

No. 25-1144

In the Supreme Court of the United States

DAISEY TRUST, BY AND THROUGH ITS TRUSTEE
EDDIE HADDAD, ET AL., PETITIONERS

v.

FEDERAL HOUSING FINANCE AGENCY, ET AL.

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

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether the Federal Housing Finance Agency's funding structure violates the Appropriations Clause, U.S. Const. Art. I, § 9, Cl. 7, or the nondelegation doctrine.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-16a) is reported at 163 F.4th 1208. The order of the district court (Pet. App. 19a-50a) is available at 2024 WL 4267792.

JURISDICTION

The judgment of the court of appeals was entered on January 2, 2026. The petition for a writ of certiorari was filed on March 30, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) are federally chartered corporations that promote the liquidity and stability of the housing market by buying mortgages, pooling them into

mortgage-backed securities, and selling the securities to investors. See *Collins v. Yellen*, 594 U.S. 220, 228 (2021). Those enterprises suffered significant losses during the 2008 financial crisis, raising concerns that the enterprises would default and thereby throw the Nation’s housing market and the global economy into turmoil. See *id.* at 228-229.

Congress responded by enacting the Housing and Economic Recovery Act of 2008 (Recovery Act or Act), 12 U.S.C. 4501 *et seq.* The Act established the Federal Housing Finance Agency (FHFA) to regulate the enterprises and, in certain circumstances, to act as their conservator or receiver. See *Collins*, 594 U.S. at 229. In September 2008 the Director of FHFA exercised that authority to place the enterprises under conservatorships (which remain in place today). See *id.* at 231. As conservator, FHFA succeeded to each enterprise’s “rights, titles, powers, and privileges” “with respect to [its] assets.” 12 U.S.C. 4617(b)(2)(A)(i).

FHFA is funded through annual assessments on the entities it regulates. The Recovery Act requires the FHFA Director to “establish and collect from the regulated entities annual assessments in an amount not exceeding the amount sufficient to provide for reasonable costs (including administrative costs) and expenses of the Agency.” 12 U.S.C. 4516(a). The Act states that those costs include the costs of conducting “examinations,” “reviews,” and “credit assessments,” as well as amounts necessary to maintain a “working capital fund.” 12 U.S.C. 4516(a)(1)-(3). The Act also states that “[t]he amounts received by the Director from any assessment under this section shall not be construed to be Government or public funds or appropriated money.” 12 U.S.C. 4516(f)(2).

2. Petitioners are investment entities that acquired homes in 2012 and 2013 at foreclosure sales conducted by homeowners' associations to enforce liens for unpaid fees. Pet. App. 2a-3a. The homes were encumbered by mortgage liens held by the enterprises. *Id.* at 3a.

In 2023, facing foreclosure on the acquired properties, petitioners sued FHFA and its Director in the United States District Court for the District of Nevada. Pet. App. 5a-6a. Petitioners alleged that FHFA's funding structure violates the Appropriations Clause, U.S. Const. Art. I, § 9, Cl. 7, and the nondelegation doctrine. Pet. App. 6a.

The district court dismissed the complaint. Pet. App. 19a-50a. The court concluded that FHFA's funding structure complies with the Appropriations Clause because Congress has specified the source and purpose of the funds used to finance FHFA's operations. *Id.* at 38a-44a. The court further held that the funding structure complies with the nondelegation doctrine because Congress has provided an intelligible principle to guide the agency. *Id.* at 44a-49a.

The Ninth Circuit affirmed. Pet. App. 1a-16a. Like the district court, the court of appeals determined that the Recovery Act satisfies the Appropriations Clause by specifying the source and purpose of FHFA's funding. *Id.* at 10a-13a. The court of appeals also agreed with the district court that the Recovery Act provides an intelligible principle to guide FHFA's determinations of how much to collect in assessments. *Id.* at 14a-15a.

ARGUMENT

Petitioners contend (Pet. 16-37) that FHFA's funding structure violates the Appropriations Clause and the nondelegation doctrine. The court of appeals correctly rejected those contentions, and its decision does

not conflict with any decision of this Court or of another court of appeals. This case also would be a poor vehicle for considering petitioners' contentions. The petition for a writ of certiorari should be denied.

1. The Appropriations Clause provides that “[n]o Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.” U.S. Const. Art. I, § 9, Cl. 7. “[A]n appropriation is simply a law that authorizes expenditures from a specified source of public money for designated purposes.” *CFPB v. Community Financial Services Ass’n of America, Ltd.*, 601 U.S. 416, 424 (2024) (*CFSA*). Such laws “need only identify a source of public funds and authorize the expenditure of those funds for designated purposes to satisfy the Appropriations Clause.” *Id.* at 426. The Recovery Act fulfills those requirements. It identifies the source of FHFA’s funding (“annual assessments” collected from the enterprises) and the purposes for which the funds may be used (FHFA’s “reasonable costs * * * and expenses”). 12 U.S.C. 4516(a).

Petitioners contend (Pet. 17) that “an appropriation requires a cap, sum certain, or other ascertainable limit on how much an agency can raise and spend.” But this Court rejected that theory in *CFSA*, where it explained that “an identified source and purpose are all that is required for a valid appropriation.” 601 U.S. at 427; see, e.g., *id.* at 426, 432, 434, 435, 438. The dissent observed, and the Court did not dispute, that the Court’s interpretation does not “require Congress to set an upper limit on the amount of money that the Executive may take.” *Id.* at 448 (Alito, J., dissenting).

History confirms that the Appropriations Clause does not require a numerical cap on appropriations. Though “[e]arly appropriations * * * adhered to the

minimum requirements of an identifiable source of public funds and purpose,” in other respects they “displayed significant variety in their structure.” *CFSA*, 601 U.S. at 434. For example, a statute enacted just three years after ratification authorized the Postmaster General to collect postage fees to defray the Post Office’s expenses, with no numerical cap on the amount he could raise or spend. See *ibid.* (citing Act of Feb. 20, 1792, § 3, 1 Stat. 234). Petitioners contend that the 1792 statute contained an “upper limit,” Pet. 21 (citation and emphasis omitted), but the limit they cite applied only to a narrow category of expenditures (commissions for deputy postmasters), not to postal expenditures more generally, see *CFSA*, 601 U.S. at 434.

Petitioners separately contend (Pet. 28-30) that the Recovery Act violates the Appropriations Clause by stating that “[t]he amounts received by the Director from any assessment under this section shall not be construed to be Government or public funds or appropriated money.” 12 U.S.C. 4516(f)(2). As discussed in more detail below, petitioners failed to preserve that contention in the lower courts. See p. 9, *infra*.

In any event, petitioners’ argument lacks merit. Labels used by Congress generally are controlling for statutory purposes but not for constitutional purposes. See, e.g., *NFIB v. Sebelius*, 567 U.S. 519, 564 (2012); *Lebron v. National Railroad Passenger Corp.*, 513 U.S. 374, 392-393 (1995). Congress’s declaration that FHFA funds “shall not be construed to be Government or public funds or appropriated money,” 12 U.S.C. 4516(f)(2), affects only how those funds are classified for statutory purposes; it does not change the funds’ constitutional status. Consistent with that understanding, this Court upheld the statute challenged in *CFSA* even though that

statute provided that the funds at issue there “shall not be construed to be Government funds or appropriated monies.” 12 U.S.C. 5497(c)(2). Petitioners contend (Pet. 29-30) that the *dissent* in *CFSA* viewed that provision as constitutionally problematic, but the Court clearly did not share that view.

2. Petitioners’ nondelegation challenge similarly lacks merit.

Article I vests Congress with all legislative powers granted by the Constitution, and Congress may not delegate those powers to executive agencies. See *FCC v. Consumers’ Research*, 606 U.S. 656, 672 (2025). Congress may, however, “‘vest discretion’ in executive agencies to implement and apply the laws it has enacted.” *Ibid.* (brackets and citation omitted). A statute effects a lawful conferral of discretion rather than an unlawful delegation of legislative power so long as “Congress has set out an ‘intelligible principle’ to guide what it has given the agency to do.” *Id.* at 673 (citation omitted). Applying that test, this Court has upheld “a host of statutes giving agencies significant discretion.” *Id.* at 683. For instance, it has upheld provisions that authorized agencies to regulate in the “public interest,” to set “just and reasonable” rates, and to set air-quality standards at levels “requisite to protect the public health.” *Id.* at 683-684 (citations omitted).

The Recovery Act satisfies the requirements established by this Court’s precedents. The Act directs FHFA to collect “annual assessments in an amount not exceeding the amount sufficient to provide for reasonable costs * * * and expenses of the Agency.” 12 U.S.C. 4516(a). The statutory standard—“sufficient to provide for reasonable costs * * * and expenses,” *ibid.*—is com-

parable to other qualitative standards that this Court has previously upheld.

Relying primarily on the dissent in *Consumers' Research*, petitioners contend (Pet. 32) that FHFA's funding structure violates the nondelegation doctrine because it lacks a "numerical cap, sum certain, or other ascertainable limit like a formula." But the Court in *Consumers' Research* rejected the argument that the nondelegation doctrine requires Congress to use "numeric caps and 'mathematical formulas'" when it authorizes an agency to raise and spend money. 606 U.S. at 675 (brackets and citation omitted). The Court instead determined that Congress may rely on "qualitative" standards, *id.* at 680, such as a requirement that the funds raised be "sufficient" for specified purposes, *id.* at 681 (citation omitted). The Recovery Act establishes just such a standard.

3. The question presented does not warrant this Court's review. Petitioners do not contend that the question is the subject of a circuit conflict, or even that another court of appeals has addressed the issue.

Petitioners instead argue (Pet. 16) that the court of appeals' decision conflicts with this Court's precedents. But as explained above, the decision below faithfully applies the tests set forth in *CFSA* and *Consumers' Research*. See pp. 4-7, *supra*. Petitioners' contrary arguments rest primarily on the dissents in those cases. See pp. 6-7, *supra*. Certiorari is not warranted to revisit theories that were recently raised by dissents but rejected by the Court.

4. This case is in all events a poor vehicle for reviewing petitioners' contentions. Even if this Court granted certiorari, multiple procedural obstacles could prevent the Court from reaching the merits.

First, petitioners lack Article III standing, which requires an injury-in-fact that was caused by the defendant's challenged action and that would likely be redressed by judicial relief. See *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021). Petitioners' claim of injury rests on their allegations that they acquired properties encumbered by liens held by the enterprises and that the enterprises' loan servicers subsequently commenced foreclosure proceedings with respect to those properties. See Pet. App. 8a. But that asserted injury was not caused by FHFA's funding structure. Even assuming that the invalidation of that funding structure would preclude FHFA from enforcing the liens in its capacity as the enterprises' conservator, the enterprises and their loan servicers could still enforce those liens in accordance with the loan documents and applicable state law. See C.A. E.R. 602 (noting that FHFA has delegated to the enterprises' management the power to conduct "day-to-day" operations, such as foreclosures) (citation omitted). Though the court of appeals rejected that standing argument, see Pet. App. 7a-10a, this Court would have an independent obligation to resolve the standing issue before reaching the merits, see *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 231 (1990).

Second, petitioners' contentions are barred by claim preclusion. Years before filing this suit, petitioners sued the enterprises' loan servicers in state court, seeking to quiet title to the properties at issue and to prevent foreclosure. See Pet. App. 3a. Petitioners lost those suits. See *ibid.* Under traditional principles of claim preclusion, the judgments in those suits bar petitioners from raising any further claims that arise out of

the same transactions as the original suits. See Re-statement (Second) of Judgments §§ 17(2), 24(1) (1982).

Petitioners could have raised their current Appropriations Clause and nondelegation challenges during the prior litigation. Having lost those earlier suits, petitioners may not now raise those challenges for the first time in new suits to prevent foreclosure as to the same properties. The courts below did not address claim preclusion, but because respondents properly preserved that defense in the lower courts, see Pet. App. 6a, they may invoke it in this Court as an alternative ground for affirmance, see *Washington v. Confederated Bands & Tribes of the Yakima Indian Nation*, 439 U.S. 463, 476 n.20 (1979).

Finally, petitioners' objections to Section 4516(f)(2)—which states that FHFA's funds “shall not be construed to be Government or public funds or appropriated money,” 12 U.S.C. 4516(f)(2)—are not properly before this Court. Petitioners did not develop those objections in the court of appeals; instead, they mentioned Section 4516(f)(2) only in passing in one sentence in their opening brief and in one sentence in their reply brief. See Pet. C.A. Br. 7; Pet. C.A. Reply Br. 16. The court of appeals, in turn, did not mention Section 4516(f)(2) in its opinion. This Court's ordinary practice precludes granting review to consider a contention that was neither properly raised nor passed upon in the court of appeals. See *United States v. Williams*, 504 U.S. 36, 41 (1992). Petitioners provide no sound reason for this Court—which is “a court of review, not of first view,” *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005)—to consider the issue in the first instance.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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