

IN THE
Supreme Court of the United States

CHARLES H. KLEIN, JR.; ANNETTE KLEIN;
ERIC HAVENS; AND SHANDRA HAVENS,

Petitioners,

v.

UNITED STATES POSTAL SERVICE; MARY
MITCHELL, POSTMASTER, GEORGETOWN POST
OFFICE, IN HER OFFICIAL CAPACITY; AND
TERRENCE MANEY, POST OFFICE OPERATIONS
MANAGER, IN HIS OFFICIAL CAPACITY,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether this Court should overrule *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200 (1994), or limit *Thunder Basin*, insofar as it permits courts to preclude by implication federal question jurisdiction over a constitutional claim when an agency may adjudicate only an unpleaded statutory claim, not the constitutional claim actually pleaded, and Congress has not clearly required constitutional claims to proceed through that scheme.

PARTIES TO THE PROCEEDING

Petitioners Charles H. Klein, Jr., Annette Klein, Eric Havens, and Shandra Havens were the plaintiffs in the United States District Court for the Southern District of Ohio and the appellants in the United States Court of Appeals for the Sixth Circuit.

Respondents United States Postal Service; Mary Mitchell, Postmaster of the Georgetown Post Office, in her official capacity; and Terrence Maney, Post Office Operations Manager, in his official capacity, were the defendants and appellees below.

No party is a corporation, and Supreme Court Rule 29.6 therefore requires no corporate disclosure statement.

RELATED PROCEEDINGS

Klein v. United States Postal Service, No. 25-3965, United States Court of Appeals for the Sixth Circuit. Judgment entered August 7, 2026.

Klein v. United States Postal Service, No. 1:24-cv-00672-JPH, United States District Court for the Southern District of Ohio, Western Division. Judgment entered October 27, 2025.

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OPINIONS BELOW

The court of appeals' published opinion is reported in the Federal Reporter and is available as *Klein v. United States Postal Service*, 186 F.4th 369 (6th Cir. Aug. 7, 2026). It is reproduced at Pet. App. 1a–20a. The district court's opinion and order granting respondents' motion to dismiss is unreported and is available as *Klein v. United States Postal Service*, No. 1:24-cv-00672-JPH (S.D. Ohio Oct. 27, 2025), 2025 WL 3005266. It is reproduced at Pet. App. 21a–34a.

JURISDICTION

The court of appeals entered judgment on August 7, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides in relevant part: “No person shall ... be deprived of life, liberty, or property, without due process of law.” The equal protection guarantee applicable to the Federal Government is embodied in the Fifth Amendment's Due Process Clause. *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954).

28 U.S.C. § 1331 provides: “The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.”

39 U.S.C. § 409(a) provides in relevant part: “Except as otherwise provided in this title, the United States district courts shall have original but not exclusive jurisdiction over all actions brought by or against the Postal Service.”

39 U.S.C. § 403(c) provides: “In providing services and in establishing classifications, rates, and fees under this title, the Postal Service shall not, except as specifically authorized in this title, make any undue or unreasonable discrimination among users of the mails, nor shall it grant any undue or unreasonable preferences to any such user.”

39 U.S.C. §§ 3662 and 3663 and 5 U.S.C. § 706 are reproduced at Pet. App. 35a–44a. Section 3662(a) permits an interested person to lodge with the Postal Regulatory Commission a complaint alleging nonconformity with specified provisions of Title 39, including § 403(c). Section 3663 permits a person aggrieved by a final Commission order or decision to seek review in the D.C. Circuit and directs that court to review the order or decision under 5 U.S.C. § 706, on the basis of the record before the Commission. Section 706 directs the reviewing court to decide relevant constitutional questions and authorizes it to set aside agency action found to be “contrary to constitutional right, power, privilege, or immunity.”

STATEMENT OF THE CASE

A. Statutory framework

Congress granted federal district courts jurisdiction over all civil actions arising under the Constitution. 28 U.S.C. § 1331. Title 39 separately grants district courts original, though not exclusive, jurisdiction over actions

by or against the Postal Service, subject to exceptions elsewhere in the title. 39 U.S.C. § 409(a). Neither provision expressly withdraws district court jurisdiction over constitutional claims.

The Postal Accountability and Enhancement Act of 2006 authorizes an interested person to lodge a complaint with the Postal Regulatory Commission alleging nonconformity with several identified provisions of Title 39. 39 U.S.C. § 3662(a). One identified provision, § 403(c), prohibits “undue or unreasonable discrimination among users of the mails.” If the Commission finds a statutory complaint justified, it must order action necessary to achieve compliance and remedy noncompliance. § 3662(c). Section 3663 permits review in the D.C. Circuit of a final Commission order or decision under 5 U.S.C. § 706, on the basis of the record before the Commission.

The statute does not authorize the Commission to adjudicate constitutional claims. It does not make the statutory procedure exclusive, and it does not preclude § 1331. Respondents’ own position confirms the statutory gap: they acknowledged that the Commission “may lack jurisdiction to declare discrimination in mail services unconstitutional—as opposed to finding a violation of 39 U.S.C. § 403(c),” and government counsel conceded at oral argument that the Commission would not decide constitutionality. Resp. C.A. Br. 17–18; Oral Arg. Audio 13:57–14:25; Pet. App. 10a–11a n.2. The court below nevertheless inferred preclusion of the district court’s jurisdiction.

B. Petitioners' constitutional claim

Petitioners live on Hillman Ridge Road in rural Brown County, Ohio. In April 2015, the Postal Service expressly approved placement of the Kleins' mailbox at the end of their driveway and delivered mail there. First Am. Compl. ¶ 17, R.13, PageID 50. In 2017, after an unrelated confrontation between a neighbor and a postal carrier, the Postal Service discontinued that delivery. *Id.* ¶¶ 18–20, PageID 50–51.

Petitioners alleged that the asserted safety rationale was pretextual. The carrier who had made the deliveries told Klein that he had experienced no accidents on the road and delivered mail on many similar narrow roads. Since the Postal Service first approved delivery, the road had been repaved; pullovers had been added; and trees and brush had been cleared. There were no reported vehicular accidents, and FedEx, UPS, and other vendors continued to reach the properties. First Am. Compl. ¶¶ 20–29, R.13, PageID 51–52. Petitioners further alleged that the Postal Service delivers directly to similarly situated properties on comparable or less accessible roads in Brown County. *Id.* ¶¶ 25, 29, PageID 52.

Without direct delivery, petitioners must travel roughly four-tenths of a mile to retrieve ordinary mail and make a ten-mile round trip to Georgetown for parcels that do not fit in the remote mailbox. *Id.* ¶ 20, PageID 51. In September 2024, petitioners asked the Postal Service to restore delivery. The Postal Service refused on October 18, 2024. *Id.* ¶ 5, PageID 47–48.

Those facts, petitioners alleged, showed that the Postal Service had intentionally singled them out for materially different treatment without a rational basis, in violation of the Fifth Amendment's equal-protection guarantee under *Village of Willowbrook v. Olech*, 528 U.S. 562 (2000). First Am. Compl. ¶¶ 31–35, R.13, PageID 53. Their operative pleading asserted that single constitutional claim and sought prospective declaratory and injunctive relief requiring equal mail delivery, together with attorney fees and costs. *Id.* ¶¶ 36–39, PageID 53–54. Petitioners did not plead a statutory violation of § 403(c), seek review of a Commission order, or ask the district court to supervise an administrative proceeding.

C. Proceedings below

Respondents moved to dismiss under Federal Rule of Civil Procedure 12(b)(1). The district court accepted the complaint's factual allegations as true but held that, despite petitioners' constitutional claim, the "essence" of the dispute concerned mail service. Pet. App. 21a. It concluded that the Commission has exclusive jurisdiction under §§ 403(c) and 3662 and dismissed without prejudice on October 27, 2025. *Id.* at 34a.

Respondents' motion embodied the jurisdictional dilemma. They argued that the Commission possessed exclusive jurisdiction over petitioners' grievance, yet expressly declined to represent that petitioners had any claim cognizable there. Respondents instead "expressly reserve[d] the right to argue to the PRC that it lacks jurisdiction to hear any complaint Plaintiffs may file there regarding their factual allegations." Defs.' Mot. to Dismiss 6 n.1, R.16, PageID 64. Thus, respondents sought

dismissal from district court while preserving the position that the designated administrative forum also could turn petitioners away.

The Sixth Circuit affirmed in a published, unanimous opinion. It acknowledged that § 1331 generally gives district courts authority over constitutional claims. Pet. App. 6a (slip op. 5). Applying *Thunder Basin* and *Elgin*, however, it asked whether an intent to preclude district-court jurisdiction was “fairly discernible” in the PAEA’s text, structure, context, and purpose. *Id.* at 7a–10a (slip op. 5–10).

At step one, the court inferred exclusivity from the Commission’s procedures, § 409(a)’s “except as otherwise provided” language, pre-PAEA decisions, and statutory purpose. *Id.* It rejected petitioners’ reliance on § 3662(a)’s statement that a customer “may lodge a complaint,” reasoning that the word “may” made filing optional but did not authorize another forum. *Id.* at 10a (slip op. 9). The court expressly agreed with the D.C. Circuit’s then-recent decision in *New York v. Trump*. *Id.* at 10a (slip op. 8–9).

At step two, the court held that all three *Thunder Basin* factors favored channeling. First, it reasoned that the D.C. Circuit ultimately could review a Commission decision for constitutional error under 5 U.S.C. § 706(2)(B). *Id.* at 11a–12a (slip op. 11). Second, it characterized petitioners’ constitutional claim as nearly identical to a statutory unreasonable discrimination complaint under § 403(c). *Id.* at 12a–13a (slip op. 11–12). Third, although recognizing that the Commission is not expert in constitutional law, it held that postal expertise could

bear on whether a rational basis supported the delivery decision. *Id.* at 13a–14a (slip op. 12–13).

Respondents acknowledged in their appellate brief that the Commission “may lack jurisdiction to declare discrimination in mail services unconstitutional—as opposed to finding a violation of 39 U.S.C. § 403(c).” Resp. C.A. Br. 17–18. At oral argument, government counsel conceded that the Commission would not decide constitutionality: “I don’t believe the Postal Regulatory Commission would opine on whether an act was constitutional or not.” Counsel explained that the Commission would adjudicate the § 403(c) claim, while the D.C. Circuit would decide petitioners’ constitutional claim. Oral Arg. Audio 13:57–14:25; Pet. App. 10a–11a n.2. The Sixth Circuit accepted that division of authority as providing meaningful review and held that a plaintiff bringing a constitutional challenge concerning postal services, classifications, rates, or fees must begin before the Commission. *Id.* at 20a (slip op. 13).

REASONS FOR GRANTING THE PETITION

This case presents a clean and recurring question at the intersection of Article III, § 1331, and the administrative state—whether courts may infer the preclusion of federal question jurisdiction when Congress never said that a constitutional claim must begin before an agency that will not adjudicate it. *Thunder Basin* permits that inference. The text enacted by Congress does not. The decision below extends implied preclusion beyond an administratively cognizable claim and exposes the unresolved conflict between *Thunder Basin*’s implication-based methodology and this Court’s repeated insistence that courts preserve

judicial review, enforce jurisdictional and exhaustion provisions as written, and not infer consequential reallocations of authority from statutory silence. *See Axon Enterprise, Inc. v. FTC*, 598 U.S. 175 (2023); *Free Enterprise Fund v. Public Company Accounting Oversight Board*, 561 U.S. 477 (2010); *Webster v. Doe*, 486 U.S. 592 (1988); *Bowen v. Michigan Academy of Family Physicians*, 476 U.S. 667 (1986); *Perez v. Sturgis Public Schools*, 598 U.S. 142 (2023); *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024). Review is warranted under Rule 10(c) because that important unresolved question recurs across administrative schemes and only this Court can clarify the limits of implied preclusion.

This case also exposes the practical consequence. Section 706(2)(B) does not confer original jurisdiction over a freestanding constitutional claim the Commission will not decide. Yet respondents obtained dismissal on the ground that the Commission has exclusive jurisdiction after acknowledging in writing that the Commission may lack jurisdiction to declare the challenged conduct unconstitutional, conceding orally that the Commission would not decide constitutionality, and expressly reserving the right to argue that it lacks jurisdiction over any complaint petitioners might file concerning these facts. Resp. C.A. Br. 17–18; Oral Arg. Audio 13:57–14:25; Defs.’ Mot. to Dismiss 6 n.1, R.16, PageID 64. Petitioners ask who decides whether Congress displaced the jurisdiction it conferred in § 1331 and what Congress must enact before a court may say that Congress did impliedly preclude jurisdiction.

I. SOUND JURISPRUDENCE MANDATES THAT THIS COURT OVERRULE OR LIMIT *THUNDER BASIN* IN ORDER TO REQUIRE CLEAR STATUTORY TEXT BEFORE THE JUDICIARY MAY PRECLUDE DISTRICT COURT JURISDICTION OVER CONSTITUTIONAL CLAIMS

A. The “fairly discernible” test reverses the ordinary rule governing federal question jurisdiction.

Section 1331 is a direct congressional grant of jurisdiction over “all civil actions arising under the Constitution.” Once Congress has spoken in those categorical terms, withdrawal should require that Congress speak equally clearly. Yet *Thunder Basin* asks courts to discern an unexpressed intention from “the statute’s language, structure, and purpose,” 510 U.S. at 207, and then to decide whether a claim is “of the type” Congress meant an agency to handle, *id.* at 212. That test makes silence do jurisdiction-stripping work.

This Court ordinarily applies a strong presumption favoring judicial review of administrative action and requires “clear and convincing evidence” to overcome it. *Bowen v. Michigan Academy of Family Physicians*, 476 U.S. 667, 670–73 (1986). It likewise requires a clear statement before construing a statute to deny every judicial forum for a colorable constitutional claim. *Webster v. Doe*, 486 U.S. 592, 603 (1988). The availability of delayed contingent appellate review should not reduce the clarity demanded when Congress is said to have closed the courthouse Congress opened in § 1331.

The decision below illustrates the problem. Section 3662 identifies particular statutory requirements and says an interested person “may” lodge a complaint with the Commission. It never mentions constitutional claims or exclusivity. The Sixth Circuit nonetheless treated the absence of an express alternative as evidence that none exists. Pet. App. 10a (slip op. 9). A clear statement rule would respect the enacted text and leave to Congress the politically accountable choice whether to preclude § 1331.

That approach also follows *Perez v. Sturgis Public Schools*, 598 U.S. 142 (2023). There, this Court unanimously refused to enlarge an express exhaustion provision beyond its terms, explaining that courts “cannot replace the actual text with speculation as to Congress’ intent.” *Id.* at 150. If statutory purpose cannot expand an enacted exhaustion requirement, it likewise should not create an exhaustion requirement—and withdraw jurisdiction granted by § 1331—where Congress enacted none.

B. *Thunder Basin*’s multifactored inquiry is indeterminate and invites judicial policy-making.

The *Thunder Basin* framework combines two open-ended inquiries: whether exclusivity is “fairly discernible” and whether three nonexclusive factors, taken together, suggest that a particular claim belongs in the statutory scheme. *Axon Enterprise, Inc. v. FTC*, 598 U.S. 175, 186 (2023). The factors do not establish weights, a burden of proof, or rules for conflicts among them. Courts are thus invited to decide jurisdiction by resemblance, prediction, and perceived administrative purpose rather than statutory command.

Here, the court treated contingent eventual D.C. Circuit review as sufficient even though government counsel conceded that the Commission would not decide the constitutional question. It treated a constitutional claim as noncollateral because it overlapped factually with a statutory claim petitioners did not bring. And it treated postal expertise as sufficient even though the dispositive constitutional standard belongs to courts. Those conclusions may follow *Thunder Basin*'s elastic vocabulary, but they do not follow the words Congress enacted.

A rule requiring a clear textual basis for preclusion would be simpler to administer and easier for Congress, agencies, litigants, and courts to predict. Congress knows how to make administrative remedies exclusive, to require exhaustion, and to specify a reviewing court. Courts should not complete that legislative work by inference.

C. *Thunder Basin*'s implied preclusion premise cannot be reconciled with this Court's recent decisions.

Axon unanimously applied the three factors to hold that the structural constitutional claims there could proceed directly in district court. 598 U.S. at 189–95. The Court reaffirmed that a statutory review scheme does not necessarily reach every claim touching agency action and focused on whether the scheme affords meaningful review, whether the claim is collateral to the administrative process, and whether it falls outside the agency's expertise. *Id.* at 185–95. Although the Court did not reconsider *Thunder Basin*'s implied-preclusion

premise, its analysis confirms that administrative review is not all-encompassing.

Free Enterprise Fund supplies the same instruction. There, the Court refused to treat the Exchange Act's review provision as an exclusive path because the plaintiffs challenged no Commission rule or order and had no meaningful route to judicial review without first manufacturing an administrative proceeding. 561 U.S. at 489–91. Petitioners likewise challenge no Commission order. The Sixth Circuit nevertheless requires them to manufacture and litigate a § 403(c) claim they did not plead before an agency that will not decide the constitutional claim they did plead. *Free Enterprise Fund* and *Axon* reject the assumption that the existence of possible eventual appellate review makes every claim touching regulated conduct belong initially to an agency.

In *Axon*, Justice Gorsuch identified the more fundamental defect. Section 1331 provides that district courts “shall” have jurisdiction over “all” civil actions arising under federal law. 598 U.S. at 207-08 (Gorsuch, J., concurring in the judgment). *Thunder Basin* nevertheless superimposes a “judge-made, multi-factor balancing test” assembled to uncover an implicit wish to oust that jurisdiction. *Id.* at 208. Justice Gorsuch described the resulting inquiry as incoherent: the factors have no prescribed weights and supply no rule when they point in different directions. *Id.* at 208-10.

More fundamentally, Justice Gorsuch explained that implied jurisdiction stripping assigns courts a power the Constitution gives Congress. *Id.* at 210-12. Section 1331 should “hold firm against mere implication[s],” and

Congress knows how to enact express jurisdictional and exhaustion provisions when it wants them. *Id.* at 210-11 (quoting *Mims v. Arrow Financial Services, LLC*, 565 U.S. 368, 383 (2012)). *Thunder Basin*’s “jurisdiction-stripping-by-implication” substitutes judicial supposition about legislative intent for enacted law. *Id.* at 210.

That concern is not isolated. Dissenting in *Elgin*, Justice Alito, joined by Justices Ginsburg and Kagan, stressed that under § 1331 the question is not whether Congress affirmatively conferred jurisdiction over constitutional claims, but whether Congress took it away. 567 U.S. at 25 (Alito, J., dissenting). Those Justices rejected the oddity of channeling a constitutional claim through an agency powerless to decide it, leaving an appellate court to address the claim initially and with limited factfinding capacity. *Id.* at 24–25, 32–34. Justice Kagan later wrote the Court’s unanimous opinion in *Axon*, applying the factors to constitutional claims challenging the legitimacy of the agency proceedings themselves. 598 U.S. at 189–95.

In *Axon*, Justice Thomas separately expressed grave constitutional doubts about assigning agencies primary adjudicatory authority over core private rights subject only to deferential review by an Article III court. 598 U.S. at 196-205 (Thomas, J., concurring). Petitioners’ narrower submission does not require resolution of that broader question. It requires only that Congress, rather than courts, make the decision to withdraw jurisdiction Congress granted in § 1331.

Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024), reinforces the same separation-of-powers

principle. *Loper Bright* did not address jurisdictional channeling, but it overruled *Chevron* because courts must exercise independent judgment on questions of law and may not infer a consequential delegation of interpretive authority from statutory ambiguity. *Id.* at 400–12. It would be anomalous to forbid an inference of delegated law-interpreting power from silence while continuing to infer from silence the more basic proposition that Article III courts lack jurisdiction altogether.

The Court need not disturb Congress’s power to establish exclusive administrative review. It need only hold that Congress must exercise that power in enacted text. This case squarely presents the issue Justice Gorsuch identified because the Sixth Circuit treated *Thunder Basin*’s implied-preclusion methodology as controlling despite statutory silence. To the extent *Thunder Basin* authorizes preclusion of § 1331 based on a judicial assessment of statutory structure and purpose, it should be overruled. At minimum, it should be limited to schemes whose enacted text expressly places the claimant and the precise governmental action challenged within the agency’s review jurisdiction, as the CSRA did in *Elgin*. It should not extend to a case in which the court must invent an unpleaded statutory claim merely because an agency might address some of the same facts.

D. *Stare decisis* does not justify retaining implied jurisdiction stripping.

Whatever *stare decisis* weight attaches to *Thunder Basin*’s construction of the Mine Act, no comparable reliance supports exporting its “fairly discernible” formulation as a freestanding method for finding

jurisdictional bars in unrelated statutes. The doctrine regulates forum and procedure, not primary conduct. Congress remains free to make administrative review exclusive in express terms, and a clear text rule would leave undisturbed statutory schemes that actually channel the claimant and precise claim at issue.

The traditional reasons for retaining precedent point toward correction, not preservation. The test has proved indeterminate because it assigns no weights to its factors and no rule for resolving conflicts among them. Later decisions have repeatedly narrowed its operation, while *Axon* exposed the “here-and-now” injuries that delayed review cannot cure and *Loper Bright* rejected a parallel practice of inferring consequential congressional delegations from ambiguity. 598 U.S. at 190–93; 603 U.S. at 400–12. Overruling the implication-based methodology—or limiting it to schemes whose enacted text clearly encompasses the precise action—would replace judicial speculation with a rule Congress and litigants can readily follow.

II. EVEN UNDER EXISTING PRECEDENT, THE DECISION BELOW MISAPPLIED THE *THUNDER BASIN* FRAMEWORK.

A. The statutory scheme does not address the claim petitioners actually pleaded.

Section 3662(a) authorizes complaints that the Postal Service is not conforming to enumerated provisions of Title 39. Petitioners pleaded no such violation. Their sole count arose under the Constitution and sought prospective equitable relief for intentional, irrational differential

treatment. The court below converted that claim into a § 403(c) complaint because the two may share facts. But jurisdiction turns on the cause of action asserted, not on a court's imputation of a potential unpleaded statutory claim.

Section 409(a) confirms district court jurisdiction over “all actions brought by or against the Postal Service,” except as “otherwise provided in” Title 39. That clause is not permission to infer exceptions; it requires another Title 39 provision that actually provides one. Sections 3662 and 3663 do not. They authorize optional complaints alleging violations of enumerated postal statutes and appellate review of possible final Commission orders for those statutory claims. Section 706 defines the reviewing court's authority when reviewing agency action; it does not confer original jurisdiction over an independent constitutional action. None of these provisions requires constitutional claims to begin before the Commission, makes Commission proceedings exclusive, or withdraws jurisdiction under §§ 1331 and 409(a). Nor does “not exclusive” subordinate district courts to the Commission; it merely leaves room for another forum when jurisdiction is independently conferred. The Sixth Circuit converted a clause requiring an actual exception into authority to invent one, nullifying Congress's express grant and forcing petitioners to pursue an unpleaded statutory claim before an agency unable to adjudicate their constitutional claim. That approach effectively adds a jurisdictional prerequisite that Congress did not enact. Congress may channel claims or withdraw jurisdiction; courts may not add a prerequisite that Congress did not enact.

The Sixth Circuit’s reliance on *New York v. Trump*, 181 F.4th 132 (D.C. Cir. July 14, 2026), underscores rather than cures that error. *New York* involved a statutory claim that the Postal Service violated Section 3661(b) by implementing nationwide service changes without first obtaining an advisory opinion from the Commission. *Id.* at 136-38. That claim was expressly cognizable under Section 3662: it alleged nonconformity with a provision of Title 39 that the Commission itself administers. *Id.* at 141-43.

The D.C. Circuit repeatedly relied on features absent here. The States’ advisory opinion claim fell “squarely” within the statutory scheme and within the “heartland” of the Commission’s responsibilities; the Commission had regularly adjudicated the same kind of complaint; it could order the Postal Service to comply with § 3661(b); and deciding whether an advisory opinion was required implicated the Commission’s distinctive expertise. *Id.* at 143–45. The court contrasted that core statutory claim with structural constitutional claims ordinarily resolved by courts. *Id.* at 143–44. *New York* therefore did not decide whether § 3662 channels a nonstructural constitutional claim that, by government counsel’s own account here, the Commission would not decide. Pet. App. 10a–11a n.2.

Petitioners’ claim falls on the opposite side of the considerations *New York* found decisive. Their Fifth Amendment claim does not allege nonconformity with any enumerated provision of Title 39; constitutional equal protection is not among the Commission’s assigned responsibilities; and government counsel conceded that the Commission would not decide constitutionality. Oral Arg. Audio 13:57–14:25; Pet. App. 10a–11a n.2. Respondents instead defended channeling on the ground

that the Commission would decide a § 403(c) statutory claim, if there was one, and the D.C. Circuit eventually might decide the constitutional claim. Postal expertise may illuminate disputed facts, but it supplies neither statutory authority nor constitutional expertise to decide intentional discrimination under the Fifth Amendment. By treating *New York*'s holding about a core, administratively cognizable statutory claim as controlling here, the Sixth Circuit extended that decision beyond both its holding and its rationale and applied it to constitutional claims.

This Court's decisions concerning overlapping statutory claims reinforce the distinction. *Fry v. Napoleon Community Schools*, 580 U.S. 154, 169–71 (2017), instructs courts to identify the gravamen of a complaint by asking what injury generates the claim. It also recognizes that factual overlap does not make distinct claims identical: “The same conduct might violate all three statutes.” *Id.* at 170–71. So too here. The same Postal Service conduct might implicate both § 403(c) and the Fifth Amendment. Petitioners' constitutional injury is not inadequate mail service in the abstract. It is intentional and irrational differential treatment. If the Postal Service denied driveway delivery uniformly to all similarly situated customers, petitioners would have no class-of-one claim. Their constitutional injury exists because the Postal Service allegedly provides direct delivery to similarly situated customers while intentionally denying it to them without a rational basis. First Am. Compl. ¶¶ 25, 29, 31–35, R.13, PageID 52–53. The constitutional character of that injury cannot be eliminated merely by identifying a postal statute possibly regulating some of the same conduct.

Nor does factual overlap alone trigger an administrative prerequisite. In *Perez*, the plaintiff's claims arose from the same educational injuries addressed by the IDEA, but this Court held that the statute did not require exhaustion of a different federal claim seeking relief the IDEA process could not provide. 598 U.S. at 147-51. The Court enforced the exhaustion provision Congress enacted rather than extending it according to perceived administrative purpose. *Id.* at 150. Here Congress authorized Commission complaints alleging violations of enumerated postal provisions; it did not require exhaustion of constitutional claims or authorize the Commission to adjudicate them.

Factual overlap does not establish identity of claims or administrative competence. Petitioners pleaded a Fifth Amendment equal-protection claim—not a complaint under Section 403(c). The claims arise under different law, require different elements and defenses, and invoke different adjudicative authority. The possibility that the Commission might grant similar practical relief on an unpleaded statutory theory neither converts petitioners' constitutional claim into a statutory claim nor supplies the Commission with authority to adjudicate the constitutional claim. *Fry* and *Perez* confirm that overlapping facts and remedies do not erase the distinction between legally independent claims.

B. Meaningful review is not assured when the agency will not adjudicate the constitutional claim.

Respondents acknowledged in writing that the Commission may lack jurisdiction to declare the challenged discrimination unconstitutional. Resp. C.A. Br.

17–18. At oral argument, government counsel conceded that the Commission would not decide constitutionality and explained that the Commission would adjudicate § 403(c), while the D.C. Circuit would decide petitioners’ equal-protection claim. Oral Arg. Audio 13:57–14:25; Pet. App. 10a–11a n.2. The Sixth Circuit treated § 3663 and 5 U.S.C. § 706 as ensuring eventual consideration of the constitutional issue. Those provisions may permit the D.C. Circuit to consider constitutional objections while reviewing a final Commission order; they do not state that an independent constitutional claim must originate before the Commission or that district court jurisdiction under § 1331 is precluded.

The decision below nevertheless postpones the constitutional claim until after petitioners plead and litigate a different statutory claim before an agency that, respondents conceded, will not adjudicate the Fifth Amendment claim. If the Commission applies only § 403(c), its order will contain no agency adjudication of petitioners’ constitutional claim. The D.C. Circuit may consider the constitutional issue as a question of law, but § 3663 confines it to review of the Commission’s order or decision on the record before the Commission. That record-bound appellate review is not equivalent to an Article III trial court adjudicating an original constitutional action, developing evidence under the governing constitutional standard, and awarding equitable relief in the first instance.

The jurisdictional trap is concrete, not hypothetical. Respondents expressly reserved the right to argue that the Commission lacks jurisdiction to hear any complaint petitioners might file regarding these factual allegations.

Defs.' Mot. to Dismiss 6 n.1, R.16, PageID 64. A route that may terminate at the agency's threshold cannot assure meaningful judicial review of a constitutional claim that the agency, by respondents' own account, will not adjudicate.

C. Petitioners' claim is collateral to § 3662 and outside the Commission's constitutional expertise.

Petitioners do not seek an order interpreting § 403(c) or reviewing a Commission decision. Their claim does not depend on proving a violation of Title 39: federal officials allegedly intentionally singled them out for irrationally unequal treatment. The fact that the challenged conduct involves mail delivery does not make the constitutional claim arise under postal law any more than a constitutional challenge to a school, prison, tax, or licensing decision arises under the agency's enabling statute.

Nor does the Commission possess expertise in equal-protection adjudication. The relevant legal questions—intentional differential treatment, similarly situated comparators, and rational basis—are ordinary judicial questions. Postal knowledge may supply evidence bearing on a claimed rational basis, but an agency's familiarity with facts does not give it expertise over the constitutional rule. Otherwise almost no constitutional claim involving regulated activity would fall outside agency expertise.

D. *Elgin* does not control this case.

Elgin involved the Civil Service Reform Act, a comprehensive scheme governing covered federal

employees who challenged the very personnel actions the Merit Systems Protection Board was authorized to review. *Id.* at 5–8, 11–13. The constitutional question was embedded in a dispute the statute squarely assigned to the Board and that originated at the Board; the Board could develop and resolve the employment questions within its domain, and the Federal Circuit could decide the constitutional issue. *Id.* at 16–23.

This case lacks that statutory predicate. Petitioners are postal customers, not participants in a specialized federal employment relationship. Section 3662 authorizes Commission complaints only for nonconformity with enumerated provisions of Title 39; it does not authorize the Commission to adjudicate petitioners' Fifth Amendment cause of action. Petitioners do not challenge an action that a comprehensive statute expressly assigns to the Commission. The question is not whether an agency may develop facts relevant to a constitutional claim, but whether factual overlap permits a court to replace the pleaded constitutional claim with an unpleaded statutory one. Respondents defended channeling not by identifying Commission authority over that constitutional claim, but by invoking possible eventual D.C. Circuit review. Extending *Elgin* to these circumstances would require petitioners to invent and litigate a different § 403(c) statutory claim merely because it may share facts with the constitutional claim they pleaded. That extension would allow implied preclusion to swallow § 1331.

That is the critical limit on *Elgin*. *Elgin* did not hold that an agency may preclude district court jurisdiction whenever it can address facts related to a constitutional claim. It held that a comprehensive statute channeled

review because the agency had jurisdiction over the very personnel action being challenged, and an Article III court had authority to decide the constitutional issue on review. Here, by contrast, the PRC has no authority over the constitutional cause of action petitioners pleaded. The proposed substitute—an unpleaded § 403(c) complaint—is not the claim in this case, may not be cognizable on these facts, and, by respondents’ own reservation, may be rejected by the PRC at the threshold. *Elgin* therefore cannot convert a possible administrative detour into an exclusive prerequisite to § 1331 jurisdiction.

III. THE QUESTION IS IMPORTANT, RECURRING, AND READY FOR REVIEW.

The Sixth Circuit announced a published rule governing constitutional challenges to Postal Service services, classifications, rates, or fees. Pet. App. 20a (slip op. 13). More broadly, its reasoning allows many agency schemes to preclude § 1331 without an express jurisdiction-stripping provision. The resulting question is not confined to postal delivery: whenever federal officers allegedly violate the Constitution in an area also regulated by statute, courts must decide whether factual overlap alone diverts the constitutional claim from the district court Congress authorized to hear it.

The issue is newly urgent. *Axon* clarified the factors but did not reconsider *Thunder Basin*’s implied-preclusion premise. *Loper Bright* then rejected a closely related method of inferring congressional delegation from ambiguity. Lower courts now must apply *Thunder Basin* in a doctrinal environment increasingly committed to

statutory text, independent judicial judgment, and clear lines between legislative and judicial power.

Recent decisions also show why the Court should clarify the limits of implied preclusion. In *Margolin v. National Association of Immigration Judges*, 608 U.S. ____ (2026), the Court reversed a court of appeals that had departed from the parties' arguments while reconsidering whether an established administrative channel remained effective. *Margolin* confirms the importance of applying statutory channeling rules according to the scheme Congress enacted; it does not resolve whether *Thunder Basin* permits courts to channel a constitutional claim that the agency lacks authority to adjudicate. *New York* treated a statutory claim lying within the Commission's heartland as channeled. The Sixth Circuit then treated petitioners' independent constitutional claim as channeled because its facts possibly overlapped an unpleaded statutory claim. The question presented here is whether that extension of implied preclusion is permissible.

The Sixth Circuit's express agreement with *New York v. Trump* demonstrates the issue's immediate and recurring importance: within weeks of *New York*, the Sixth Circuit extended the same implied preclusion analysis from an administratively cognizable statutory claim to a constitutional claim that government counsel conceded the Commission would not decide. Without this Court's intervention, the Postal Commission scheme will increasingly be treated as precluding § 1331 beyond the circumstances *New York* actually decided.

The separation-of-powers concern is the converse of that in *United States v. Klein*, 80 U.S. (13 Wall.)

128 (1871). *Klein* recognized Congress’s authority to regulate federal jurisdiction but held that Congress may not use jurisdictional language to prescribe how courts decide a case under existing law. *Id.* at 145–47. Here, the problem is not that Congress enacted an impermissible jurisdictional command; it is that Congress enacted no command withdrawing the jurisdiction granted by §§ 1331 and 409(a). Treating statutory silence as preclusion allows courts—not Congress—to reallocate adjudicative authority. Requiring clear statutory text therefore respects both Congress’s power to assign jurisdiction and the judiciary’s duty to apply the law Congress enacted.

IV. THIS CASE IS AN EXCELLENT VEHICLE.

The jurisdictional question was the sole basis for dismissal and the sole question resolved on appeal. The Rule 12(b)(1) challenge was facial, so the courts accepted petitioners’ factual allegations as true. There are no disputed merits findings, exhaustion rulings, damages issues, or alternative holdings that could obstruct review.

The Sixth Circuit expressly applied both steps of *Thunder Basin* and addressed each factor. Respondents acknowledged in writing that the Commission may lack jurisdiction to declare the challenged discrimination unconstitutional; government counsel conceded orally that the Commission would not decide constitutionality and explained that the D.C. Circuit might decide that claim; and respondents separately reserved the right to argue that the Commission lacks jurisdiction over any complaint arising from petitioners’ circumstances. Resp. C.A. Br. 17–18; Oral Arg. Audio 13:57–14:25; Pet. App. 10a–11a n.2; Defs.’ Mot. to Dismiss 6 n.1, R.16, PageID

64. If Congress did not preclude § 1331, reversal would simply restore the district court's authority to adjudicate the pleaded constitutional claim, without requiring this Court to decide the merits. This case therefore squarely presents whether a court may infer that Congress required petitioners to begin before an agency that will not decide the only claim they pleaded, while respondents reserve the right to argue that the agency cannot hear any complaint arising from the facts at all.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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October 2026

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**APPENDIX A — OPINION OF THE UNITED STATES
COURT OF APPEALS FOR THE SIXTH CIRCUIT,
FILED AUGUST 7, 2026**

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 25-3965

CHARLES H. KLEIN, JR.; ANNETTE KLEIN;
ERIC HAVENS; SHANDRA HAVENS,

Plaintiffs-Appellants,

v.

UNITED STATES POSTAL SERVICE; MARY
MITCHELL, POSTMASTER, GEORGETOWN
POST OFFICE, IN HER OFFICIAL CAPACITY;
TERRENCE MANEY, POST OFFICE OPERATIONS
MANAGER, IN HIS OFFICIAL CAPACITY,

Defendants-Appellees.

Argued: July 23, 2026
Decided and Filed: August 7, 2026

Appeal from the United States District Court for the
Southern District of Ohio at Cincinnati.
No. 1:24-cv-00672—Jeffery P. Hopkins, District Judge.

Before: BATCHELDER, MOORE, and
THAPAR, Circuit Judges.

*Appendix A***OPINION**

KAREN NELSON MOORE, Circuit Judge. The United States Postal Service delivers the mail through snow, rain, heat, and gloom of night. It does not, however, deliver directly to certain residential addresses on Hillman Ridge Road in Brown County, Ohio. Unhappy with this situation, Plaintiffs Charles and Annette Klein and their neighbors Eric and Shandra Havens sued in federal district court. Asserting a “class of one” equal-protection claim, they argue that the Postal Service’s failure to deliver the mail to their property violates the Constitution. Because their claim must instead be filed before the Postal Regulatory Commission, we **AFFIRM** the district court’s dismissal of Plaintiffs’ first amended complaint for lack of jurisdiction.

I. BACKGROUND**A. Legal Background**

Our nation’s semiquincentennial came this July 4, but our postal system reached the same milestone almost a year earlier. On July 26, 1775, the Continental Congress established a “[g]eneral post office” under the supervision of Benjamin Franklin, the first Postmaster General. 2 Journals of the Continental Congress 1774-1789, 208-09 (Government Printing Office 1905). Fourteen years later, the Constitution gave Congress the authority “[t]o establish Post Offices and post Roads.” U.S. Const. art. I, § 8, cl. 7. For nearly two centuries, Congress vested in the Post Office Department the responsibility for

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delivering our nation’s mail. *Nat’l Ass’n of Greeting Card Publishers v. U.S. Postal Serv.*, 462 U.S. 810, 813, 103 S.Ct. 2717, 77 L.Ed.2d 195 (1983). This ended with the Postal Reorganization Act of 1970 (“PRA”), Pub. L. No. 91-375, 84 Stat. 719 (1970), which “established the United States Postal Service as an independent agency under the direction of an 11-member Board of Governors.” *Greeting Card Publishers*, 462 U.S. at 813, 103 S.Ct. 2717 (citing 39 U.S.C. §§ 201-02).

The PRA also created the Postal Rate Commission, an independent body with both rulemaking and oversight responsibilities. PRA § 2, 84 Stat. at 759-60 (39 U.S.C. §§ 3601-04).¹ In addition to these responsibilities, the PRA included a provision—codified at 39 U.S.C. § 3662 (entitled “Rate and service complaints”)—creating a procedure for the Rate Commission to hear complaints by “[i]nterested parties who believe the Postal Service is charging rates which do not conform to the policies set out in this title or who believe that they are not receiving postal service in accordance with the policies of this title.” *Id.* at 764 (39 U.S.C. § 3662). On review of such a complaint, the Rate Commission could recommend that the Postal Service’s Board of Governors implement a remedy. *Id.* at 762 (39 U.S.C. § 3625). The Board’s decision whether to adopt that recommendation was then reviewable by appeal to a “court of appeals of the United States.” *Id.* at 763 (39 U.S.C. § 3628).

1. Because § 2 of the PRA encompasses all of the Act’s additions to Title 39, we indicate the corresponding section of code (as enacted) for ease of reference.

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More than three decades later, Congress substantially amended the PRA by passing the Postal Accountability and Enhancement Act of 2006 (“PAEA”), Pub. Law. No. 109-435, 120 Stat. 3198. The PAEA redesignated the Postal Rate Commission as the Postal Regulatory Commission (hereinafter “Commission”). *Id.* § 604, 120 Stat. at 3241-42. The PAEA amended § 3662 as well, with that section now imbuing the Commission with the authority to hear complaints that “the Postal Service is not operating in conformance with the requirements of the provisions of sections 101(d), 401(2), 403(c), 404a, or 601.” 39 U.S.C. § 3662(a). The Commission must act on such a complaint within 90 days by initiating proceedings or dismissing the complaint. *Id.* § 3662(b). If the Commission ultimately “finds the complaint to be justified, it shall order that the Postal Service take such action as the Commission considers appropriate in order to achieve compliance with the applicable requirements and to remedy the effects of any noncompliance.” *Id.* § 3662(c). Either party—the complainant or the Postal Service—may then seek appellate review in the D.C. Circuit, which applies the Administrative Procedure Act’s standards. *Id.* § 3663 (citing 5 U.S.C. § 706). Relevant here, 39 U.S.C. § 403(c) provides that the “Postal Service shall not, except as specifically authorized in this title, make any undue or unreasonable discrimination among users of the mails, nor shall it grant any undue or unreasonable preferences to any such user.” That subsection has remained unchanged since the PRA’s passage. *See* PRA § 2, 84 Stat. at 723 (39 U.S.C. § 403(c)).

*Appendix A***B. Facts and Procedural Background**

Plaintiffs live on Hillman Ridge Road, a single-lane road in Brown County, Ohio. R. 13 (FAC ¶¶ 12-13, 18) (Page ID #49, 50). In 2015, the local Postmaster approved a request to place a mailbox at the end of the Kleins' driveway. *Id.* ¶ 17 (Page ID #50). In 2017, however, the Postal Service stopped delivering to that mailbox. *Id.* ¶¶ 18-20 (Page ID #50-51). The Postmaster explained to the Kleins that the decision to discontinue direct delivery was because of a confrontation between one of Plaintiffs' neighbors and a mail carrier. *Id.* ¶ 18 (Page ID #50). Without direct delivery, Plaintiffs must now travel to a mailbox about half a mile down the road to retrieve letters and five miles into Georgetown, Ohio, for parcels. *Id.* ¶ 20 (Page ID #51).

In summer 2024, a "temporary Postmaster . . . informed Klein that he could restore the mailbox to the end of his driveway," but then retracted this promise after a "carrier refused to travel the subject portion of the road and did not deliver mail to Klein." *Id.* ¶ 24 (Page ID #51-52). "[U]nder duress, Klein moved the mailbox back to the distant location." *Id.* Other services deliver to Plaintiffs' properties, and the Postal Service continues to deliver the mail directly to properties on similar single-lane roads in Brown County. *Id.* ¶¶ 26, 29 (Page ID #52).

Seeking redress, Plaintiffs sued the Postal Service, Georgetown Postmaster Mary Mitchell, and Operations Manager Terrence Maney in federal district court in December 2024. R. 1 (Compl.) (Page ID #1-10). They filed

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their amended complaint, which asserts a “class of one” equal-protection claim, a few months later. R. 13 (FAC ¶¶ 31-35) (Page ID #53). Defendants moved to dismiss for lack of jurisdiction under Federal Rule of Civil Procedure 12(b)(1). R. 16 (Mot. to Dismiss) (Page ID #59-68). The district court, finding that Plaintiffs’ “dispute[] belong[s] exclusively before the Postal Regulatory Commission,” granted the motion. R. 21 (Op. & Order at 10-11) (Page ID #94-95). Plaintiffs timely appealed. R. 23 (Notice of Appeal) (Page ID #97).

II. ANALYSIS

Because Defendants have lodged a facial challenge to the district court’s subject matter jurisdiction, we “treat[] the facts alleged in the complaint as true” and review the district court’s decision de novo. *W6 Rest. Grp., Ltd. v. Loeffler*, 140 F.4th 344, 349 (6th Cir. 2025).

A. The *Thunder Basin* Framework

Plaintiffs allege that the Postal Service violated their constitutional right to equal protection. And, as a general matter, 28 U.S.C. § 1331 “gives district courts authority over constitutional claims.” *Elgin v. Dep’t of Treasury*, 567 U.S. 1, 9, 132 S.Ct. 2126, 183 L.Ed.2d 1 (2012); *see also* 28 U.S.C. § 1331 (“The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.”). Congress may, however, make exceptions to this general grant of jurisdiction, including by “creat[ing] procedures ‘designed to permit agency expertise to be brought to

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bear on particular problems.” *Free Enter. Fund v. Public Co. Acct. Oversight Bd.*, 561 U.S. 477, 489, 130 S.Ct. 3138, 177 L.Ed.2d 706 (2010) (quoting *Whitney Nat’l Bank in Jefferson Parish v. Bank of New Orleans & Tr. Co.*, 379 U.S. 411, 420, 85 S.Ct. 551, 13 L.Ed.2d 386 (1965)). When Congress creates such procedures, they are usually held “to be exclusive.” *Id.* (quoting *Whitney*, 379 U.S. at 420, 85 S.Ct. 551).

To determine whether an administrative review scheme divests a district court of jurisdiction over a constitutional claim, we employ a two-step process. To begin the first step, we consider whether the review scheme would “deny any judicial forum for a colorable constitutional claim,” or whether it “simply channels judicial review of a constitutional claim to a particular court.” *Elgin*, 567 U.S. at 9, 132 S.Ct. 2126 (quoting *Webster v. Doe*, 486 U.S. 592, 603, 108 S.Ct. 2047, 100 L.Ed.2d 632 (1988)). In the former instance, “where Congress intends to preclude judicial review of constitutional claims” *entirely*, “its intent to do so must be clear.” *Id.* (quoting *Webster*, 486 U.S. at 603, 108 S.Ct. 2047). In the latter, we “instead ask[] only whether Congress’ intent to preclude district court jurisdiction [is] ‘fairly discernible in the statutory scheme.’” *Id.* at 9-10, 132 S.Ct. 2126 (quoting *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 207, 114 S.Ct. 771, 127 L.Ed.2d 29 (1994)) (citation modified); *see also Krafstur v. Davenport*, 736 F.3d 1032, 1036 (6th Cir. 2013).

If such intent is fairly discernible, we proceed to step two, at which we consider three questions regarding the particular constitutional or statutory claim at issue:

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(1) whether “a finding of preclusion could foreclose all meaningful judicial review”; (2) whether “the suit is ‘wholly collateral to a statute’s review provisions’”; and (3) whether “the claim[] [is] ‘outside the agency’s expertise.’” *Free Enter. Fund*, 561 U.S. at 489, 130 S.Ct. 3138 (quoting *Thunder Basin*, 510 U.S. at 212-13, 114 S.Ct. 771). These “three considerations[,] . . . commonly known now as the *Thunder Basin* factors,” help courts determine “whether particular claims” concerning agency action are “of the type Congress intended to be reviewed within th[e] statutory structure.” *Axon Enter., Inc. v. Fed. Trade Comm’n*, 598 U.S. 175, 186, 143 S.Ct. 890, 215 L.Ed.2d 151 (2023) (quoting *Thunder Basin*, 510 U.S. at 212, 114 S.Ct. 771). “The first *Thunder Basin* factor recognizes that Congress rarely allows claims about agency action to escape effective judicial review.” *Id.* “The second and third reflect in related ways the point of special review provisions—to give the agency a heightened role in the matters it customarily handles, and can apply distinctive knowledge to.” *Id.*

Two pairs of Supreme Court decisions inform our application of this framework. We first consider *Thunder Basin* and *Elgin*. The former involved a coal company’s challenge to a “Mine Act” requirement that the company provide its employees’ representatives—in this case, non-employee union officials—with access to its workplace. 510 U.S. at 204-05, 114 S.Ct. 771. The company raised both statutory and constitutional objections to the Mine Act and its review scheme, which channeled enforcement challenges through the Federal Mine Safety and Health Review Commission. *Id.* at 205-06, 114 S.Ct. 771. The Court held

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that Congress intended the company’s particular claim to proceed through the agency process, finding that (1) the “petitioner’s statutory and constitutional claims . . . can be meaningfully addressed in the Court of Appeals,” (2) the challenge was not collateral to the issue of the petitioner’s rights and duties under the Mine Act, and (3) “agency expertise [could] be brought to bear” on the questions at issue. *Id.* at 214-15, 114 S.Ct. 771 (quoting *Whitney*, 379 U.S. at 420, 85 S.Ct. 551). *Elgin*, in turn, involved the Civil Service Reform Act’s channeling of certain claims through the Merit Systems Protection Board (“MSPB”), with review by the Court of Appeals for the Federal Circuit. 567 U.S. at 5-6, 132 S.Ct. 2126. The plaintiffs there, men who failed to register for the Selective Service, challenged their dismissals as unconstitutional sex-based discrimination. *Id.* at 6-8, 132 S.Ct. 2126. After finding it “‘fairly discernible’ that Congress precluded district court jurisdiction,” *id.* at 10, 132 S.Ct. 2126, the Court considered the three *Thunder Basin* factors, *id.* at 16-23, 132 S.Ct. 2126. Examining the review scheme in detail, the Court held that (1) the Federal Circuit stood ready to review the plaintiffs’ constitutional claims; (2) the claims were not “wholly collateral” because the “constitutional claims [were] the vehicle by which” the plaintiffs sought “to reverse the removal decisions”; and (3) the issues involved in their claims fell “squarely within the MSPB’s expertise.” *Id.* at 22-23, 132 S.Ct. 2126.

The Supreme Court reached the opposite conclusion in *Free Enterprise Fund* and *Axon*, each of which involved “challenges . . . to the structure or very existence of an agency.” *Axon*, 598 U.S. at 189, 143 S.Ct. 890. Because

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these challenges were “about subjection to an illegitimate proceeding,” post-proceeding judicial review would “come too late to be meaningful.” *Id.* at 191, 143 S.Ct. 890. The nature of the challenge in those cases was therefore also “collateral” because “[t]he parties’ separation-of-powers claims d[id] not relate to the subject of the enforcement actions.” *Id.* at 193, 143 S.Ct. 890. Finally, because the agencies in those cases knew “nothing special about the separation of powers,” the claims clearly fell outside their expertise. *Id.* at 194, 143 S.Ct. 890.

B. Step One

We begin with step one of the analysis, looking to whether the PAEA, “by specifying a different method to resolve claims about agency action,” implicitly supplants § 1331’s grant of jurisdiction. *Axon*, 598 U.S. at 185, 143 S.Ct. 890. To do so, we ask whether it is “fairly discernible” that Congress intended claims within the Commission’s ambit to proceed exclusively through the PAEA’s administrative review scheme. *Elgin*, 567 U.S. at 10, 132 S.Ct. 2126. That is because, as in *Elgin*, the scheme does not completely foreclose judicial review of Plaintiffs’ constitutional claims. *See id.* at 9-10, 132 S.Ct. 2126. A party unhappy with the Commission’s final decision has an unqualified right to seek review in the D.C. Circuit, 39 U.S.C. § 3663, which may decide whether the Commission’s decision was “contrary to constitutional right, power, privilege, or immunity,” 5 U.S.C. § 706(2)(B).²

2. We leave it to the Commission to decide in the first instance whether it may grant Plaintiffs relief on constitutional grounds, or whether it may only apply the framework in 39 U.S.C. § 403(c),

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Upon review of the PAEA’s text, structure, context, and purpose, Congress’s intent to supplant federal district court jurisdiction over those matters expressly placed within the Commission’s purview is fairly discernible.

Text. The PAEA established the Commission as a body of “5 Commissioners, appointed by the President, by and with the advice and consent of the Senate.” 39 U.S.C. § 502. The Commission may consider “[r]ate and service complaints” arising under several statutory provisions, *id.* § 3662(a), including complaints that the Postal Service has engaged in “undue or unreasonable discrimination among users of the mails,” *id.* § 403(c). Once a complaint is filed, the Commission may not dither—it must within 90 days either initiate proceedings or dismiss the complaint, and “issue a written statement setting forth the bases of its determination.” *Id.* § 3662(b). The Commission may appoint from its ranks of its staff and Administrative Law Judges a presiding officer to manage a complaint, 39 C.F.R. § 3010.106, and it has enacted regulations governing the processing of such complaints, *id.* §§ 3022.1-50. The presiding officers are empowered to “administer oaths, examine witnesses, take depositions, . . . receive evidence,” “issue subpoenas,” and “order the taking of depositions.” 39 U.S.C. § 504(f)(1)-(2). If a complaint is ultimately

which prevents “unreasonable discrimination,” to the extent that provision’s protections deviate from the Constitution’s. We note, however, the Postal Service’s concession at oral argument that whether or not the “Commission would opine on whether an act was constitutional or not,” “the D.C. Circuit would indeed have jurisdiction . . . to decide this equal protection class of one claim.” Oral Arg. Audio at 13:57-14:25.

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found “to be justified,” the Commission will require the Postal Service to take remedial action “in order to achieve compliance with the applicable requirements.” *Id.* § 3662(c). After the conclusion of proceedings, any unsatisfied party may petition for review in the D.C. Circuit. *Id.* § 3663.

All this considered, we agree with the D.C. Circuit’s recent holding that this text “contains all the hallmarks of a statutory scheme that precludes district court jurisdiction.” *New York v. Trump*, 181 F.4th 132, 138 (D.C. Cir. 2026). This comprehensive textual channeling of service- and rate-related grievances to the Commission strongly suggests that Congress intended that the Commission’s jurisdiction over such complaints “[is] to be exclusive.” *Free Enter. Fund*, 561 U.S. at 489, 130 S.Ct. 3138 (quoting *Whitney*, 379 U.S. at 420, 85 S.Ct. 551).

Plaintiffs respond by arguing that § 3662(a)’s permissive language, which provides that an aggrieved party “*may* lodge a complaint,” (emphasis added) suggests that Congress intended to allow an aggrieved party the choice between filing a complaint with the Commission or in federal district court. D. 22 (Appellant Br. at 14-15). We disagree, and read the use of “may” as simply indicating that the decision whether or not to file a complaint at all lies with the aggrieved party. The fact that a party “may lodge a complaint” with the Commission does not necessarily mean that it may do so in any other way. This reading is consistent with ordinary English usage. We would not read a sign stating that job applicants “may schedule an interview during a timeslot on Wednesday” as implying

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that they may also schedule interviews on another day or may apply through some other means. And, as the D.C. Circuit noted in addressing the same argument, “other statutory schemes containing similar language” have been “found to preclude district court jurisdiction.” *New York*, 181 F.4th at 139 (citing *Elgin*, 567 U.S. at 12-13, 132 S.Ct. 2126; *Thunder Basin*, 510 U.S. at 207-08, 114 S.Ct. 771; *Miriyeva v. U.S. Citizenship & Immigr. Servs.*, 9 F.4th 935, 939-40 (D.C. Cir. 2021)). The civil-service scheme in *Elgin*, for instance, provides that “[a]n employee . . . *may* submit an appeal to the Merit Systems Protection Board.” 5 U.S.C. § 7701(a) (emphasis added). We cannot agree with Plaintiffs that the similar language here merits a different result.

Structure and context. The Act’s structure and the context in which it was enacted also support our conclusion. To start, 39 U.S.C. § 409(a), which provides for federal district court jurisdiction over actions by or against the Postal Service, limits that jurisdictional grant with the words “[e]xcept as otherwise provided in this title.” This indicates that such exceptions exist in Title 39, or else the qualifying language would be unnecessary surplusage. And Plaintiffs do not identify (nor are we aware of) any other potential limitation apart from the provisions in §§ 3662-63, suggesting that these provisions provide the exception that § 409(a) references.

The interpretive context in which the PAEA was passed likewise demonstrates that §§ 3662-63 are exactly the limitations on jurisdiction Congress had in mind. Under the prePAEA version of the PRA, 39 U.S.C. § 409(a) read:

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“[e]xcept as provided in section 3628 of this title.” PRA § 2, 84 Stat. at 725 (39 U.S.C. § 409(a)). Section 3628, in turn, was the prePAEA provision providing for appellate review of Postal Rate Commission proceedings. *Id.* at 763. This demonstrates an intent to divide potential claims against the Postal Service into two mutually exclusive categories: (1) those which may be filed in federal district court and (2) those which are cognizable on a petition for review in a federal court of appeals. Courts, including ours, therefore interpreted the PRA’s original structure as precluding federal district court jurisdiction over rate- and service-related complaints. *See Enter., Inc. v. Bolger*, 774 F.2d 159, 161-62 (6th Cir. 1985) (per curiam); *Erickson v. U.S. Post Off.*, No. 06-186, 2006 WL 2583158, at *2 (D. Minn. Sep. 7, 2006); *LeMay v. U.S. Postal Serv.*, 450 F.3d 797, 799-801 (8th Cir. 2006); *Bovard v. U.S. Postal Serv.*, No. 94-6360, 1995 WL 74678, at *1, 1995 U.S. App. LEXIS 3846, at *3-4 (10th Cir. Feb. 24, 1995); *Village of Niles v. U.S. Postal Serv.*, No. 84 C 10102, 1985 WL 2900, at *4 (N.D. Ill. Sept. 30, 1985); *Tedesco v. U.S. Postal Serv.*, 553 F. Supp. 1387, 1390 (W.D. Pa. 1983). Our decision in *Enterprise, Inc.* was clear that this logic extended to complaints challenging a “mail rate or classification decision” on constitutional grounds. 774 F.2d at 161-62 (noting that “Congress can require that a constitutional challenge be made only under the special statutory procedure established in an act”).

The PAEA, while expanding the Commission’s authority, changing its name, and specifying the complaints encompassed by § 3662, largely preserved the PRA’s review structure. By retaining—if not strengthening—this scheme, Congress may be presumed to have ratified

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the pre-PAEA judicial consensus. *See Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 239-40, 129 S.Ct. 2484, 174 L.Ed.2d 168 (2009) (“Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change.” (quoting *Lorillard v. Pons*, 434 U.S. 575, 580, 98 S.Ct. 866, 55 L.Ed.2d 40 (1978))). If the PAEA Congress wanted to reopen district courts to cases like Plaintiffs’, it could (and should) have made that clear.

Purpose. The legislative purpose and history underlying the 1970 and 2006 Acts also reveal Congress’s intent that the Commission have exclusive jurisdiction over service- and rate-related complaints. *Elgin*, 567 U.S. at 10, 132 S.Ct. 2126 (“To determine whether it is ‘fairly discernible’ that Congress precluded district court jurisdiction over petitioners’ claims, we examine the CSRA’s text, structure, and purpose.”); *see also Axon*, 598 U.S. at 186, 143 S.Ct. 890 (looking to Congress’s intent). The PRA set up the Postal Service as a self-governing and self-supporting business. *Franchise Tax Bd. v. U.S. Postal Serv.*, 467 U.S. 512, 519-20, 104 S.Ct. 2549, 81 L.Ed.2d 446 (1984). And the PAEA vests in the Commission the day-to-day oversight of that business enterprise. *See* H.R. Rep. No. 109-66, pt. 1, at 52 (2005) (envisioning the Postal Regulatory Commission’s “enhanced authority” to quickly and effectively “respond to complaints of pricing, service, or other actions by the Postal Service in violation of law”); *Enter. Inc.*, 774 F.2d at 161 (reviewing PRA’s legislative history and finding “Congressional intent that even constitutional questions . . . should be raised initially at the agency level”). By allowing for accelerated

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and expert review of rate and service complaints, the PRA and PAEA reduce the litigation burden that might arise from dealing with such matters in federal district court. *See LeMay*, 450 F.3d at 800 (“The PRA’s legislative history shows that, in crafting the Act, Congress intended to minimize external intrusions on the Postal Service’s managerial independence.”). This “integrated scheme of review,” which allows an expert body to deal with complaints covered by § 3662 in the first instance, could “be seriously undermined if, as [Plaintiffs] would have it,” anyone unhappy with their local post office’s operations could elude the Commission’s jurisdiction by framing their complaint in constitutional terms. *Elgin*, 567 U.S. at 14, 132 S.Ct. 2126.

We therefore hold at step one of the *Thunder Basin* framework that the PAEA gives the Commission, not federal district courts, jurisdiction over § 3662 complaints. And because Plaintiffs’ complaint, at bottom, is one alleging “unreasonable discrimination among users of the mails,” 39 U.S.C. § 403(c), it involves the “particular problems” over which the Commission’s “procedures are to be exclusive,” *Free Enter. Fund*, 561 U.S. at 489, 130 S.Ct. 3138 (citation modified).

C. Step Two

Plaintiffs fare no better at step two, because each of the three *Thunder Basin* factors indicates that this particular case belongs before the Postal Regulatory Commission. *First*, “preclusion of district court jurisdiction” will not “foreclose all meaningful judicial review.” *Axon*, 598

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U.S. at 190, 143 S.Ct. 890 (quoting *Thunder Basin*, 510 U.S. at 212-13, 114 S.Ct. 771). Plaintiffs may present their claim to the Postal Regulatory Commission in the form of a complaint that “the Postal Service is not operating in conformance with the requirements of the provisions of section[] . . . 403(c).” 39 U.S.C. § 3662(a). They may incorporate into that complaint their constitutional claim that the Postal Service’s refusal to deliver directly to their addresses violates their right to equal protection. The Commission must then either initiate proceedings on the complaint or dismiss it. *Id.* § 3662(b). If the Commission fails to act on the complaint, dismisses it, or if the proceedings end unfavorably, Plaintiffs may then seek review in the D.C. Circuit, *id.* §§ 3662(b), 3663, which stands ready to consider whether the Commission’s actions were “contrary to constitutional right, power, privilege, or immunity,” 5 U.S.C. § 706(2)(B); *see* 39 U.S.C. § 3663 (incorporating Administrative Procedure Act standard of review); *GameFly, Inc. v. Postal Regul. Comm’n*, 704 F.3d 145, 146 (D.C. Cir. 2013) (requiring Commission to remedy discriminatory Postal Service rates under 39 U.S.C. § 403(c)). There is thus little reason to question the D.C. Circuit’s ability, affirmed by that court’s own recent decision in *New York*, to searchingly review this sort of agency action. 181 F.4th at 139-40.

Second, far from being “wholly collateral to [the] statute’s review provisions,” Plaintiffs’ equal-protection challenge mirrors the type of complaint the Commission is tasked with handling. *Elgin*, 567 U.S. at 15, 132 S.Ct. 2126 (quoting *Free Enter. Fund*, 561 U.S. at 489, 130 S.Ct. 3138). Plaintiffs do not, like the parties in *Free Enterprise*

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Fund or *Axon*, challenge the very authority of the Postal Regulatory Commission to act. *See New York*, 181 F.4th at 141 (holding that claim there was “not like a structural constitutional claim, which would normally be resolved by courts”). Instead, Plaintiffs’ “constitutional claims are the vehicle by which they seek to” litigate their claim that the Postal Service is improperly discriminating against them by failing to deliver down their street—a claim that fits comfortably within § 403(c)’s terms. *Elgin*, 567 U.S. at 22, 132 S.Ct. 2126.

The two claims may in fact be nearly identical. To prevail on a “class of one” equal-protection challenge, Plaintiffs must show that they were “intentionally treated differently from others similarly situated and that there [was] no rational basis for the difference in treatment.” *Village of Willowbrook v. Olech*, 528 U.S. 562, 564, 120 S.Ct. 1073, 145 L.Ed.2d 1060 (2000) (per curiam). This sounds quite a lot like § 403(c)’s prohibition on “unreasonable discrimination among users of the mails.” If anything, the constitutional claim presents a higher hurdle than the equivalent statutory claim, because “a ‘class of one’ theory requires proof of intentional discrimination.” *Fouts v. Warren City Council*, 97 F.4th 459, 470 (6th Cir. 2024). In any event, these similarities demonstrate the logic behind the second *Thunder Basin* factor. Allowing for a “class of one” equal-protection claim to proceed in federal district court simply because a plaintiff claims it is “wholly collateral” to the statutory review scheme could wreak havoc on administrative review schemes everywhere. An enterprising plaintiff could reframe just about any arbitrary-and-capricious challenge or other complaint

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as a claim that an agency treated them differently with no rational basis, *see Olech*, 528 U.S. at 564, 120 S.Ct. 1073, thus circumventing congressional efforts to require agency review.

Third, Plaintiffs’ constitutional claims do not fall outside the Postal Regulatory Commission’s expertise. *See Elgin*, 567 U.S. at 22-23, 132 S.Ct. 2126. To be sure, the Commission is not expert in constitutional law, but neither was the MSPB in *Elgin* or the Federal Mine Safety and Health Commission in *Thunder Basin*. *See id.*; *Thunder Basin*, 510 U.S. at 214-15, 114 S.Ct. 771. Its expertise on matters postal may nevertheless be “brought to bear” on the issues at hand, including whether any rational basis exists for the Postal Service’s refusal to deliver on Hillman Ridge Road. *Elgin*, 567 U.S. at 23, 132 S.Ct. 2126 (quoting *Thunder Basin*, 510 U.S. at 215, 114 S.Ct. 771). That factual question is at the core of determining whether any violation, constitutional or statutory, occurred. In this respect, the Commission “can apply distinctive knowledge” not possessed by federal district courts. *Axon*, 598 U.S. at 186, 143 S.Ct. 890.

All three *Thunder Basin* factors therefore indicate that Plaintiffs’ “claim is ‘of the type’ Congress thought belonged within [the] statutory scheme.” *Axon*, 598 U.S. at 188-89, 143 S.Ct. 890 (quoting *Thunder Basin*, 510 U.S. at 212, 114 S.Ct. 771). This helps explain why courts, including ours, have all held that the Commission has exclusive jurisdiction over claims like Plaintiffs’, even when they are framed as constitutional issues. *See, e.g., Torp v. United States*, No. 21-1422, 2022 U.S. App. LEXIS

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2824, at *5-7 (6th Cir. Jan. 31, 2022) (order); *White v. U.S. Post Off.*, No. 23-1239, 2024 WL 2973705, at *2 (10th Cir. June 13, 2024); *Glover v. Thompson*, No. 20-10313, 2022 WL 2405362, at *3-5 (E.D. Mich. Jan. 11, 2022); *Pep-Wku, LLC v. U.S. Postal Serv.*, No. 1:20-cv-9, 2020 WL 2090514, at *2-3 (W.D. Ky. Apr. 30, 2020); *Powell v. U.S. Postal Serv.*, No. 15-12913-FDS, 2016 WL 409672 at *1-2, 2016 U.S. Dist. LEXIS 12175, at *3-5 (D. Mass. Feb. 2, 2016). We agree with those decisions and hold that a plaintiff bringing a “class of one” equal-protection challenge to the Postal Service’s “services . . . [,] classifications, rates, [or] fees” must do so by filing a complaint with the Commission. 39 U.S.C. §§ 403(c), 3662.

III. CONCLUSION

For these reasons, we AFFIRM the district court’s dismissal of Plaintiffs’ complaint for lack of jurisdiction.

**APPENDIX B — OPINION AND ORDER OF THE
UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF OHIO, WESTERN
DIVISION, FILED OCTOBER 27, 2025**

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Case No. 1:24-cv-00672

CHARLES H. KLEIN, JR., *et al.*,

Plaintiffs,

v.

UNITED STATES POSTAL SERVICE, *et al.*,

Defendants.

Signed October 27, 2025

OPINION AND ORDER

Plaintiffs Charles H. Klein, Jr. and Annette Klein and Eric Havens and Shandra Havens (“Plaintiffs”) all live on a narrow, hard to pass road in rural Brown County, Ohio. Plaintiffs filed this Amended Complaint ostensibly to challenge the mail delivery service they are receiving from the United States Postal Service and the actions of the local mail carriers who deliver mail in Brown County (“Defendants” or the “Postal Service”).

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Before the Court is Defendants’ Motion to Dismiss (Doc. 16). In this action, Plaintiffs request a permanent injunction ordering the Postal Service to deliver mail to their properties, and a declaratory judgment establishing Plaintiffs’ right to have their mail delivered as requested. Am. Compl., Doc. 13, ¶¶ 36-37. The Postal Service and the local officials who deliver the mail in Brown County are asking this Court to dismiss Plaintiffs’ Amended Complaint for lack of subject-matter jurisdiction. Doc. 16, PageID 59. Defendants assert that the Court lacks jurisdiction over Plaintiffs’ Amended Complaint because jurisdiction over service-related discrimination claims against the Postal Service lies exclusively with the Postal Regulatory Commission (hereinafter the “PRC” or “Postal Regulatory Commission” when needed for clarity). *Id.* at PageID 61.

For the reasons that follow, the Court **GRANTS** Defendants’ Motion to Dismiss (Doc. 16) and **DISMISSES** Plaintiffs’ Amended Complaint (Doc. 13).

I. BACKGROUND

This dispute arises from the Postal Service’s refusal to deliver mailed packages directly to Plaintiffs’ rural properties in Brown County, Ohio. *See Am. Compl.*, Doc. 13, ¶¶ 12-13.¹ Neighbors, Plaintiffs Charles and Annette Klein and Eric and Shandra Havens live on Hillman

1. This account of the facts comes from Plaintiff’s Amended Complaint, as the Court must accept Plaintiff’s allegations as true in evaluating a facial attack on subject-matter jurisdiction. *See W6 Rest. Grp., Ltd. v. Loeffler*, 140 F.4th 344, 349 (6th Cir. 2025).

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Ridge Road in Brown County. *Id.* In April 2015, Mr. Klein requested that he be permitted to place his mailbox at the end of his driveway on Hillman Ridge Road; the Postal Service agreed and began delivering mail there. *Id.* ¶ 17. Subsequently, one of Kleins' neighbors got into an altercation with a Postal Service mail carrier while that individual was delivering mail to the Klein's house. *Id.* ¶¶ 18-19. In response, the Postal Service stopped delivering mail to the Klein's Hillman Ridge Road address altogether, instead telling the Kleins that Hillman Ridge Road, near where their property sits, is too narrow and unsafe to travel. *Id.* ¶ 18. Thereafter, Mr. Klein relocated the couple's mailbox 0.4 miles from his property and now collects his mail there. *Id.* ¶ 20. Because packages do not fit in the Kleins' relocated mailbox, they now must undergo the inconvenience of picking up packages at their local post office in Georgetown, Ohio, ten miles from their home.

In September 2024, Mr. Klein made a written request that the Postal Service deliver mail directly to his property, and directly to his neighbors'—the Havens'—property. *Id.* ¶ 5. The Postal Service, however, refused this request. *Id.*

For various reasons, Plaintiffs find this to be unfair. For one, other delivery vehicles, including FedEx and UPS [United Parcel Service] drivers, deliver directly to the Klein property. *Id.* ¶ 23. Further, many other residents of rural Brown County live on roads as narrow as Hillman Ridge Road where the Kleins and Havens reside, yet the Postal Service delivers to them. *Id.* ¶ 25. In fact, the Postal Service delivers mail to properties

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that are more difficult to access, including on roads where there is no designated turn-around point. *Id.* ¶ 29. Additionally, in 2024, a temporary postmaster told Mr. Klein that the Postal Service *would* begin delivering to his property but later changed his position. *Id.* ¶ 24. All-in-all, Plaintiffs believe that the Postal Service is not at all justified in refusing to deliver to their properties and has not adequately explained its decision not to deliver to their properties. *See id.* ¶ 25.

On November 22, 2024, Plaintiffs filed the instant lawsuit. Compl., Doc. 1. Then, on March 9, 2025, they amended their complaint. Doc. 13. On April 3, 2025, Defendants filed the Motion to Dismiss presently under consideration. Doc. 16. As noted, Defendants seek dismissal of the Amended Complaint for lack of subject-matter jurisdiction. *Id.*

II. STANDARD OF REVIEW

“If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.” Fed. R. Civ. P. 12(h)(3). Here, Defendants have challenged the Court’s jurisdiction. When that happens, “the plaintiff has the burden of proving jurisdiction in order to survive the motion.” *Rogers v. Stratton Indus., Inc.*, 798 F.2d 913, 915 (6th Cir. 1986); *Courtney v. Smith*, 297 F.3d 455, 459 (6th Cir. 2002). A dismissal for lack of jurisdiction under Rule 12(b)(1) is typically without prejudice because it “allows for the possibility of repleading the action to bring it within the subject matter jurisdiction of some court.” *Ohio Nat’l Life Ins.*

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Co. v. United States, 922 F.2d 320, 325 (6th Cir. 1990); *see also Derwish v. Deputy Chief Mission, U.S. Embassy in Djibouti*, No. 1:24-cv-709, 2025 WL 2372081, at *2 (S.D. Ohio Aug. 15, 2025).

A challenge to the court’s subject-matter jurisdiction can be either facial or factual. *Id.* “A *facial* attack . . . merely questions the sufficiency of the pleading.” *Id.* To determine whether a complaint withstands a facial attack on jurisdiction, the Court asks whether the complaint “contain[s] non-conclusory facts which, if true, establish that the district court ha[s] jurisdiction over the dispute.” *Carrier Corp. v. Outokumpu Oyj*, 673 F.3d 430, 440 (6th Cir. 2012). Accordingly, when confronted with a facial challenge to jurisdiction the Court “treats the facts alleged in the complaint as true.” *W6 Restaurant Group, Ltd v. Loeffler*, 140 F.4th 344, 349 (6th Cir. June 9, 2025).

“On the other hand, when a court reviews a . . . *factual* attack . . . no presumptive truthfulness applies to the factual allegations.” *Ohio Nat’l Life Ins. Co.*, 922 F.2d at 325. When reviewing a factual attack, the Court has “broad discretion with respect to what evidence to consider in deciding whether subject matter jurisdiction exists, including evidence outside the pleadings.” *W6 Restaurant Group*, 140 F.4th at 349.

Here, Defendants make a facial attack on jurisdiction, contending that this Court has no jurisdiction over Plaintiffs’ Amended Complaint because exclusive jurisdiction lies with the Postal Regulatory Commission. Doc. 16, PageID 62. Accordingly, the Court treats the facts alleged in the Amended Complaint as true.

*Appendix B***III. LAW AND ANALYSIS**

Plaintiffs’ one-count Amended Complaint alleges that Defendants have violated the equal protection clause of the U.S. Constitution by refusing to deliver mail directly to their properties. Doc. 13, PageID 53. Defendants respond that Plaintiffs’ complaint when boiled down to its essentials concerns the Postal Service’s mail delivery, and thus the Postal Regulatory Commission has exclusive jurisdiction over their complaint. Doc. 16, PageID 62-64. Separately, Defendants argue that the Postal Service, as an agency of the federal government, is immune from suit. *Id.* at PageID 65. Plaintiffs respond that “the equal protection [mandate] embedded in the United States Constitution gives rise to a cause of action against [the Postal Service] when [it] arbitrarily and capriciously treats a citizen differently from others similarly situated.” Doc. 17, PageID 71-72. They cite to several cases in which the U.S. Supreme Court concluded that federal courts have jurisdiction to entertain constitutional challenges to actions taken by government officials, including *Village of Willowbrook v. Olech*, 528 U.S. 562, 120 S.Ct. 1073, 145 L.Ed.2d 1060 (2000) and *Bolling v. Sharpe*, 347 U.S. 497, 74 S.Ct. 693, 98 L.Ed. 884 (1954). Doc. 17, PageID 71-76. Plaintiffs also point to *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 144 S.Ct. 2244, 219 L.Ed.2d 832 (2024), which directs courts to “exercise independent judgment in determining the meaning of statutory provisions,” *id.* at 394, 144 S.Ct. 2244, as supporting their contention that this Court has jurisdiction to entertain Plaintiffs’ challenge to the Postal Service’s alleged unfair practices. Doc. 17, PageID 76-77.

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Under 39 U.S.C. § 3662(a), a postal customer who believes the Postal Service is not operating in accordance with certain statutory service requirements “may lodge a complaint with the Postal Regulatory Commission.” *Id.* As every circuit to consider the issue has held, “the remedy provided by section 3662 is exclusive.” *Lemay v. United States Postal Serv.*, 450 F.3d 797, 800 (8th Cir. 2006).² Thus, a postal customer may make a complaint about Postal Service mail delivery practices to the PRC, but federal district courts do not have original jurisdiction over such complaints. *Id.*

Complaints of “unreasonable discrimination” by the Postal Service and of “undue and unreasonable preferences” are considered service complaints and thus are within the *exclusive* jurisdiction of the PRC. *See* 39 U.S.C. § 403(c). A federal district court in Massachusetts, confronted with a similar challenge as the one Plaintiffs present in this case, ably explained the statutory scheme that leads to this conclusion:

By statute, “the United States district courts shall have original but not exclusive jurisdiction” over actions brought against the U.S. Postal

2. *See Pontefract v. Fed. Bureau of Prisons*, No. 23-3142, 2024 WL 5055838, *3 (3d Cir. Dec. 10, 2024) (“Jurisdiction to hear [postal service complaints] lies exclusively with the Postal Regulatory Commission (PRC), with review by the D.C. Circuit.”); *Foster v. Pitney Bowes Corp.*, 549 F. App’x 982, 986 (Fed. Cir. 2013). The Sixth Circuit reached the same conclusion in an unpublished decision. *Torp v. United States*, No. 21-1422, 2022 U.S. App. LEXIS 2824, *5-6 (6th Cir. Jan. 31, 2022).

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Service. 39 U.S.C. § 409(a). That jurisdiction, however, is subject to certain exceptions. *See* 39 U.S.C. §§ 409(a), 3662(a). One of those exceptions concerns matters relating to § 403(c), which provides that “[i]n providing services . . . the Postal Service shall not, except as specifically authorized in this title, make any undue or unreasonable discrimination among users of the mails, nor shall it grant any undue or unreasonable preferences to any such user.” 39 U.S.C. § 403(c). Another exception involves matters relating to § 3661(a), which provides that “[t]he Postal Service shall develop and promote adequate and efficient postal services.” 39 U.S.C. § 3661(a). Complaints under §§ 403(c) and 3661(a) may be lodged with the Postal Regulatory Commission. . . . 39 U.S.C. § 3662(a).

Powell v. United States Postal Serv., No. 15-12913, 2016 WL 409672, at *1, 2016 U.S. Dist. LEXIS 12175, at *3 (D. Mass. Feb. 2, 2016).

The Court concludes that Plaintiffs’ complaint about the Postal Service concerning mail delivery, or the lack thereof, is a service complaint, and thus exclusive jurisdiction over the complaint lies in the Postal Regulatory Commission. To reiterate, Plaintiffs complain that the Postal Service stopped delivering mail to their respective residences. This relates to Postal Service mail delivery, not any other aspect of agency activity. Even though Plaintiffs seek to frame their argument in constitutional terms, *see* Doc. 17, PageID 74, the essence

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of their complaint directly relates to mail service.³ Plaintiffs’ argument that the claim in this case “arises under the Constitution and not under a statute,” *id.*, avoids the central fact of this case, that Plaintiffs’ claim is a direct result of Defendants ceasing mail delivery service to Plaintiffs’ properties. More specifically, Plaintiffs’ complaint is that the Postal Service is affording “undue or unreasonable preferences” to their neighbors. *See* 39 U.S.C. § 403(c). Pursuant to 39 U.S.C. §§ 3662 and 403(c), this complaint belongs before the Postal Regulatory Commission.

Decisions of other courts to confront this sort of challenge brought by parties similarly situated to Plaintiffs are in accord. The court in *Pep-Wku, LLC v. United States Postal Serv.*, No. 1:20-cv-9, 2020 WL 2090514, 2020 U.S. Dist. LEXIS 76257 (W.D. Ky. Apr. 30, 2020), for example, found no subject-matter jurisdiction over the plaintiff landlord’s complaint that the Postal Service stopped sorting mail to be delivered to its tenants. The *Pep-Wku, LLC* court determined that this was a mail service complaint, so it belonged before the PRC.

3. Supporting this point, Plaintiffs’ Response (Doc. 17) frequently mentions “service.” It asserts “a claim for unconstitutional deprivation of equal protection of the law” stemming from Defendants’ refusal to “*serve* [Plaintiffs’] although other similar situated residents in the same county receive USPS mail *service* at their properties . . .” Doc. 17, PageID 71 (emphasis added). “It was only after USPS had a confrontation . . . that USPS terminated [Plaintiffs’] *service* for pretextual reasons[.]” *Id.* (emphasis added). “In 2024, the temporary Postmaster informed [Plaintiffs’] that he could restore mail delivery *service* to [Plaintiffs’] property . . .” *Id.* (emphasis added).

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Likewise, in *Torp v. United States*, the Sixth Circuit, in an unpublished opinion, affirmed a district court's decision finding no subject-matter jurisdiction over a post office's refusal to allow a mail service customer to use general delivery service.⁴ *Torp v. United States*, No. 21-1422, 2022 U.S. App. LEXIS 2824 (6th Cir. Jan. 31, 2022). And in *Powell*, similar to *Pep-Wku, LLC*, the court concluded it did not have jurisdiction over plaintiff's complaint that her local post office refused to allow her to use general delivery service. *Powell*, 2016 WL 409672, at *2, 2016 U.S. Dist. LEXIS 12175, at *5. In each of the cases cited, the courts all came to the same conclusion that the complaints raised by the plaintiffs related to mail delivery service and belonged before the PRC.

Finally, the case of *Hollander v. United States Postal Serv.*, No. 88-2497, 1988 WL 138754, 1988 U.S. Dist. LEXIS 14370 (D. Mass. Dec. 20, 1988), involves facts near-identical to this one. There, the court found no subject-matter jurisdiction: plaintiff complained that he should receive mail delivery to his door rather than curbside. Similarly, in *Bovard v. United States Post Office*, No. 94-6360, 1995 WL 74678, 1995 U.S. App. LEXIS 3846 (10th Cir. Feb. 24, 1995) (unpublished), the Tenth Circuit concluded there was no subject-matter jurisdiction where plaintiff claimed that switching his mail service from morning delivery to afternoon delivery was "unreasonable discrimination." *Id.* at *1, 1995 U.S. App. LEXIS 3846 at

4. "General delivery service permits a person to receive mail addressed merely to his or her name, with the designation, General Delivery, [City Name]." *Currier v. Potter*, 379 F.3d 716, 722 (9th Cir. 2004).

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*2. *See also Shelby Resources, Inc. v. United States Postal Service*, 619 F. Supp. 1546, 1549 (S.D.N.Y. 1985) (holding court lacked subject-matter jurisdiction over complaint of late mail delivery); *Tedesco v. United States Postal Service*, 553 F. Supp. 1387 (W.D. Pa. 1983) (holding the district court lacked subject-matter jurisdiction over a complaint regarding the failure by the Postal Service to establish post office in a certain Pennsylvania township).

Plaintiffs give the Court no reason to depart from this well-established authority. Rather than contesting that their complaint is about the Postal Service's mail delivery, they argue that the authority of the PRC "is limited, is technical, and does not include adjudicating constitutional claims." Doc. 17, PageID 70. They further argue that 39 U.S.C. § 3662 does not apply to their claim because that statute provides that the PRC has jurisdiction over certain statutory claims against the Postal Service but makes no mention of constitutional claims against Postal Service. Doc. 17, PageID 73-74 ("Whether or not the Plaintiffs have an alternative statutory claim under 39 U.S.C. 3662, Congress did not, and cannot, divest Plaintiffs of access to this Court for their claim *arising under the Constitution*."). *See also id.* at 76 ("USPS's Motion to Dismiss only discusses a hypothetical *statutory* claim but not the actual *constitutional* claim Klein filed in the Amended Complaint."). But in fact, Congress did exactly that in enacting the statutory scheme at issue here. It divested this Court of jurisdiction over Plaintiffs' claim.

Importantly, Plaintiffs cannot "avoid the PRC's exclusive jurisdiction over commonplace service complaints

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through artful pleading.” *LeMay*, 450 F.3d at 801. When evaluating a motion to dismiss for lack of subject-matter jurisdiction, the Court must accept all factual allegations as true but need not accept plaintiff’s “conclusory legal allegations.” *Thomas v. Toms King (Ohio II), LLC*, 997 F.3d 629, 634 (6th Cir. 2021). Thus, the Court accepts as true the facts in Plaintiffs’ Amended Complaint—including that the Postal Service delivers mail curbside to Plaintiffs’ rural neighbors but not to them—but need not accept as true Plaintiffs’ legal contention that this presents a constitutional wrong. Plaintiffs’ complaints are fundamentally complaints about Postal Service mail delivery service, so Plaintiffs exclusive recourse is through the Postal Regulatory Commission. *See LeMay*, 450 F.3d at 800.⁵

Additionally, the Court notes that its dismissal of Plaintiffs’ Amended Complaint will be **WITHOUT PREJUDICE** because it does not adjudicate the merits of the underlying complaint. *Ohio Nat’l Life Ins. Co.*, 922 F.2d at 325 (“A dismissal under [Federal Rule of Civil Procedure] 12(b)(1) allows for the possibility of repleading the action to bring it within the subject matter jurisdiction of some court.”).

In closing, the Court offers as an explanation one last quotation from another district court which had previously considered this issue when a disgruntled patron of the

5. In *Torp*, the Sixth Circuit affirmed a district court dismissal of a Postal Service mail delivery-related complaint for lack of jurisdiction, despite plaintiff arguing that his claims “raise[d] constitutional issues.” *Torp*, 2022 U.S. App. LEXIS 2824, at *6.

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Postal Service sought in federal court to challenge the way they had been receiving mail:

[N]ot every wrongful omission or failure on the part of the government bureaucracy can be redressed in the United States District Court. The Executive Branch, and also the Legislative Branch in its legislative oversight activities, each bear a great responsibility for the quality and the equality of such services, and in the final analysis performance of governmental services in a fair and equal manner rests essentially on the sense of duty and moral obligation of those men and women who actually render the service.

Shelby Resources, Inc., 619 F. Supp. at 1547.

IV. CONCLUSION

It is a well-entrenched rule that complaints about mail service delivery by the Postal Service do not rise to the level of a violation of a protection available to citizens under the U.S. Constitution. These disputes belong exclusively before the Postal Regulatory Commission. Plaintiffs' Amended Complaint in the instant case equates to just that—grievances about the quality and equality of the service they are receiving from the men and women who work at the Postal Service in rural Brown County, Ohio charged with delivering mail to them. Plainly stated, this Court has no jurisdiction over this dispute. Plaintiffs' grievances with the quality of their mail service may very

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well have legitimacy, and they may very well be entitled to some form of relief, but the proper forum for them to pursue these claims is not here—a district court, with very limited jurisdiction—but rather as dictated by Congress—the Postal Regulatory Commission. Accordingly, the Court **GRANTS** Defendants’ Motion to Dismiss (Doc. 16) and **DISMISSES** Plaintiffs’ Amended Complaint (Doc. 13) without prejudice. The Clerk is directed to **TERMINATE** this matter from the Court’s docket.

IT IS SO ORDERED.

October 27, 2025

s/ Jeffery P. Hopkins
Jeffery P. Hopkins
United States District Judge

**APPENDIX C — CONSTITUTIONAL AND
STATUTORY PROVISIONS INVOLVED**

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

* * *

*Appendix C***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) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

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(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

*Appendix C***39 U.S.C. § 403—General duties**

(a) The Postal Service shall plan, develop, promote, and provide adequate and efficient postal services at fair and reasonable rates and fees. The Postal Service shall receive, transmit, and deliver throughout the United States, its territories and possessions, and, pursuant to arrangements entered into under sections 406 and 411 of this title, throughout the world, written and printed matter, parcels, and like materials and provide such other services incidental thereto as it finds appropriate to its functions and in the public interest. The Postal Service shall serve as nearly as practicable the entire population of the United States.

(b) It shall be the responsibility of the Postal Service—

(1) to maintain an efficient system of collection, sorting, and delivery of the mail nationwide;

(2) to provide types of mail service to meet the needs of different categories of mail and mail users; and

(3) to establish and maintain postal facilities of such character and in such locations, that postal patrons throughout the Nation will, consistent with reasonable economies of postal operations, have ready access to essential postal services.

(c) In providing services and in establishing classifications, rates, and fees under this title, the Postal Service shall not, except as specifically authorized in this

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title, make any undue or unreasonable discrimination among users of the mails, nor shall it grant any undue or unreasonable preferences to any such user.

* * *

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39 U.S.C. § 409(a)

(a) Except as otherwise provided in this title, the United States district courts shall have original but not exclusive jurisdiction over all actions brought by or against the Postal Service. Any action brought in a State court to which the Postal Service is a party may be removed to the appropriate United States district court under the provisions of chapter 89 of title 28.

*Appendix C***39 U.S.C. § 3662—Rate and service complaints****(a) IN GENERAL.—**

Any interested person (including an officer of the Postal Regulatory Commission representing the interests of the general public) who believes the Postal Service is not operating in conformance with the requirements of the provisions of sections 101(d), 401(2), 403(c), 404a, or 601, or this chapter (or regulations promulgated under any of those provisions) may lodge a complaint with the Postal Regulatory Commission in such form and manner as the Commission may prescribe.

(b) PROMPT RESPONSE REQUIRED.—

(1) IN GENERAL.—The Postal Regulatory Commission shall, within 90 days after receiving a complaint under subsection (a)—

(A) either—

(i) upon a finding that such complaint raises material issues of fact or law, begin proceedings on such complaint; or

(ii) issue an order dismissing the complaint; and

(B) with respect to any action taken under subparagraph (A)(i) or (ii), issue a written statement setting forth the bases of its determination.

*Appendix C***(2) TREATMENT OF COMPLAINTS NOT TIMELY ACTED ON.—**

For purposes of section 3663, any complaint under subsection (a) on which the Commission fails to act in the time and manner required by paragraph (1) shall be treated in the same way as if it had been dismissed pursuant to an order issued by the Commission on the last day allowable for the issuance of such order under paragraph (1).

(c) ACTION REQUIRED IF COMPLAINT FOUND TO BE JUSTIFIED.—

If the Postal Regulatory Commission finds the complaint to be justified, it shall order that the Postal Service take such action as the Commission considers appropriate in order to achieve compliance with the applicable requirements and to remedy the effects of any noncompliance (such as ordering unlawful rates to be adjusted to lawful levels, ordering the cancellation of market tests, ordering the Postal Service to discontinue providing loss-making products, or requiring the Postal Service to make up for revenue shortfalls in competitive products).

(d) AUTHORITY TO ORDER FINES IN CASES OF DELIBERATE NONCOMPLIANCE.—

In addition, in cases of deliberate noncompliance by the Postal Service with the requirements of this title, the Postal Regulatory Commission may order, based on the nature, circumstances, extent, and seriousness of the noncompliance, a fine (in the amount specified

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by the Commission in its order) for each incidence of noncompliance. Fines resulting from the provision of competitive products shall be paid from the Competitive Products Fund established in section 2011. All receipts from fines imposed under this subsection shall be deposited in the general fund of the Treasury of the United States.

* * *

*Appendix C***39 U.S.C. § 3663—Appellate review**

A person, including the Postal Service, adversely affected or aggrieved by a final order or decision of the Postal Regulatory Commission may, within 30 days after such order or decision becomes final, institute proceedings for review thereof by filing a petition in the United States Court of Appeals for the District of Columbia. The court shall review the order or decision in accordance with section 706 of title 5, and chapter 158 and section 2112 of title 28, on the basis of the record before the Commission.

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