

IN THE SUPREME COURT OF THE UNITED STATES

No. A-____

CUSTODIA BANK, INC.,
APPLICANT

v.

FEDERAL RESERVE BOARD OF GOVERNORS
AND FEDERAL RESERVE BANK OF KANSAS CITY

APPLICATION FOR AN EXTENSION OF TIME
WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

To the Honorable Neil M. Gorsuch, Circuit Justice for the
United States Court of Appeals for the Tenth Circuit:

Pursuant to Rules 13.5 and 30.2 of this Court, Custodia Bank, Inc., applies for a 30-day extension of time, to and including July 10, 2026, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit in this case.* The Tenth Circuit entered its judgment on October 31, 2025. App., *infra*, 1a. It denied Custodia's petition for rehearing and rehearing en banc on March 13, 2026. *Id.* at 78a. Unless extended, the time for filing a petition for a writ of certiorari will expire on June 11, 2026. The jurisdiction of this Court would be invoked under 28 U.S.C. 1254(1).

* Applicant has no parent corporation, and there is no publicly held company that owns 10% or more of its stock.

1. To move money from place to place, American banks must hold master accounts with the Federal Reserve. A master account is "indispensable" for a bank's day-to-day operations. See Fourth Corner Credit Union v. Federal Reserve Bank of Kansas City, 861 F.3d 1052, 1064 (10th Cir. 2017) (opinion of Bacharach, J.). For that reason, closing a bank's master account -- or refusing to open one -- all but sentences the bank to death. The decision below held that the Federal Reserve's master account decisions are wholly discretionary, giving regional Federal Reserve Bank presidents plenary power over a bank's ability to function. And it did so in the face of a statutory provision directing that the Federal Reserve's services -- services that can only be accessed by banks with a master account -- "shall be available to nonmember depository institutions" and "shall be priced at the same fee schedule applicable to member banks." 12 U.S.C. 248a(c)(2). The phrase "nonmember depository institution" includes "any bank which is eligible" for FDIC insurance but is not a member of the Federal Reserve System. 12 U.S.C. 461(b)(1)(A)(i).

2. Applicant Custodia Bank, Inc., is a Wyoming-chartered Special Purpose Depository Institution, a type of financial institution that primarily serves digital asset companies. Custodia's charter authorizes it to "[p]rovide payment services" and "[c]arry on a nonlending banking business." Wyo. Rev. Stat. § 13-12-103(b). In 2020, Custodia applied for a master account. The Federal Reserve Bank of Kansas City told Custodia that it "was legally eligible" for the account and that "there were 'no showstoppers' with its application." App., infra, 12a. But when

officials from the Federal Reserve Board of Governors intervened, the regional bank changed its tune. In January 2023, it sent Custodia a letter denying Custodia's master-account application. Id. at 14a.

Custodia sued the Federal Reserve Board of Governors and the Federal Reserve Bank of Kansas City in the United States District Court for the District of Wyoming. App., infra, 15a-17a. It argued that, under Section 248a of the MCA, 12 U.S.C. 248a(c)(2), a regional Reserve Bank lacked discretion to deny a master account application. Ibid. On the defendants' motion, the district court dismissed some of Custodia's claims and subsequently entered summary judgment for defendants on Custodia's Section 248a claim against them. Id. at 18a.

3. A divided panel of the Tenth Circuit affirmed. App., infra, 1a-48a. The court determined that, under the Federal Reserve Act, 12 U.S.C. 342, the regional Reserve Banks possessed "discretionary authority" over a depository institution's application. Id. at 30a. The court was not persuaded by the MCA's mandate that all services be provided to nonmember depository institutions -- a category that undisputedly includes Custodia -- because, in its view, the MCA was "concerned with * * * the [Reserve Banks'] pricing of services," rather than their provision of services. Ibid. (emphasis added) (citing 12 U.S.C. 248a).

Judge Tymkovich dissented. App., infra, 49a-77a. He explained that the MCA stripped the Regional Banks of any authority to deny Custodia master account access. Id. at 61a-62a. The majority's contrary position, he added, raised "constitutional

concerns" that the court was "bound to avoid." Id. at 73a. Moreover, by granting presidents of the regional Reserve Banks "unreviewable discretion" over account applications such as Custodia's, the majority made those individuals "Officers of the United States," raising "thorny question[s]" under Article II of the Constitution. Id. at 75a-76a. Finally, any concerns as to excessive risk created by granting Custodia a master account could be adequately addressed through other means. Id. at 73a.

4. The court of appeals denied Custodia's petition for rehearing. App., infra, 78a-79a. Judges Hartz, Tymkovich, and Eid voted to grant rehearing en banc. Judge Tymkovich, joined by Judge Eid, issued a separate dissent from the denial of rehearing en banc, urging the "full court's consideration" because the case presented a "critical question" with implications of "exceptional importance." Id. at 80a.

5. The undersigned counsel respectfully requests a 30-day extension of time, to and including July 10, 2026, within which to file a petition for a writ of certiorari. This case presents weighty and complex issues concerning the authority of the Federal Reserve's regional banks and the power of States to charter their own banks. In addition, applicant's counsel has substantial professional obligations between now and the current due date, including a brief in opposition in Fairfield Sentry Ltd. v. Citibank NA London, No. 25-1089 (U.S.), due on May 28, and an opening brief in Mull v. SOF-XI Kauai PV Golf, L.P., No. 25-609 (Haw.), due on May 29. Additional time is therefore needed to prepare and print the petition in this case.

Respectfully submitted.

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