No. 25-986

IN THE

Supreme Court of the United States

MFN PARTNERS, LP, ET AL.,

Petitioners,

v.

NEW YORK STATE TEAMSTERS CONFERENCE AND RETIREMENT FUND, ET AL.

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

REPLY BRIEF FOR PETITIONERS

GEORGE W. HICKS, JR.
KIRKLAND & ELLIS LLP
1301 Pennsylvania Ave., N.W.
Washington, D.C. 20004
(202) 389-5000
george.hicks@kirkland.com

DEREK L. SHAFFER
Counsel of Record
QUINN EMANUEL URQUHART & SULLIVAN, LLP
555 13th St. NW, Ste. 600
Washington, D.C. 20004
(202) 538-8000
derekshaffer@quinnemanuel.com

[Additional Counsel Listed On Inside Cover]

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D.C. 20002

PATRICK J. NASH, P.C.
SHIRLEY CHAN
KIRKLAND & ELLIS LLP
333 W. Wolf Point Plaza
Chicago, IL 60654
(312) 862-2000

Counsel for Petitioners-Debtors and Debtors in Possession

ERIC WINSTON
BEN ROTH
QUINN EMANUEL URQUHART & SULLIVAN, LLP
865 S. Figueroa St., 10th Fl.
Los Angeles, CA 90017
(213) 443-3000

NICHOLAS J. CALUDA
JACOB C. BEACH
QUINN EMANUEL URQUHART & SULLIVAN, LLP
700 Louisiana St., Ste. 3900
Houston, TX 77002
(713) 221-7000

SAM HEAVENRICH
QUINN EMANUEL URQUHART & SULLIVAN, LLP
295 5th Ave., 9th Fl.
New York, NY 10016
(212) 849-7000

Counsel for Petitioners MFN Partners, LP and Mobile Street Holdings, LLC

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REPLY BRIEF

Before the Phase-In Regulation, unfunded vested benefits equaled vested benefits minus plan assets, precisely as Congress prescribed. 29 U.S.C. § 1393(c). After the Phase-In Regulation, however, unfunded vested benefits now equal vested benefits minus plan assets, *except for vast amounts of SFA Funds*. By affirming an agency's deviation from Congress's prescription, the judgment below begs for review.

The Government's contrary arguments are unpersuasive. For example, the Government resists review because no other circuit has addressed the Phase-In Regulation. But this Court often reviews cases absent a direct head-to-head conflict where, as here, the courts diverge methodologically. On the merits, the Government claims statutory grounding for the Phase-In Regulation by invoking 29 U.S.C. § 1432(*l*), as though that provision mandates using SFA Funds only to pay plan benefits and expenses. But it thereby repeats the Third Circuit's error of transforming a statutory "may" into a "shall." Tellingly, the Government does not deny the seismic consequences of the Phase-In Regulation, contending merely that those consequences diminish over time. And the Government altogether ignores the larger importance of correcting agency overreach post-*Loper Bright*.

The second question presented likewise warrants review. MEPPs may adopt "any other alternative method" (outside the four statutorily prescribed methods) for calculating a withdrawing employer's allocable unfunded vested benefits. 29 U.S.C. § 1391(c)(5)(A). But MEPPs may do so only "subject to the approval of" the PBGC, based on a finding that

the method "would not significantly increase the risk of loss to plan participants and beneficiaries or to the [PBGC]." *Id.* Here, everyone agrees that NY/WPA Teamsters adopted an alternative method. Everyone further agrees that NY/WPA Teamsters did not seek PBGC approval. The Third Circuit nonetheless allowed NY/WPA Teamsters to use that alternative method, merely because it made "good sense" to do so—never mind Congress's contrary judgment.

Respondents lack any satisfying reason why this Court should not review that erroneous decision. Contrary to their contention, this case follows naturally on the heels of *M & K Employee Solutions, LLC v. Trustees of the IAM National Pension Fund*, 146 S. Ct. 1224 (2026), where this Court affirmed that textual commands trump policy considerations, especially in the ERISA context. On the merits, Respondents come up blank. They largely premise their case on a 37-year-old PBGC opinion letter that relies on a single floor statement from a single Congressman. But no such letter can supersede Section 1391(c)(5)(A)'s plain text. Nor can Respondents gainsay the problems that result from excusing MEPPs from obtaining PBGC approval.

Notably, although the Government contends and Petitioners agree that their challenge to the No-Receivables Regulation is moot given the recent settlement, the petition remains live in all other respects. Respondents do not contend otherwise.

Accordingly, the Court should grant certiorari, or at minimum, grant, vacate, and remand in light of *M & K*.

I. The Government Confirms The Need To Review The Third Circuit's Phase-In Regulation Holding

A. The Government Fails To Dispel Circuit Conflict

The Government[1] contends review is unnecessary because no "other circuit has addressed the validity" of the Phase-In Regulation. PBGC Br. 12. But that equates the absence of a head-to-head split with the absence of any cert-worthy conflict. This Court, in contrast, does not insist upon a regulation-to-regulation match when identifying circuit conflicts.

For instance, *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), concerned a herring-monitoring rule as to which circuits had not meaningfully diverged. *See* Government Br. 23, *Loper Bright Enters. v. Raimondo* (No. 22-451), 2023 WL 2065102 (Feb. 16, 2023) (Government arguing no split). The Court nonetheless granted certiorari because lower courts had diverged in applying the governing *Chevron* framework. Likewise, in *Kisor v. Wilkie*, 588 U.S. 558 (2019), the Court granted certiorari to address *Auer* deference despite the absence of circuit conflict over that particular regulation. *See* Government Br. 10, *Kisor v. Wilkie* (No. 18-15), 2018 WL 5678446 (Oct. 31, 2018) (same).

The same holds here. The Third Circuit applied a methodology fundamentally different from what the Second Circuit applied in *Board of Trustees of Bakery Drivers Local 550 & Industry Pension Fund v. PBGC*,

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[1] The Funds do not independently address the Phase-In Regulation. Funds Br. 1.

136 F.4th 26 (2d Cir. 2025), when reviewing a closely related ARPA provision. *See* Pet. 17-19. Specifically, the Third Circuit here elevated the PBGC's policy preference over clear statutory text, whereas the Second Circuit stuck to the plain text regardless of the PBGC's preferences. *Id.* That methodological split warrants review.

B. The Government's Defense Of The Third Circuit's Phase-In Regulation Holding Lacks Merit

1. The Phase-In Regulation breaks from Section 1393(c)'s command that plan assets be subtracted from vested benefits in the unfunded-vested-benefits calculation. The Government does not contest that SFA Funds are "assets" under any ordinary understanding of the term and that Congress itself classified them as assets in Section 1432(*l*). *See* Pet. 21-22. It further concedes that the Phase-In Regulation removes a plan asset from the unfunded-vested-benefit formula. PBGC Br. 13. The upshot is that an agency, under auspices of its implementing regulation, has arrogated to itself the ability to revise the governing statute.

To argue otherwise, the Government maintains that Section 1432(*l*) must mean that SFA Funds *shall* be used *only* to make "benefit payments and pay plan expenses." PBGC Br. 9. But Section 1432(*l*) actually provides that SFA Funds "*may*" be used for those purposes. By transforming a "may" into a "shall," the Government forgets its position in other recent cases[2]

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[2] *E.g.*, Petition for a Writ of Certiorari 19, *United States v. Cotter Corp., N.S.L.* (No. 25-1127), 2026 WL 966872 (Mar. 23,

in which it notes (correctly) that "'may' means 'may.'" *Biden v. Texas*, 597 U.S. 785, 807 (2022). Among the cited cases is one where this Court confirmed that "may" was not mandatory. *See* PBGC Br. 9 (citing *United States v. Rodgers*, 461 U.S. 677, 707-09 (1983)).

The Government's only other claimed statutory support comes from Section 1432(*l*)'s heading. PBGC Br. 9. But "the heading of a section cannot limit the plain meaning of the text." *Bhd. of R.R. Trainmen v. Balt. & Ohio R.R. Co.*, 331 U.S. 519, 529 (1947). In any event, the heading—"Restrictions on the use of special financial assistance"—maintains harmony with a permissive "may" in Section 1432(*l*)'s first sentence once the other two sentences are considered. Those latter sentences state that SFA Funds "shall" be "segregated from other plan assets" and "invested by plans in" certain investment vehicles. Read properly together, Section 1432(*l*) and its heading reflect Congress's desire to place restrictions on how to hold and invest funds, while hewing to the first sentence's baseline rule that SFA Funds are otherwise normal plan assets, available to pay plan benefits and expenses.

The Government next suggests that the Phase-In Regulation was correctly upheld under 29 U.S.C. § 1432(m)(1) because Congress delegated to the PBGC broad authority to issue "reasonable conditions" relating to withdrawal liability. PBGC Br. 9-10. Even

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2026) ("As this Court has repeatedly observed, the word 'may' *clearly* connotes discretion."); *accord* Government Br. 9, *Champagne v. Collins* (No. 25-482), 2025 WL 3767097 (Dec. 19, 2025); Government Br. 15, *Ohio v. EPA* (No. 24-450), 2024 WL 5089998 (Dec. 10, 2024).

when a statute confers discretion, however, courts must hold agencies within "the boundaries of [their] delegated authority." *Loper Bright*, 603 U.S. at 395 (quotation omitted). Nor is it reasonable for a regulation to revise clear statutory text, as the Phase-In Regulation did here relative to Section 1393(c)'s formula.

In trying to explain away the alteration to that formula, the Government resorts to an argument that the district court rejected and the Third Circuit bypassed. Specifically, because Section 1393(c) does not specify *how* to value plan assets, the Government contends that the Phase-In Regulation permissibly "approximate[s] the actual value of the SFA fund to the plan over time." PBGC Br. 10 (quotation omitted). But Section 1393(c) is directed at valuing a plan's assets—or, in the bankruptcy court's words, determining the "true" value. App. 53a. It does not contemplate bending valuations based on policy preferences. As the bankruptcy court explained, the Government's smoothing-over-time rationale does not belong unless principled accounting indicates SFA Funds fluctuate in value due to short term price volatility. *Id.* No one contends that is reality.

2. Independently, the Government fails to refute that the Phase-In Regulation impermissibly imposes a "condition on" employers rather than on MEPPs under Section 1432(m)(1).

Notably, the Government does not deny that the Phase-In Regulation alters the legal rights of employers. Instead, like the Third Circuit, the Government simply notes that MEPPs calculate withdrawal liability. PBGC Br. 11. At best, however,

it follows that the Phase-In Regulation imposes a condition directly on withdrawing employers *alongside* MEPPs, still straying beyond Section 1432(m)(1)'s authorization. *See* Pet. 25-26. Contrary to the Government's suggestion, PBGC Br. 11, such overreach is far from accepted. Consider 29 C.F.R. § 4262.16(h)(1), which requires MEPPs to obtain PBGC approval before settling certain withdrawal-liability claims. That may carry collateral, follow-on implications for withdrawing employers, but the legal condition falls solely on MEPPs, not employers, who lack any statutory right to settle.

C. The Government Identifies No Impediment To Reviewing The Important Phase-In Regulation Question

The Government does not deny that this Court often grants review in cases involving withdrawal liability. Nor does it counter the powerful reasons for doing so here. The validity of the Phase-In Regulation affects $70.9 billion in federal funds, 109 plans, and over 1.3 million plan participants. Pet. 8. The practical, economic implications of applying correct treatment are colossal.

The Government's only answer is to say that the Phase-In Regulation's impact lessens over time. PBGC Br. 13. That argument confirms how the regulation continues to skew the withdrawal-liability calculations today and will continue to do so (even according to the Government) for years. *See* PBGC Br. 7, 13. As to this case, the Government quibbles with the Phase-In Regulation's exact economic magnitude but does not dispute that the Phase-In

Regulation is costing countless stakeholders, including the PBGC itself as to its own claim.

Moreover, the Government ignores the importance of ensuring that Congress retains authority to decide such questions as how to calculate withdrawal liability. As Senator Hawley explained, the PBGC should not be able to accomplish by "administrative fiat" what Congress itself has opted against. Pet. 11.

II. Respondents Fail To Explain Away The Need To Review The Third Circuit's Alternative-Method Holding

A. This Court's *M & K* Decision Counsels In Favor Of Granting Review

The Government contends that review is unnecessary because the Court has resolved the relevant circuit split against Petitioners. PBGC Br. 15 (citing *M & K*, 146 S. Ct. 1124). To the contrary, however, this Court held in *M & K* that courts may not "read limitations into statutes that do not appear in their text" and that "policy concerns cannot trump the best interpretation of the statutory text." 146 S. Ct. at 1231, 1233. The Third Circuit's error here mirrors the D.C. Circuit's error in *M & K*: Rather than reading a deadline *into* a statute, as in *M & K*, the Third Circuit here read an approval requirement *out of* Section 1391(c)(5)(A), on the express ground that doing so "makes good sense." App. 25a. This case is the natural follow-on, asking whether *M & K*'s textual fidelity applies equally to the alternative-method requirement. At a minimum, this case should be GVR'd in light of *M & K*—on both questions presented—to allow the Third Circuit to reconsider its elevation of

supposed policy/purpose over the on-point text when construing ERISA.[3]

B. Respondents Fail to Justify The Third Circuit's Alternative-Method Holding

Respondents lack any satisfying defense of the Third Circuit's alternative-method holding.

First, Respondents emphasize a 37-year-old PBGC opinion letter. PBGC Br. 14-15; Funds Br. 12. That advisory opinion letter rests on a floor statement by a single Congressman, *see* 126 Cong. Rec. 23,039 (1980), and predates *Loper Bright*. It is a suspect guide for interpreting statutes. *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005) ("[T]he authoritative statement is the statutory text, not the legislative history[.]"). Even on its own terms, the letter says merely that employers can contractually waive withdrawal-liability limitations. Opinion Letter 89-8, 1989 WL 224526, at *2 (Oct. 19, 1989). That much is agreed but also irrelevant. The specific question here is whether such a contractual arrangement needs PBGC approval under Section 1391(c)(5)(A). As to that question, the opinion letter punts, stating that the letter "should not be construed as approving or disapproving" the proposed allocation method under Section 1391(c)(5). *Id.* at *3.

Moreover, the letter explains that an employer's contractual waiver of withdrawal-liability limitations must not "increase other employers' potential withdrawal liability under the statute[.]" *Id.* at *2. That

[3] The Funds argue against granting review to resolve circuit conflicts over the approach to construing ERISA. Funds Br. 9. That is addressed *supra* pp. 3-4.

could happen when, as here, a MEPP uses "the presumptive method" and "is unable to collect" all or part of the employer's withdrawal liability. *Id.* In that instance, under 29 U.S.C. § 1391(b)(1)(C) and (b)(4), the "withdrawal liability of other employers may be increased." *Id.* That prospect supplies further reason why the PBGC should approve any contractual agreement to alter a withdrawing employer's allocable unfunded vested benefits.

Second, Respondents misplace reliance on *Artistic Carton Co. v. Paper Industry Union-Management Pension Fund*, 971 F.2d 1346 (7th Cir. 1992). PBGC Br. 15; Funds Br. 3, 11-12. Like the opinion letter, the Seventh Circuit states that ERISA "does not forbid employers from agreeing to pay extra money[.]" 971 F.2d at 1353. Again, Petitioners do not contend otherwise. Their modest point is simply, per Section 1391(c)(5)(A), that the PBGC must approve such agreements. Nor did the Seventh Circuit disagree that such approval is required; while flagging the question, it declined to answer because it had not been raised below. *Id.* at 1354.

Third, the Funds (but not the Government) try to defend the Third Circuit's departure from Section 1391(c)(5)(A) on the theory that there need never be PBGC approval unless a "completely different method" is employed. Funds Br. 11. But that is refuted by Section 1391(c)(5)(A)'s plain terms, requiring PBGC approval for "any other alternative method." Petitioners have explained and the Funds have ignored that those terms necessarily encompass the alternative method here. Pet. 34-35. Nevertheless, the Funds purport to ground the Third Circuit's "completely different method" rule in a Seventh Circuit

opinion, *Peick v. PBGC*, 724 F.2d 1247 (7th Cir. 1983). But Section 1391(c)(5)(A) was not at issue in *Peick*. The phrase appears only in the background section, where the Seventh Circuit casually paraphrased the statute; it was not operative in the court's analysis. *Id.* at 1256.

Finally, Respondents repeat the Third Circuit's reasoning that there is "no good" reason nor any "statutory case" for allowing Yellow to escape its bargain. Funds Br. 13 (quoting App. 25a); PBGC Br. 15. Here, too, Section 1391(c)(5)(A)'s text supplies the answer. Congress prescribed one and only one acceptable way for alternative methods to be approved. No one other than Congress is competent to rewrite the statute, or to treat a statutory violation as though it is statutory compliance.

Additionally, Respondents contend that an agreement to pay more in withdrawal liability "necessarily 'would not significantly increase the risk of loss to plan participants and beneficiaries' or to the PBGC." PBGC Br. 14-15 (quoting 29 U.S.C. § 1391(c)(5)(A)); *see* Funds Br. 12 (saying this is "self-evident"). That is false. Consider an agreement between a near-insolvent MEPP and an employer to increase the employer's withdrawal liability by reducing the employer's annual payment amount in the early years of the payment schedule, with greater payments due in later years, such that the total payments exceed the statutory amount. The MEPP, nearing insolvency, soon will lack adequate resources to pay benefits. By delaying withdrawal-liability payments to later years, the MEPP becomes insolvent sooner, such that benefit payments are reduced to a PBGC-guaranteed amount sooner. 29 U.S.C. §§ 1322a(c), 1441(d). The

agreement to increase the employer's withdrawal liability thus accelerates (1) benefit cuts to the MEPP's beneficiaries and (2) the need for the PBGC's financial assistance.

All of this confirms the import of Congress's judgment, embodied in Section 1391(c)(5)(A), that the PBGC should consider and approve any alternative method—full stop.[4]

C. Respondents Fail To Deny The Importance Of Addressing The Alternative-Method Issue

In trying to downplay the problems invited by the Third Circuit's alternative-method holding, the Government contends there is no evidence that MEPPs will misuse their newfound power to extract concessions from employers over the withdrawal-liability formula without PBGC approval. PBGC Br. 16. Tellingly, the Funds do not join the Government here. And history proves the Government wrong. Central States, for example, has repeatedly threatened expulsion and accompanying withdrawal liability to extract concessions from contributing employers. *SeeBorntrager v. Cent. States, Se. & Sw. Areas Pension Fund*, 425 F.3d 1087, 1089 (8th Cir. 2005); *Penske v. Cent. States, Se. & Sw. Areas Pension Fund*, 2022 WL 1028927, at *1-2, *9 (N.D. Ill. Apr. 16, 2022). Other plans have done the same. *See In re Caesars Ent. Operating Co.*, 540 B.R. 637, 640 (Bankr. N.D. Ill. 2015).

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[4] The Funds alone suggest possible daylight between Yellow's "actual" contributions, versus its "required" contributions. Funds Br. 14. But Yellow actually contributed just what it was required to contribute—the amounts set by the reduced rates.

Section 1391(c)(5)(A) affords the only protection employers have (or at least *had*) to protect the withdrawal-liability calculation against coercive manipulation.

Similarly, the Government errs in suggesting Yellow's agreement here was voluntary. Yellow's only alternative was to cease contributing to NY/WPA Teamsters and accept an immediate assessment of withdrawal liability—which would have caused insolvency years before Yellow ultimately failed. The so-called "bargain" to which the Funds contend Yellow should be held is thus no bargain at all.

CONCLUSION

The petition should be granted. Alternatively, the Court should GVR in light of *M & K*.

Respectfully submitted,

GEORGE W. HICKS, JR.
KIRKLAND & ELLIS LLP
1301 Pennsylvania Ave., N.W.
Washington, DC 20004
(202) 389-5000
george.hicks@kirkland.com

PATRICK J. NASH, P.C.
SHIRLEY CHAN
KIRKLAND & ELLIS LLP
333 W. Wolf Point Plaza
Chicago, IL 60654
(312) 862-2000

Counsel for Petitioners-Debtors and Debtors in Possession

DEREK L. SHAFFER
Counsel of Record
QUINN EMANUEL URQUHART & SULLIVAN, LLP
555 13th St. NW, Ste. 600
Washington, D.C. 20004
(202) 538-8000
derekshaffer@quinnemanuel.com

ERIC WINSTON
BEN ROTH
QUINN EMANUEL URQUHART & SULLIVAN, LLP
865 S. Figueroa St., 10th Fl.
Los Angeles, CA 90017
(213) 443-3000

NICHOLAS J. CALUDA
JACOB C. BEACH
QUINN EMANUEL URQUHART
& SULLIVAN, LLP
700 Louisiana St., Ste. 3900
Houston, TX 77002
(713) 221-7000

SAM HEAVENRICH
QUINN EMANUEL URQUHART
& SULLIVAN, LLP
295 5th Ave., 9th Fl.
New York, NY 10016
(212) 849-7000

Counsel for Petitioners MFN Partners, LP and Mobile Street Holdings, LLC

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