PETITION

I. FAIT's Plausible Failure of the Rational Basis Test and Plausible Violation of the Equal Protection Clause Merit This Court's Review

Pursuant to Supreme Court Rule 10(c), the Decision Below has decided an important question of federal law which has not been, but should be, settled by this Court. The Decision Below misinterprets 12 U.S.C. § 225a in direct conflict with the plain intention of the 95th Congress and the Congressional Record, with the effect of nullifying the law and violating the Equal Protection Clause.

A. The Decision Below Conflicts with the Plain Intention of Congress in §225a

The Congressional Record is clear that Congress intended to enact Dr. Milton Friedman's "k-percent" rule into law in 12 U.S.C. § 225a. The record is clear the purpose was to eliminate inflation caused by excessively rapid expansion of the money supply by the Fed, a practice which contributed to the Great Inflation of the 1970s.

The Decision Below is choosing not to enforce the law as intended by the 95th Congress. If this honorable Court allows this action to be dismissed without going to the merits, it will set a precedent that effectively removes §225a from enforcement by the Court for all time. This is a constitutionally invalid means of amending and/or striking a law from the books.

Respondents have argued the "Dual Mandate" misinterpretation of §225a, which unlawfully returns discretion to the Fed which was intentionally stripped away by Congress using the "k-percent" rule. Congress passed §225a as a solution to the Great Inflation of the 1970s. By allowing §225a to lapse into non-enforcement, the country is now re-living the inflation nightmare of the 1970s all over again, observing that 91% chain-type price inflation through year 2049 is already baked into the economy by the Fed's $12 trillion expansion in April to May, 2020. The Congressional Record states: "*Contrary to the conventional view that we can increase production and reduce unemployment by accepting more inflation, our analysis indicates that the way to promote and sustain recovery is to eliminate inflation.*" App-35a ¶2.

By denying this Court's review, the Fed will see a green light to print any amount of money they desire and we will not exit the Second Great Inflation until Congress and the Courts choose to begin enforcing §225a once again. While waiting for Congress and the Courts to uphold §225a, millions of fixed-income pensioners in the private sector will be left impoverished through FAIT's violation of the Equal Protection Clause.

B. The Decision Below Conflicts with the Coinage Power and Nondelegation Doctrine

The Constitution vests the Coinage Power with Congress, which includes setting the value of the dollar and interchangeable dollar coins. When the "gold window" was closed in the early 1970s, the dollar became a floating paper currency whose value is tied to a basket of goods and services. As a result, price inflation directly changes the value of the dollar. In Humphrey-Hawkins, Congress has already spoken and voted down running annual price inflation as a trade for lower unemployment, concluding that inflation affects many more people than unemployment. FAC-142 Ex. #9 "Inflation Goal."

Under the Coinage Power and the Nondelegation Doctrine, if Congress were to authorize the Fed to intentionally expand the money supply to cause annual price inflation above zero percent, Congress must specifically approve the annual rate of price inflation authorized. It was for this very reason that Humphrey-Hawkins was taking votes on authorizing specific levels of annual price inflation in trade-off negotiations for lower unemployment. No Congressman in 1978 was under the impression that 12 U.S.C. § 225a in 1977 authorized any amount of inflation the Fed wanted, especially 16.2% over three years from 2021 to 2023 (or else why even consider Humphrey-Hawkins a year later in 1978? A cabal could simply dial up any amount of inflation they want).

Humphrey-Hawkins finally settled whether or not the Fed could intentionally drive non-zero price inflation using excessive expansion of the money supply, and Congress's answer was a firm no. In the final 1978 law, the "k-percent" rule in §225a was left

unchanged and Humphrey-Hawkins commanded the Fed to achieve zero percent inflation by 1988, which effectively codified "stable prices" as zero percent inflation. In this context, zero percent inflation refers to that portion of price inflation caused by the execution of U.S. Government monetary policy itself, i.e. the continuous expansion of the elastic money supply, as opposed to exogenous sources of inflation such as wars or oil embargoes.

If FAIT is allowed to stand, and §225a is effectively allowed to lapse into non-enforcement by the Court, there is no limiting principal to FAIT's inflation. A cabal of Fed governors, the President, and a few Congressional leaders could decide to print another $20 trillion in "new" money over the next 60 days. To "launder" the resulting inflation, nothing is stopping such a cabal from deciding the target rate of FAIT's inflation should be changed from 2% to 5% per year and backdating FAIT's averaging period to 2008 once again. Such a cabal could keep going back in time to 2008, over and over again, to print as much money as they want: there is no limiting principle of law supporting FAIT whatsoever.

In fact, what we are seeing in real time is that the effective target rate of FAIT's inflation has quietly changed from 2% to 3% per year. The $12 trillion is simply too much money for the Fed to sweep under the rug, and inflation is now out of control and the country is facing the Second Great Inflation. The Fed attempts to sugarcoat the change to 3% by citing "core" inflation and other distractions from the fact that 2% per year is not achievable while the $12 trillion continues to work its way through the economy, with wage and salary actions continuing to spiral upwards without an end in sight.

In short, choosing not to enforce §225a, and allowing the Fed to print 117 years' worth of money growth in only 60 days, is a *de facto* violation of the Nondelegation Doctrine by Congress. Similar to the "too big to fail" doctrine on banks, FAIT creates a "too much money to withdraw" problem for Congress and the Courts. The Fed's monetary system under FAIT has slipped all Constitutional and statutory constraints, and so this action merits the Court's review under Supreme Court Rule 10(c).

C. Congress Intended Overshoot in The Money Supply To Be Withdrawn Over The Long Run

When passing the "k-percent" rule into law, Congress intended that any overshoot of money supply growth be withdrawn over the long run to maintain stable prices. This was encapsulated in House Concurrent Resolution 133 (1975) and the original text of 12 U.S.C. § §225a (App-13a):

> The Board of Governors shall consult with Congress at semiannual hearings...about the Board of Governors' and the Federal Open Market Committee's objectives and plans with respect to the ranges of growth or <u>diminution</u> of monetary and credit aggregates for the upcoming twelve months [...]

While this text was amended out of §225a, leaving the first sentence with the "k-percent" rule unchanged, it clearly states Congress's intention that the money supply would be adjusted up *and down* on a 12 month basis to achieve stable prices. The law clearly states the "long run" is taken as 12 months. In summary, the Fed was required by law to withdraw the emergency $12 trillion in growth once the COVID

emergency ended, and to do this in a time period of 12 months, which the Fed failed to do.

One could argue it is impossible to withdraw $12 trillion in 12 months. However, the same argument can be made that if the Fed knew they would have to remove emergency money growth from the economy over 12 months, they would have had to petition Congress for authorization for a permanent $12 trillion expansion. The political process would have protected fixed-income pensioners by granting them a COLA similar to the FERS COLA. FAIT by-passed the political process and, in so doing, harmed the Petitioner and over 25 million fixed-income retirees.

In short, Congress clearly intended excessive money supply growth to be withdrawn under §225a to maintain stable prices, and enforcing this statutory command merits this Court's review. While it may be unreasonable to withdraw such excessive growth in 12 months, it is not unreasonable to extend the correction period to 10 years or more, as the elastic money supply is continuously being expanded within normal GDP growth. While FAIT has realized 22% inflation to date, prospective relief is intended to halt any further harm and, in particular, prevent 91% inflation through 2049 which cuts the purchasing power of fixed-income pensions in half.

D. The Decision Below Conflicts with Supreme Court Precedent in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009)

Petitioner's complaint states sufficient facts to meet the Supreme Court's precedent in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). FAIT plausibly violates the Equal Protection Clause. FAIT plausibly fails the rational basis test by violating 12 U.S.C. § 225a and

Congress's Coinage Power. Non-enforcement of §225a by Congressional oversight functions is a *de facto* violation of the Nondelegation Doctrine. All of the supporting facts are drawn from the Congressional Record and are indisputable.

In their opposition, Respondents have provided no citation into the 1977-1978 Congressional Record for §225a or Humphrey-Hawkins (not a single reference). The opposition attempts to rewrite the history of the legislation, citing the "Dual Mandate" which is entirely made up out of whole cloth many years after the events of 1977 and 1978 took place. FAIT is a test by the Respondents to see if anyone remembers why §225a was ever passed into law in the first place.

II. District Court Jurisdiction Over Petitioner's Complaint For Declaratory and Injunctive Relief Merits This Court's Review

Pursuant to Supreme Court Rule 10(c), the Decision Below conflicts with Supreme Court Precedent in *Bowen v. Massachusetts,* 487 U.S. 879 (1988). Petitioner brings a complaint for declaratory and injunctive relief against FAIT under the Administrative Procedure Act. The heart of the complaint is a prayer for relief striking FAIT down as *ultra vires* to avoid 91% chain-type price inflation over Petitioner's remaining life through year 2049.

The complaint clearly seeks to enforce the law under §225a and the U.S. Constitution. App-45a. The first finding by the Supreme Court in *Bowen* states: "First, insofar as the State's complaint sought declaratory and injunctive relief, it was not an action for money damages."

Whether or not the Court finds monetary COLA relief is specific relief or compensatory monetary

damages, the 20 lines of prospective relief in the First Amended Complaint clearly survive and the district court has jurisdiction under the APA to hear the complaint. App-45a. The Decision Below used the COLA issue as "top cover" to strike all prospective relief, which is effectively *gatekeeping* the "Dual Mandate" misinterpretation of §225a without any support in the Congressional Record. There is only one mandate in §225a: the Fed "shall maintain" the "k-percent" rule.[17]

III. Monetary COLA Relief as Specific Relief and not "Money Damages" Merits This Court's Review

Pursuant to Supreme Court Rule 10(c), and Supreme Court precedent in *Bowen v. Massachusetts*, 487 U.S. 879 (1988), monetary COLA relief is specific relief and not "money damages" as that term is used in §702 of the APA. The "thing which is owed" in 12 U.S.C. §225a is stable prices at zero percent inflation due to expansion of the elastic money supply by the Fed.

It was arbitrary and capricious for the Decision Below to recast COLA relief, already paid to public-sector pensions under the FERS COLA, as "compensatory monetary damages" when paid to Petitioner's fixed-income pension in the private sector. By long tradition starting in the early 1970s with the first COLAs built into the Social Security System, the U.S. retirement system recognizes a

---

[17] Gatekeeping of the "Dual Mandate" misinterpretation of §225a, without any support in the Congressional Record, so far departs from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power under Supreme Court Rule 10(a).

COLA as distinct from money damages. A COLA is the traditional means by which a retiree's pension keeps up with the cost-of-living until a retiree passes away.

The law recognizes that the dollar is an elastic currency, with the amount of dollars in circulation constantly growing over time, while pensions are generally fixed over a pensioner's remaining life span. For this reason, Congress has erected a massive architecture for measuring, tracking and then applying cost-of-living adjustments for retirees. The Social Security Administration (SSA) has a massive system to apply a yearly COLA to SSA payments. The FERS COLA does the same for public pensions.

The authorizing document for FAIT makes the following admission: "The inflation rate over the longer run is primarily determined by monetary policy, and hence the Committee has the ability to specify a longer-run goal for inflation." App-22a ¶4. In this statement, the Respondents admit money growth sets the inflation rate. The same sentence then sets §225a aside, which commands zero percent inflation, and takes the law into their own hands to intentionally cause 16.2% price inflation over three years from 2021 to 2023. FAIT uses the PCE price index to drive consumer price inflation.

The PCE index was first developed in 1959 by the U.S. Bureau of Economic Analysis. The PCE index measures prices for final goods and services that are bought by consumers (and excludes those bought by businesses and governments). The Consumer Price Index (CPI) was developed from 1913 to 1921 by the U.S. Bureau of Labor Statistics. The PCE and CPI indices measure "out of pocket" expenses by consumers, mainly differing in weights for housing

and medical costs[18]. Both the FERS COLA and SSA use the CPI-W index to reimburse retirees[19]. Petitioner's complaint seeks a temporary COLA tied to either the PCE or CPI-W index, to be decided on the merits by the Court. FAC-102 Items u and v.

It is fair to conclude that, in the context of the U.S. retirement system in its various forms and constructs, the law recognizes a COLA payment to a fixed-income retiree as being distinct from "money damages." As a test, no one would rationally argue that the FERS COLA is paying compensatory monetary damages to public pensioners for FAIT's intentionally high inflation. By long tradition in the United States, the Court is clearly allowed to use its equitable powers to make the distinction between a COLA and "money damages."

Therefore, if the Fed were to comply with §225a and grow the money supply at a slow and steady rate to eliminate that part of inflation due to the Fed's continuous expansion of the money supply, then the Petitioner would have no standing to bring suit for exogenous inflation, which is out of the Fed's control. However, when 117 years' worth of money growth takes place in only 60 days, without Constitutional or Congressional authorization, the resulting price inflation is unlawful and monetary COLA relief to a

---

[18] Great efforts are made to adjust the weights in these indices to represent the actual "out-of-pocket" expenses paid by consumers for the cost of living, which is not "compensatory." Petitioner is head of a household of six, including a Wife and four dependent children aged 10 to 22, with out-of-pocket living expenses as average as can be.

[19] The CPI-W index is tailored for the urban population and represents over 93% of the American population.

fixed-income pension is specific relief and not "money damages."

In summary, pursuant to Supreme Court Precedent in *Bowen v. Massachusetts*, 487 U.S. 879 (1988), specific relief involving money is not "money damages" as that term is used in §702 of the APA. Therefore, the district court has jurisdiction to allow monetary COLA relief under the APA. Monetary COLA Relief as specific relief, and not "money damages," merits this Court's review.

CONCLUSION

Mark A. Bauersachs requests that the Petition for Writ of Certiorari be granted on all three questions presented.

Respectfully submitted, Pro Se

MARK A. BAUERSACHS
5 Patriot Ln
Hudson, MA 01749
mark23289@yahoo.com
978-562-1734

February 2026