No.

In the Supreme Court of the United States

CUSTODIA BANK, INC., PETITIONER

v.

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

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Monetary Control Act, which states that the Federal Reserve "shall" provide its services to legally eligible nonmember depository institutions, 12 U.S.C. 248a(c)(2), gives presidents of regional Federal Reserve Banks discretionary authority to deny master accounts to such institutions.

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT

Petitioner is Custodia Bank, Inc. Petitioner has no parent corporation, and no publicly held company owns 10% or more of its stock.

Respondents are the Federal Reserve Board of Governors and the Federal Reserve Bank of Kansas City.

RELATED PROCEEDINGS

United States District Court (D. Wyo.):

Custodia Bank, Inc. v. *Federal Reserve Board of Governors, et al.*, Civ. No. 22-125 (Mar. 29, 2024)

United States Court of Appeals (10th Cir.):

Custodia Bank, Inc. v. *Federal Reserve Board of Governors, et al.*, No. 24-8024 (Oct. 31, 2025)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Miscellaneous—continued:

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PETITION FOR A WRIT OF CERTIORARI

Custodia Bank, Inc., respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-71a) is reported at 157 F.4th 1235. The opinion of the district court (App., *infra*, 72a-101a) is reported at 728 F. Supp. 3d 1227.

JURISDICTION

The judgment of the court of appeals was entered on October 31, 2025. A petition for rehearing was denied on March 13, 2026 (App., *infra*, 102a-103a). On May 29, 2026, Justice Gorsuch extended the time within which to file a petition for a writ of certiorari to and including July 11, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 248a of Title 12 of the United States Code provides in relevant part:

> (a) Publication of pricing principles and proposed schedule of fees; effective date of schedule of fees
>
> Not later than the first day of the sixth month after March 31, 1980, the Board shall publish for public comment a set of pricing principles in accordance with this section and a proposed schedule of fees based upon those principles for Federal Reserve bank services to depository institutions, and not later than the first day of the eighteenth month after March 31, 1980, the Board shall begin to put into effect a schedule of fees for such services which is based on those principles.
>
> (b) Covered services
>
> The services which shall be covered by the schedule of fees under subsection (a) are—
>
> (1) currency and coin services;
>
> (2) check clearing and collection services;
>
> (3) wire transfer services;
>
> (4) automated clearinghouse services;
>
> (5) settlement services;
>
> (6) securities safekeeping services;
>
> (7) Federal Reserve float; and

> (8) any new services which the Federal Reserve System offers, including but not limited to payment services to effectuate the electronic transfer of funds.
>
> (c) Criteria applicable
>
> The schedule of fees prescribed pursuant to this section shall be based on the following principles:
>
> * * *
>
> (2) All Federal Reserve bank services covered by the fee schedule shall be available to nonmember depository institutions and such services shall be priced at the same fee schedule applicable to member banks, except that nonmembers shall be subject to any other terms, including a requirement of balances sufficient for clearing purposes, that the Board may determine are applicable to member banks. * * *

Section 342 of Title 12 of the United States Code provides in relevant part:

> Any Federal reserve bank may receive from any of its member banks, or other depository institutions, and from the United States, deposits of current funds in lawful money[.] * * *

STATEMENT

This case presents an exceptionally important question: whether the unappointed officials heading regional Federal Reserve Banks can, in disregard of a clear statutory command, deny master accounts to eligible banks and thereby override state bank-chartering decisions by depriving banks of essential payment services.

To move money from place to place, an American bank must hold a "master account" with the Federal Reserve. A master account is the bank's own bank account with the Federal Reserve, and it is required in order to access the

Fed's payment services. A master account is indispensable for a bank's day-to-day operations, and refusing to open a master account effectively excludes the bank from the American payment system.

A federal statute, the Monetary Control Act, leaves the regional Federal Reserve Banks no discretion about opening master accounts for eligible state-chartered banks: it instructs that the Fed "shall" make its payment services accessible to eligible banks. Until recently, the Fed followed that instruction, granting every eligible bank a master account. In recent years, however, regional Federal Reserve Banks began to cut off access to the Fed's services for disfavored state-chartered banks by denying their master-account applications. The regional Federal Reserve Bank presidents who review master-account applications are purporting to exercise plenary power, with no judicial review, over whether a bank that has already received a charter from its State can continue effectively to function.

Over a powerful dissent, the court of appeals in this case blessed that extraordinary exercise of boundless authority. But nothing in the United States Code gives regional bank presidents the discretion to deny master accounts to legally eligible banks. To the contrary, the key statutory language plainly provides that all of the Fed's payment services "*shall* be available." The court of appeals' contrary reading goes badly astray by reading that command as a non-command. Correcting that reading is exceptionally important in light of the Fed's unique independence from presidential control. Further raising the stakes, that reading creates serious constitutional concerns by conferring such expansive power on regional bank presidents, who are not appointed as either principal or inferior officers under Article II of the Constitution. The decision below also tramples on the rights of the

States to charter their own banks by giving the Fed an effective veto over their decisions. If decision below is allowed to stand, courts will need to confront those thorny constitutional questions; reversing it avoids that eventuality.

Petitioner is a Wyoming-chartered bank that serves cryptocurrency companies. Wyoming has long strived to become the center of the Nation's crypto industry and has enacted a robust regulatory scheme that authorizes banks such as petitioner to be chartered. But the president of the Kansas City Fed disagreed with Wyoming's policy choice. As he saw it, petitioner's novel business design made it unworthy of access to the Federal Reserve's payment services. Accordingly, he denied petitioner a master account.

The question presented in this case is whether regional Federal Reserve Bank presidents possess unbounded discretionary authority to deny master accounts to eligible banks. As Judge Tymkovich urged in his dissent below, the "constitutional ramifications of allowing unappointed bank officials to wield such significant and unreviewable executive authority are too weighty to brush aside." App., *infra*, 104a. And the "implications for the continuing viability of our state-federal dual banking system carry exceptional importance." *Ibid.*

It is no accident that this case has been closely watched by the entire financial services industry. This case is an ideal vehicle for the Court's review, and it presents the Court with the opportunity to rein in the Fed's abuse of its authority. The petition for a writ of certiorari should be granted.

A. Background

1. "[S]ince the early days of our Republic, the States have chartered banks and have actively regulated their activities." *Lewis* v. *BT Investment Managers, Inc.*, 447 U.S. 27, 38 (1980). Indeed, "during most of the first century of our Nation's history * * * state-chartered banks were the norm and federally chartered banks an exception." *Atherton* v. *FDIC*, 519 U.S. 213, 221 (1997). It was only in 1863 that the National Bank Act created today's dual banking system, "made up of parallel federal and state banking systems." *Cantero* v. *Bank of America, N.A.*, 602 U.S. 205, 209-210 (2024). Today, national banks are chartered by the Office of the Comptroller of the Currency and "are subject primarily to federal oversight and regulation." *Id.* at 210; see *Lacewell* v. *Office of Comptroller of Currency*, 999 F.3d 130, 135 (2d Cir. 2021). State-chartered banks are primarily subject to state regulation. See *Cantero*, 602 U.S. at 210; *Lacewell*, 999 F.3d at 135.

2. a. The Federal Reserve System, commonly known as the "Federal Reserve" or "Fed," consists of a seven-member Board of Governors; twelve regional Federal Reserve Banks; and the Federal Open Market Committee. The Board of Governors is the governing body of the Federal Reserve, overseeing certain operations of the twelve regional banks and ensuring that the Fed fulfills its responsibilities under the Federal Reserve Act. Members of the Board of Governors enjoy for-cause removal protection. App., *infra*, 5a; 12 U.S.C. 225a; *Trump* v. *Cook*, No. 25A312 (June 29, 2026), slip op. 6.

Of particular relevance here, the Fed operates much of our Nation's payment infrastructure, including its wire-transfer and electronic-payment networks. Financial institutions rely on the Fed's payment system to move money between themselves, a requirement for many day-to-day transactions. For example, the Fed's services allow companies to deposit their employees' paychecks directly. As of 2024, the Fed processed more than $4.5 trillion in payments per day. App., *infra*, 5a, 48a.

The twelve regional Federal Reserve Banks provide essential financial services to depository institutions within their districts, essentially acting as a "bank for banks." App., *infra*, 5a. The Reserve Banks are "privately owned (and operated) by the commercial banks of the area." *Cook*, slip op. 5. Each bank has a board of directors and a president, who runs the day-to-day operations. The board of directors consists of nine members, divided into three classes. Classes A and B of the directors are chosen by each respective regional bank's member banks—state and national banks who own stock in their regional banks. Class C is chosen by the Board of Governors. See 12 U.S.C. 302; *The Fed Explained: What the Central Bank Does* 9-10 (11th ed. 2021) (*Fed Explained*). The presidents of the Reserve Banks are elected by Classes B and C of the directors, subject to the Board of Governors' approval. See 12 U.S.C. 341.

b. To use the Fed's payments services, a depository institution must deposit funds in a "master account" with its regional Federal Reserve Bank. App., *infra*, 7a. A master account is essential; without it, a bank cannot directly transfer funds electronically, making it "nothing more than a vault." *Fourth Corner Credit Union* v. *Federal Reserve Bank of Kansas City*, 861 F.3d 1052, 1053 (10th Cir. 2017) (opinion of Moritz, J.). Put simply, a bank without a master account "can't really function as a financial institution." Peter Conti-Brown, *The Fed Wants to Veto State Banking Authorities. But is That Legal?*, Brookings (Nov. 14, 2018) <tinyurl.com/vetostatebanking>.

No statute expressly authorizes the Federal Reserve to offer master accounts. Rather, the Fed created those accounts in 1998 as the gateway to its services. It did so pursuant to its statutory authority to take deposits and provide services. App., *infra*, 8a n.4; 12 U.S.C. 342.

3. The Monetary Control Act of 1980 (MCA), Pub. L. No. 96-221, 94 Stat. 132, governs the functioning of the Federal Reserve System. The MCA instructs the Federal Reserve Board to set a fee schedule for the services it provides and requires that those services "shall be available to nonmember depository institutions" and "shall be priced at the same fee schedule applicable to member banks." 12 U.S.C. 248a(c)(2). The phrase "nonmember depository institution" includes "any bank which is eligible" for FDIC insurance but is not a member of the Federal Reserve System. 12 U.S.C. 461(b)(1)(A)(i). "Member banks" are banks—whether chartered nationally or by a State—that have completed the requirements for, and been accepted into, membership by one of the regional reserve banks. 12 U.S.C. 221. They "own shares of a Federal Reserve Bank and elect most members of the board of directors." *Fourth Corner*, 861 F.3d at 1068 n.7 (opinion of Bacharach, J.).

B. Facts And Procedural History

1. Cryptocurrency is a digital or virtual currency that can be exchanged to make sales and purchases. See Paul Tierno, Congressional Research Service, R48963, *Cryptocurrency: Regulatory and Legislative Policy Issues* 1 (May 29, 2026). Unlike traditional currency, cryptocurrency is not issued by any bank or central authority. See *Cryptocurrency*, Black's Law Dictionary (12th ed. 2024). Rather, cryptocurrency is an "open-source, math-based, peer to peer" currency that has "no central monitoring or oversight." Financial Action Task Force, *FATF Report:*

Virtual Currencies: Key Definitions and Potential AML/CFT Risks 5 (2014) <tinyurl.com/FTAFVirtual-Currencies>. Proponents argue that cryptocurrency's unique benefits include "the ability to make transfers without an intermediary and without geographic limitation," as well as "lower transaction costs compared to other forms of payment." *Virtual Currencies: The Oversight Role of the U.S. Securities and Exchange Commission and the U.S. Commodity Futures Commission: Hearing Before the S. Comm. on Banking, Housing, and Urban Affairs*, 115th Cong., 2d Sess. 176 (2018) (statement of Jay Clayton, Chairman, Securities and Exchange Commission). The White House has touted cryptocurrency as "play[ing] a crucial role in innovation and economic development in the United States." President's Working Group on Digital Asset Markets, *Strengthening American Leadership in Digital Financial Technology* (July 2025) <tinyurl.com/WHDigitalAssets> (White House Working Group).

The States, as the primary regulators of state banks, have taken divergent approaches to cryptocurrency. See Joseph Jasperse, *50-State Review of Cryptocurrency and Blockchain Regulation*, Wharton Initiative on Financial Policy and Regulation <tinyurl.com/StateCryptoReview> (last updated Feb. 2023). As relevant here, Wyoming has promoted itself as a home for the crypto industry and has actively sought investment by digital asset firms. See *Wyoming Wants to Become America's Crypto Capital*, The Economist (Sept. 14, 2023) <tinyurl.com/WYcryptocapital>. To encourage that investment, Wyoming created a tailored regulatory regime for banks servicing digital asset companies. See 2019 Wyo. Sess. Laws ch. 92, § 1(a)(viii). Buoyed by its comprehensive legal framework for digital assets, Wyoming has become

"America's leading crypto hub." Vishal Chawla, *How Wyoming Became a Crypto Hub*, CryptoBriefing (Sept. 11, 2021) <tinyurl.com/WYcryptohub>.

2. Petitioner is a depository institution that primarily serves digital asset companies. App., *infra*, 9a. It is headquartered in Cheyenne, Wyoming, and holds a Wyoming Special Purpose Depository Institution charter. *Ibid.* That charter authorizes petitioner to "[p]rovide payment services" and "[c]arry on a nonlending banking business." Wyo. Stat. Ann. § 13-12-103(b)(iv), (v) (2026). Petitioner's business strategy is to "provide traditional banking services to digital asset companies." App., *infra*, 50a (Tymkovich, J., dissenting).

In 2020, petitioner applied for a master account with the Federal Reserve Bank of Kansas City. C.A. App. 87. The Kansas City Fed told petitioner it "was legally eligible" for the account and that "there were 'no showstoppers' with its application." App., *infra*, 10a. In internal memorandums, the Kansas City Fed's staff deemed petitioner's capital "adequate" and its liquidity risk "low," while praising its "strong" risk management and "impressive" executive team. C.A. App. 693-694.

Although Reserve Banks "typically move[] quickly on master account applications," the Kansas City Fed "sat on [petitioner's] for years." App., *infra*, 105a (Tymkovich, J., dissenting from the denial of rehearing en banc). In 2023, the Kansas City Fed denied petitioner's application. C.A. App. 1947, 1949-1955. In a letter, the Kansas City Fed's president explained that petitioner's application was denied because the Fed has "concerns with business models that are concentrated in crypto-asset-related activities or have concentrated exposures to the crypto-asset sector." *Id.* at 1949.

3. Petitioner sued respondents, the Fed's Board of Governors and the Kansas City Fed, in the United States

District Court for the District of Wyoming. App., *infra*, 12a-14a.[*] Petitioner brought claims under the Administrative Procedure Act, the Mandamus Act, and the Declaratory Judgment Act, contending that, under the MCA, the Kansas City Fed lacked discretion to deny its master-account application. *Ibid.*

4. The district court granted respondents' motion for summary judgment. App., *infra*, 72a-101a. The court interpreted the MCA to mean that Reserve Banks "'may' open [master] accounts, not that they shall." *Id.* at 97a (citation omitted). In so doing, the district court expressly "deviate[d]" from Judge Bacharach's contrary opinion in *Fourth Corner*. See *id.* at 92a.

5. A divided panel of the court of appeals affirmed. App., *infra*, 1a-44a.

The majority held that, under the Federal Reserve Act, the regional Reserve Banks possessed "discretionary authority" over an eligible depository institution's application. App., *infra*, 26a-27a (citing 12 U.S.C. 342). The majority was not persuaded by the MCA's mandate that all services "shall" be available to nonmember depository institutions—a category that undisputedly includes petitioner—because, in its view, that Act was "concerned with * * * the [Reserve Banks'] *pricing* of services," rather than their *provision* of services. *Ibid.* (emphasis added) (citing 12 U.S.C. 248a).

Judge Tymkovich dissented. App., *infra*, 45a-71a. He explained that, by its plain text, the MCA—which directs the Fed to "provide universal access" to banking services to eligible depository institutions "at equal prices"—

[*] Petitioner first filed suit after its application had been pending for 19 months, seeking to compel the Kansas City Fed to act. App., *infra*, 12a. When the Kansas City Fed denied the application, Custodia filed an amended complaint challenging the denial. *Id.* at 14a.

stripped the Reserve Banks of any authority to deny petitioner access to a master account. *Id.* at 54a-61a. The majority's contrary position, he added, raised "constitutional concerns" that the court was "bound to avoid." *Id.* at 68a. By granting presidents of the Reserve Banks "unreviewable discretion" over master-account applications such as petitioner's, the majority's interpretation gave Reserve Bank presidents "significant authority," which made them "officers of the United States"—raising "thorny questions" under Article II of the Constitution about the constitutionality of their appointment and removal. *Id.* at 68a-71a. Noting the Fed's unique position in the federal government, Judge Tymkovich warned that the institution "would be wise not to expand its power beyond its historical limits." *Id.* at 70a.

Judge Tymkovich further explained that giving the Reserve Banks discretion to deny master-account applications was not necessary to avoid excessive risk from problematic applicants. Rather, the Fed could address that "policy concern[]" through other tools: for instance, limits on an applicant's total deposits or size of transfers. App., *infra*, 67a. Judge Tymkovich noted that those tools had worked in the past, as the Fed had successfully "managed risky banks" for decades before it claimed to possess full discretion to deny master-account access. *Ibid.*

c. The court of appeals denied the petition for rehearing en banc. App., *infra*, 102a-103a. Of the ten judges who participated in the en banc vote, three (Judges Hartz, Tymkovich, and Eid) indicated they would have granted the petition. *Ibid.*

Judge Tymkovich, joined by Judge Eid, filed an opinion dissenting from the denial of rehearing. App., *infra*, 104a-113a. He reiterated that the denial of a master account is "akin to a death sentence" for a bank. *Id.* at 105a.

He emphasized that the statute's plain text and the principle of constitutional avoidance supported reading the MCA to deprive the Reserve Banks of discretion to deny master-account access to eligible banks. *Id.* at 106a-107a, 110a-111a. And he spelled out the far-reaching implications of the court's opinion: by giving the Reserve Banks unbounded discretion over master-account access, the court "effectively hand[ed] the Reserve Banks a veto over [S]tates' chartering power," threatening the "continuing viability of our state-federal dual banking system." *Id.* at 104a. The "constitutional ramifications" and practical "implications" of that result, Judge Tymkovich concluded, "carry exceptional importance" and are "too weighty to brush aside." *Ibid.*

REASONS FOR GRANTING THE PETITION

This case presents an exceptionally important question: whether regional Federal Reserve Bank presidents possess unbounded, unreviewable discretion to deny disfavored banks access to the Federal Reserve's payment services. The Fed's aggregation of such enormous power in its unappointed regional bank presidents flouts statutory text and has stark implications for its power vis-à-vis the President; for the constitutionality of the Fed's appointment structure; and for the continued viability of the States' historical prerogative to charter banks and regulate local banking. Although no circuit conflict has yet developed, the question has engendered deep division among diverse judges who take diametrically different views of the statutory question. The stakes are monumental, but the opportunities for this Court's review are scarce. It is a massive undertaking for a bank laboring under a death sentence to litigate the issue all the way to the Court, and there is unlikely to be another opportunity like this one in the foreseeable future. Without the

Court's intervention here, the Fed's flouting of the statutory constraints on its authority will continue indefinitely.

The Court should not let the Fed's power grab go unchecked. The arguments on both sides of the question presented have been fully aired in the lower courts; the court below erred in interpreting the relevant statutory provisions; and this Court's resolution of the question presented is urgently needed. The petition for a writ of certiorari should be granted.

A. The Decision Below Is Incorrect

The Monetary Control Act requires regional Federal Reserve Banks to provide access to the Fed's payment services to legally eligible nonmember depository institutions. A master account is required for depository institutions to access the Fed's services. It follows that the regional banks must issue master accounts to all eligible nonmember institutions. In the decision below, however, the court of appeals held that regional bank presidents have unfettered discretion to deny master accounts to eligible nonmember banks. As a variety of jurists and scholars (including Judge Tymkovich in his dissent below) have recognized, that holding is incorrect.

1. The plain text of the MCA requires regional banks to grant master-account access to all eligible nonmember banks.

a. The MCA instructs the Board to develop a fee schedule for certain "payment services." 12 U.S.C. 248a(b). It then includes a command as to how to provide and price those services: "All Federal Reserve bank services covered by the fee schedule shall be available to nonmember depository institutions and such services shall be priced at the same fee schedule applicable to member banks." 12 U.S.C. 248a(c)(2). That language imposes a nondiscretionary duty on a regional bank to provide a master account to any nonmember depository institution.

There is no dispute that petitioner is a nonmember depository institution and thus eligible for a master account. Under the MCA, a "depository institution" includes "*any* bank which is eligible" to apply for FDIC insurance. 12 U.S.C. 461(b)(1)(A)(i) (emphasis added). A "nonmember depository institution" is thus any bank that is eligible for FDIC insurance but that has not joined the Federal Reserve System. Cf. 12 U.S.C. 221 (defining "member bank"). And a bank is eligible for FDIC insurance if it is a "State bank * * * engaged in the business of receiving deposits, other than trust funds," and "incorporated under the laws of any State." 12 U.S.C. 1813(a)(2), (c)(1); 12 U.S.C. 1815(a)(1).

A master account, in turn, both is necessary to access "services" under Section 248a(c)(2) and is itself a "service[]" under that provision. A master account is a prerequisite to accessing all the services "covered by the fee schedule." 12 U.S.C. 248a(c)(2); see 12 U.S.C. 248a(b). A master account "gives [a] depository institution[] access to the Federal Reserve System's services, including its electronic payments system," which is the only way for a bank to move money directly from place to place. *Fourth Corner*, 861 F.3d at 1053 (opinion of Moritz, J.). Without access to a master account, "a depository institution is nothing more than a vault." *Ibid.* (citation omitted). In addition, the Fed created the master-account structure as a gateway to its other services after the enactment of the MCA. App., *infra*, 7a n.3. For that reason, a master account is a "new service[] which the Federal Reserve System offers," and itself constitutes a covered service that must be made available to nonmember banks. 12 U.S.C. 248a(b)(8).

In short, the MCA's requirement that covered services "*shall* be available" to legally eligible depository institutions, 12 U.S.C. 248a(c)(2) (emphasis added), establishes that regional bank presidents lack discretion to deny master accounts. Congress's use of "shall" imposes a clear "discretionless obligation[]" on the Federal Reserve, *Lopez* v. *Davis*, 531 U.S. 230, 241 (2001), to provide "all [of the] bank services covered by the fee schedule" to eligible nonmember banks, 12 U.S.C. 248a(c)(2).

b. The mandatory provision of Federal Reserve services to nonmember depository institutions was a central feature of the MCA. Before the MCA's enactment, Federal Reserve services were available only to member banks and were free of charge (funded by member banks' non-interest-bearing reserves). See Staff of the Subcomm. on Domestic Monetary Policy of the House Comm. on Banking, Finance and Urban Affairs, 98th Cong. 2d Sess., *The Role and Activities of the Federal Reserve System in the Nation's Check Clearing and Payments System* 3 (Comm. Print 1984). The MCA leveled the playing field between member and nonmember banks by making the Fed's services a public good that shall be available to nonmember banks as well. See H.R. Rep. No. 1590, 95th Cong., 2d Sess. 20 (1978). In exchange for gaining access, the MCA gave the Fed the power to impose reserve requirements on nonmember as well as member banks. See 126 Cong. Rec. 6897 (1980) (statement of Sen. William Proxmire). And it required the Fed to start charging for its services—and to do so on equal terms for all institutions—thereby forcing the Fed to compete with its private competitors. See 45 Fed. Reg. 58,689, 58,690 (Sept. 4, 1980).

Section 248a thus reflects a careful "bargain between the [F]ederal [R]eserve and nonmember banks." App., *infra*, 66a (Tymkovich, J., dissenting). It subjected all depository institutions to the Fed's reserve requirements and forced the Fed to charge competitively for its services, and "in return all depository institutions would get access to the Federal Reserve's payment services." Julie Andersen Hill, *From Cannabis to Crypto: Federal Reserve Discretion in Payments*, 109 Iowa L. Rev. 117, 168 (2023) (Hill). The decision below undoes that bargain.

c. Reading the MCA to grant reserve banks discretion to deny access to Federal Reserve services also departs from decades of Fed practice. See *Fourth Corner*, 861 F.3d at 1070-1072 (opinion of Bacharach, J.). Before 2015, the Fed "uniformly interpreted" the MCA to "extend Federal Reserve services to all 'depository institutions.'" *Ibid.*; see 45 Fed. Reg. at 58,690. And between 1998 (when the modern master-account system was first established) and 2015, the Fed never denied *any* legally eligible bank a master account. C.A. App. 766-767. For 35 years, every interpretation by every representative of the Federal Reserve confirmed that the MCA provided all depository institutions with access to its services. See *Fourth Corner*, 861 F.3d at 1070-1072 (opinion of Bacharach, J.) (collecting sources); Hill 177-178 (same). Only in 2015 did the Fed do an about-face by rejecting a master-account application from a bank that proposed to serve the cannabis industry. See App., *infra*, 67a (Tymkovich, J., dissenting); Hill 178. In so doing, the Fed purported to "discover * * * an unheralded power to regulate a significant portion of the American economy." *Utility Air Regulatory Group* v. *EPA*, 573 U.S. 302, 324 (2014) (internal quotation marks and citation omitted). Courts "typically greet" such a putative discovery with a "measure of skepticism." *Ibid.* The court of appeals embraced it instead.

2. Despite the statute's unequivocal command, the court of appeals held that a regional bank president had plenary discretion to deny a master account to an eligible nonmember bank. That was erroneous.

a. The court of appeals began by observing that, under the 1913 Federal Reserve Act, the Fed could refuse deposits from banks such as petitioner. App., *infra*, 26a-27a (citing 12 U.S.C. 342). But the 1980 MCA amended the Federal Reserve Act, and it did so precisely to remove the Fed's discretionary authority over "payment services." 12 U.S.C. 248a(b), (c)(2). As it stands today, therefore, the Federal Reserve Act cannot establish that the Fed possesses discretion to deny a master account.

Turning to Section 248a, the court of appeals concluded that "subsection (c)(2) simply provides that those services must be provided to both member and nonmember banks on equal terms and with nondiscriminatory pricing." App., *infra*, 27a. But the relevant language from the MCA unambiguously addresses service availability, providing that "all" applicable services "shall be available" and only then specifying how those services "shall be priced." 12 U.S.C. 248a(c)(2). There is no basis to read the express availability requirement to mean something other than what it says. See App., *infra*, 57a (Tymkovich, J., dissenting).

b. The court of appeals further reasoned that Section 248a(c)(2) "does not say that services must be available to *all* nonmember depository institutions, just that [those services] must be available to nonmember institutions in general, *as a class*." App., *infra*, 29a. But Section 248a (c)(2) incorporates Section 461's definition of "depository institution," which covers "*any* bank which is eligible" to apply for FDIC insurance. 12 U.S.C. 461(b)(1)(A)(i) (emphasis added). Section 248a(c)(2) thus requires the Federal Reserve to make its payment services available to "*any*" bank eligible for them—*i.e.*, to any nonmember bank. See App., *infra*, 55a, 59a-60a (Tymkovich, J., dissenting). By analogy, suppose that Congress instructed schools to provide "all listed services to students with disabilities." A school could not assert unlimited discretion to deny services to disabled students simply because it had provided all listed services to *one* disabled student, and so had made the services available to disabled students "as a class." *Id.* at 29a (emphasis omitted). So too here.

Nor is the absence of the word "all" significant. "All" is an indefinite adjective that need not be used when an exhaustive meaning is already implied. See Bryan A. Garner, *The Chicago Guide to Grammar, Usage, and Punctuation* 60 (2016). The "addition" of "all" to an "already comprehensive provision" does not expand the provision's scope. *TC Heartland LLC* v. *Kraft Foods Group Brands LLC*, 581 U.S. 258, 269 (2017). The inverse is likewise true: the omission of "all" before a comprehensive plural noun cannot restrict a statute's meaning where there is no "material difference between the two phrasings." *Id.* at 268. That is the case here: the MCA "would have the same meaning regardless of whether the word 'all' preceded the phrase 'nonmember depository institutions.'" *Fourth Corner*, 861 F.3d at 1069 (opinion of Bacharach, J.). Given "the absence of contrary restrictive indications in [the] statute," the MCA's express service-availability requirement extends to all eligible nonmember banks. *Pure Oil Co.* v. *Suarez*, 384 U.S. 202, 205 (1966).

The court of appeals' interpretation, by contrast, added a word to the MCA, reading it to say that "[a]ll Federal Reserve [B]ank services * * * shall be available to [*some*] nonmember depository institutions." 12 U.S.C. 248a(c)(2). That was erroneous. "With a plain, nonabsurd meaning in view," the court of appeals should not have "read an absent word into the statute." *Lamie* v. *United States Trustee*, 540 U.S. 526, 538 (2004).

c. The court of appeals also attempted to distinguish Section 248a by noting that it speaks to the Board of Governors, not regional Reserve Banks. App., *infra*, 28a, 31a-32a. That is incorrect. The statute directs the Board to set a *schedule of fees* for Federal Reserve services. See 12 U.S.C. 248a(a). But the requirement about covered services is not limited to the Board; it applies to "[a]ll Federal Reserve bank services," which "shall be available to nonmember depository institutions." 12 U.S.C. 248a (c)(2). So while the schedule of fees is set by the Board, the obligation to provide services to nonmember depository institutions applies to the entire Federal Reserve system.

d. The court of appeals also pointed to the 2023 Toomey Amendment. App., *infra*, 30a-31a; see Pub. L. No. 117-263, § 5708, 136 Stat. 3419-3420 (codified at 12 U.S.C. 248c). That provision requires the Board to "create and maintain a public, online, and searchable database that contains * * * a list of every entity that submits an access request for a reserve bank master account and services," including whether the request was "approved, rejected, pending, or withdrawn." 12 U.S.C. 248c(b)(1)(B)(ii). The court of appeals assumed that Congress had granted the Fed vast new authority to override state and federal chartering decisions merely by asking the Fed to track and report any accounts that were "rejected." App., *infra*, 30a-31a.

Not so. Congress passed the amendment merely to "gather information" about the Fed's account administration practices, which the Fed had previously resisted subjecting to congressional oversight, App., *infra*, 63a-64a (Tymkovich, J., dissenting); it did not seek to "opine on any preexisting authority Congress may have given."

C.A. Br. of Sen. Toomey 18-19; cf. *Cox Communications, Inc.* v. *Sony Music Entertainment*, 146 S. Ct. 959, 969 (2026) (observing that Congress's enactment of a provision that creates defenses does not establish that Congress understood the preexisting statute to create liability). And the Fed unquestionably has the power to "reject" applications even under petitioner's reading: specifically, when a bank is not statutorily eligible to apply for FDIC insurance and thus is not a qualifying "depository institution." 12 U.S.C. 461(b)(1)(A)(i).

e. Finally, the court of appeals expressed concern that, without the ability to deny state-chartered banks access to Federal Reserve services, the Fed's "ability to carry out their duty to safeguard our financial system from risky institutions" would be "impair[ed]." App., *infra*, 37a. But "policy concerns cannot trump the best interpretation of the statutory text." *M&K Employee Solutions, LLC* v. *Trustees of IAM National Pension Fund*, 146 S. Ct. 1224, 1233 (2026) (citation omitted). And those policy concerns are in any event misplaced, because the Fed has always had ample tools to mitigate risks without denying the statutorily required access to basic covered services. For example, the Fed "has general discretion over deposits and can reject deposits it views as risky." App., *infra*, 67a (Tymkovich, J., dissenting). The Fed has successfully managed risk by requiring banks to maintain extra balances; limiting a bank's total deposits; limiting the size of a transfer; or denying access to other services not covered under Section 248a, such as the discount window. See *ibid.* (citing Board of Governors of the Federal Reserve System, *Guide to the Federal Reserve's Payment System Risk Policy on Intraday Credit* (July 20, 2023) <tinyurl.com/fedriskpolicy>). Fed officials have admitted that those tools could adequately manage risks, including any risks associated with petitioner's own application. See Interview with Christopher J. Waller by Eleanor Terrett, Crypto in America, at 8:05-8:40 (Oct. 21, 2025) <tinyurl.com/WallerInterview>.

3. Principles of constitutional avoidance support petitioner's reading of the MCA. As discussed below, see pp. 23-25, granting regional bank presidents unfettered discretion to override the policy decisions of state legislators raises profound concerns under both Article II and the federal structure of the Constitution. The "simple solution" to those problems is to interpret the MCA to "limit[] the Bank presidents' authority such that they are not 'officers' in the constitutional sense." App., *infra*, 110a (Tymkovich, J., dissenting from denial of rehearing en banc). It is a "cardinal principle" that, when "a serious doubt" is raised about a statute's constitutionality, a court must "first ascertain whether a construction of the statute is fairly possible by which the question may be avoided." *Jennings* v. *Rodriguez*, 583 U.S. 281, 296 (2018) (citation omitted). That principle has special import in the Article II context: a court "should not read [a] statute in a way that makes the current method of appointment * * * unconstitutional if [the court] can reasonably read it otherwise." *Kennedy* v. *Braidwood Management, Inc.*, 606 U.S. 748, 775 (2025).

The court of appeals did just the opposite. By interpreting the MCA to grant unbounded discretionary authority to deny master-account applications to legally eligible depository institutions, the court of appeals created serious doubt about the statute's constitutionality under Article II by making the presidents of regional Federal Reserve Banks "officers"—likely "principal officers"—"of the United States." See *Braidwood*, 606 U.S. at 776; App., *infra*, 68a-71a (Tymkovich, J., dissenting).

B. The Question Presented Is Exceptionally Important

The question whether regional Federal Reserve Bank presidents possess unfettered discretion to deny state-chartered banks master accounts is vitally important. The court of appeals' mistaken interpretation of the Fed's statutory authority vests absolute, unreviewable power in regional Federal Reserve Bank presidents to debank financial institutions. That interpretation creates serious constitutional problems under the Appointments Clause; aggrandizes the Fed at the expense of Congress and the President; and undermines the States' authority to charter banks.

1. By placing executive power outside the President's direct chain of command, the court of appeals' interpretation of the MCA raises serious constitutional questions and has stark implications for the separation of powers.

a. If left uncorrected, the court of appeals' interpretation threatens grave problems under the Appointments Clause of the Constitution by giving boundless power to regional Federal Reserve Bank presidents, who are appointed neither by the President nor by an agency head. Under Article II, regional bank presidents cannot perform duties that would make them "Officers of the United States." U.S. Const. Art. II, § 2, cl. 2. That is because the Appointments Clause "prescribes the exclusive means" of appointing officers of the United States: only the President may appoint "principal" officers, and "[o]nly the President, a court of law, or a head of a department" may appoint "inferior" officers. *Lucia* v. *SEC*, 585 U.S. 237, 244 & n.3 (2018).

Regional Federal Reserve Bank presidents, however, are not selected in any of these ways. Instead, six members of each Reserve Bank's board, drawn from the private sector, "appoint" the president "with the approval of the Board of Governors of the Federal Reserve System."

12 U.S.C. 341. As Chairman Jerome Powell recently emphasized, the President "play[s] no role in the selection or oversight of the 12 Reserve Bank presidents." Jerome H. Powell, *Acceptance Remarks* (May 31, 2026) <tinyurl.com/PowellJFK>. Instead, the regional banks are "privately owned (and operated) by the commercial banks of the area." *Cook*, slip op. 5.

Yet the court of appeals gave regional bank presidents unbounded discretion over master-account applications—including the power to deny an application based on a policy disagreement with a bank's business model or the business model of its clientele. That interpretation makes regional bank presidents at least "inferior" officers. To qualify as an "inferior" officer, a federal official must (1) "occupy a 'continuing' position established by law" and (2) "'exercise[] significant authority pursuant to the laws of the United States.'" *Lucia*, 585 U.S. at 245 (quoting *Buckley* v. *Valeo*, 424 U.S. 1, 126 (1976) (per curiam)). And under the court of appeals' interpretation, regional bank presidents tick both boxes: they hold "continuing" positions, and they wield the "significant" power to decide which banks can access the payment system. *Ibid.*

Indeed, the court of appeals' interpretation likely makes the regional bank presidents "principal" officers. A "principal officer" is an officer with no superior, and thus with the "power to render a final decision" himself. *United States* v. *Arthrex, Inc.*, 594 U.S. 1, 14 (2021) (citation omitted). As a result of the court of appeals' interpretation, regional bank presidents fit that bill too: they make "final decision[s]" on master-account applications, without further review. App., *infra*, 19a. The court of appeals effectively promoted regional bank presidents to principal-officer status and, in doing so, raised a serious Appointments Clause concern that the court of appeals was "bound to avoid." *Id.* at 68a (Tymkovich, J., dissenting).

By endowing presidents of privately owned regional banks with duties reserved for officers of the United States, the decision below unnecessarily raises serious questions about whether the appointment structure for the regional presidents is unconstitutional. For example, does the historical exception for the Federal Reserve that the Court identified in *Cook* extend to the appointment of officials beyond the Board of Governors? Beyond the Fed's decisions on traditional monetary policy to the Fed's bank-regulation and payment-system-operations roles? But see *Cook*, slip op. 22 n.6. The reading of the MCA adopted by the decision below would force courts to confront those difficult questions.

And that is not all. The regional banks purport to possess the discretion to deny master accounts without being subject to any judicial review—even if, at least according to the San Francisco Fed, a regional bank discriminates on the basis of race in denying an application. See App., *infra*, 65a-66a (Tymkovich, J., dissenting); Oral Arg. at 19:00-20:00, *PayServices Bank* v. *Federal Reserve Bank of San Francisco* (No. 24-2355) (Dec. 4, 2024). That assertion of power is all the more alarming in light of the private nature of the regional banks. Granting regional banks final governmental authority to deprive disfavored banks of essential government resources, without any opportunity for judicial review, raises substantial questions as to whether the private nondelegation doctrine is violated too. See *Carter* v. *Carter Coal Co.*, 298 U.S. 238, 310-311 (1936).

In short, with its expansive reading of the regional bank presidents' authority, the court of appeals walked into a "constitutional quagmire." App., *infra*, 111a (Tymkovich, J., dissenting from denial of rehearing en banc).

This Court should grant review to return the interpretation of the MCA to constitutionally solid ground.

b. Relatedly, because of the Fed's unique position when it comes to presidential removal, the question whether the Fed has the statutory discretion to deny master accounts presents a question exceptionally important to the separation of powers. As a general rule, "[w]hen an agency executes a congressional mandate against private parties, it exercises executive power," meaning that the agency head must be removable by the President—"no ifs, ands, or quasis about it." *Trump* v. *Slaughter*, No. 25-332 (June 29, 2026), slip op. 36. The Federal Reserve, however, exercises power "independent of executive influence," and the members of the Board of Governors enjoy substantial for-cause protection from presidential removal. *Cook*, slip op. 26 (alteration and citation omitted).

Given the Federal Reserve's unique independence from presidential control, it is particularly important for the Court to ensure that the power that the Fed claims to possess has in fact been authorized by Congress. The scope of the powers that the Fed exercises independent of the President is a question for "the legislative process." *Cook*, slip op. 3 (Kavanaugh, J., concurring). Even where the powers are sufficiently tied to "monetary policy" to be free from presidential control, those insulated powers are ones that only "Congress could assign." *Id.* at 22 n.6 (majority opinion). Leaving the decision below unreviewed would allow an aggrandizement of the Fed's power at the expense of the President's authority to oversee the execution of the Nation's banking regulations. Indeed, it would allow the non-presidentially appointed or removable Reserve Bank presidents to override not just state bank-chartering decisions but also those of the Treasury Department's Comptroller of the Currency. See p. 6, *supra*. And it would put the Fed at loggerheads with the policy of the executive branch to "confirm that otherwise eligible entities are not prohibited from * * * receiving Reserve Bank master accounts or services solely because they engage in digital-asset activities." White House Working Group 78. Careful scrutiny is warranted before allowing the lower courts to expand those presidentially insulated powers beyond anything Congress has authorized.

2. Beyond the allocation of power within the federal government, this case is also "exceptionally important" in its "impact on the state-federal balance" in regulating banking. App., *infra*, 113a (Tymkovich, J., dissenting from the denial of rehearing en banc). Throughout the Nation's history, the regulation of banking has been a matter of "profound local concern." *Lewis* v. *BT Investment Managers, Inc.*, 447 U.S. 27, 38 (1980). "[O]ur country traditionally has favored widely dispersed control of banking." *Northeast Bancorp, Inc.* v. *Board of Governors*, 472 U.S. 159, 177 (1985). At the core of that dispersion is the "important power" States have "to incorporate banks." *Briscoe* v. *Bank of Commonwealth of Kentucky*, 36 U.S. 257, 318 (1837).

The power to regulate banking is shared with the federal government in a dual system that is animated by "a federalist model in financial governance" that allows states to preserve "meaningful regulatory authority over chartering, corporate structure, and consumer-facing supervision." Richard Fair, *The Future of Monetary Federalism: Rethinking Supremacy in the Stablecoin Era*, 15 Am. U. Bus. L. Rev. 1, 17 (2026). State-chartered banks have outnumbered national banks for over a century, and the dual banking system has continued to this day. Jay B. Sykes, Congressional Research Service, R45726, *Federal Preemption in the Dual Banking System: An Overview and Issues for the 116th Congress* 5 (May 17, 2019).

The long-established power of States to charter banks is given a quiet burial by the decision below. As discussed above, see p. 7, the denial of a master account will "effectively crippl[e]" a bank's operations, *Fourth Corner*, 861 F.3d at 1053 (opinion of Moritz, J.). Under the court of appeals' interpretation, regional bank presidents wield an effective "veto" over state decisions to charter banks. App., *infra*, 104a (Tymkovich, J., dissenting from the denial of rehearing en banc).

This is a case in point. Wyoming created the Special Purpose Depository Institution charter in 2019 to "provide a regulatory framework for digital asset custody and payment services," subject to "rigorous capital requirements, examination procedures, and ongoing supervision." C.A. Br. of Sen. Toomey 11. But the Kansas City Fed effectively overrode Wyoming's policy judgment when it denied petitioner's master account, stating that petitioner's "crypto-asset activities" were "highly likely [to be] inconsistent with safe and sound banking practices." App., *infra*, 11a. By denying a master account, the Kansas City Fed used its purported discretion to override Wyoming's determination that petitioner should be a bank.

Nor is petitioner's denial an isolated occurrence. Despite Colorado's policy decision to charter a bank catering to the cannabis industry, the Kansas City Fed denied the bank's master-account application "in large part because of its 'focus on serving'" marijuana-related businesses. *Fourth Corner*, 861 F.3d at 1053 (opinion of Moritz, J.). And fifteen of the sixteen Puerto Rico-chartered international banking entities have had their master accounts revoked in recent years. Pet. for Reh'g at 5-6, *Banco San*

Juan Internacional, Inc. v. *Federal Reserve Bank of New York*, 176 F.4th 163 (2d Cir. 2026) (No. 25-1144). The San Francisco Fed has gone so far as to tell the Ninth Circuit that it could use its discretion to shut entire States out of the business of chartering banks. See Oral Arg. at 20:17-20:41, *PayServices Bank*, *supra* (No. 24-2355) (Dec. 4, 2024). And there is no guarantee that the Fed will refrain from using its newfound power to target politically disfavored industries. See, *e.g.*, OCC, *Preliminary Findings from the OCC's Review of Large Banks' Debanking Activities* 2 (Dec. 2025) <tinyurl.com/OCCDebanking> (discussing debanking of firearms manufacturers and retailers); *Hearing on the Weaponization of the Federal Government: Before the Select Subcomm. on the Weaponization of the Federal Government of the House Comm. on the Judiciary*, 118th Cong., 2d Sess. 65 (2024) (statement of Jeremy Tedesco) (addressing debanking of Christian nonprofit organizations).

In short, the court of appeals' decision works a fundamental shift in the balance between state and federal authority over banking. The implications of that change are exceptionally significant, and they warrant the Court's review.

3. The practical stakes here are likewise massive. Although the Fed's claim of authority is relatively novel, see p. 17, *supra*, regional Reserve Bank presidents have exercised their newfound discretion with alarming frequency. Of the 52 applications for master accounts submitted by innovative banks without federal insurance in recent years, the Fed has approved only two. See Federal Reserve, *Master Account and Service Database* <tinyurl.com/FedMasterAccData> (last visited July 10, 2026) (*Master Account Database*). All of the other applications either have been rejected or have been languishing for years; in some cases, banks have given up on the

process and withdrawn their applications. Even the two banks that received master accounts are hardly success stories: one waited nearly two years for approval, while the other waited over five for access to the Fed's payment system. See *ibid.* Regional bank presidents have also revoked longstanding existing accounts. See *Banco San Juan Internacional*, 176 F.4th at 174-176.

The Fed's parsimonious approach is stifling innovation. As the President recently recognized, "the United States is a global leader in financial innovation, driven in part by the rapid growth of financial technology (fintech) firms." Exec. Order 14,405 (May 19, 2026). Such firms "provide innovative services and solutions that enhance access to financial products and services and create economic opportunity for all Americans." *Ibid.* The President accordingly has urged the Fed to consider options for expanding access to the Fed's payment services in order to "reduce unnecessary barriers to entry[] and encourage collaboration between fintech firms, federally regulated financial institutions, and Federal financial regulators." *Ibid.* A presidential working group has likewise urged the federal government to "adopt a pro-innovation mindset toward digital assets and blockchain technologies." White House Working Group 6.

The relevant banking agencies have followed the President's directive. The Comptroller of the Currency has confirmed that banks may hold cryptoassets on their balance sheets. See OCC, Interpretive Letter 1186 (Nov. 2025); OCC, Interpretive Letter 1188 (Dec. 2025). And as relevant here, the Comptroller himself has chided the Fed for having "discovered" in its "most recent reading of the Federal Reserve Act" newfound power to deny master accounts that it lacked for the previous "95 years." A Conversation with the Comptroller of the Currency, University of Wyoming College of Law, at 1:00:00-1:00:30 (Apr.

13, 2026) <tinyurl.com/GouldUWYO>. For its part, the FDIC has authorized banks to engage in "crypto-related activities" without prior approval, removing a significant roadblock for banks. FDIC, FIL-7-2025 (Mar. 28, 2025). Yet the Fed has doubled down on its view that Reserve Bank presidents are bouncers of the financial system, proclaiming in a recent proposed rule that they "maintain discretion whether to provide" master accounts, 91 Fed. Reg. 30,627 (May 26, 2026), and, in petitioner's case, expressly denying a master account because of concerns regarding cryptoassets.

With the stakes so high, it is no surprise that this case is being closely watched by legal commentators and by the financial services industry. See, *e.g.*, Amin Ayan, *Custodia Bank Loses Final Court Appeal Over Federal Reserve Master Account*, Yahoo! Finance (Mar. 14, 2026); Evan Weinberger, *Custodia Bank Loses Bid for Rehearing in Fed Master Account Case*, Bloomberg Law (Mar. 13, 2026); Penny Crosman, *Appeals Court Sides with Federal Reserve in Custodia Bank Case*, American Banker (Oct. 31, 2025). Given the importance of the payment system to the American economy, this Court's review is urgently needed.

C. The Question Presented Is Frequently Recurring, And This Case Presents A Perfect Opportunity For The Court's Review

The time for review of the question presented is now. The arguments on both sides are well rehearsed, including in the thorough opinions at the panel and en banc stages of this case. Given the Fed's penchant for exercising its newfound authority by delaying rather than outright rejecting master-account applications, and given the practical difficulty of litigating the question presented all the way to the Court, this case presents a rare opportunity for the Court to address the question. And this case is an optimal vehicle for that review.

1. As discussed above, see pp. 29-30, the regional Federal Reserve banks are refusing to approve master-account applications with startling frequency. The Fed, however, often chooses delay over outright rejection. Accordingly, only the Tenth Circuit (in the decision below) has held that regional bank presidents have discretion to deny requests for master accounts. App., *infra*, 32a. The Second Circuit has similarly held that a regional bank president had the power to *revoke* a master account that had previously been granted—a discrete but related question. *Banco San Juan Internacional*, 176 F.4th at 178. While the Ninth Circuit heard oral argument in a case on the denial question in December 2024 (with Judge Tymkovich sitting by designation), see *PayServices*, *supra*, the Ninth Circuit placed that case in abeyance shortly after argument pending the outcome of state administrative proceedings following the expiration of the plaintiff's preliminary charter. See Dkt. 49 (Jan. 17, 2025); Dkt. 52 (Jan. 24, 2025). As a recent status report in that case demonstrates, see Dkt. 89 (June 22, 2026), those proceedings may not be resolved for an extended period. Whether that case will result in a decision on the merits of the statutory question (and, if so, when) thus remains uncertain. And until this Court grants review, the regional Federal Reserve Banks will be able to take full advantage of the claimed power to delay and deny master-account applications as they see fit.

Further percolation is unlikely to benefit the Court in resolving the question presented. Judge Tymkovich has now written two opinions forcefully explaining why the reserve banks lack discretion to deny master accounts. See App., *infra*, 45a-71a (Tymkovich, J., dissenting); App., *infra*, 104a-113a (Tymkovich, J., dissenting from the denial of rehearing en banc). And his opinions built upon Judge Bacharach's previous opinion in *Fourth Corner*. See 861 F.3d at 1067-1074. Additional opinions from other courts of appeals will thus add little to this Court's consideration of the question presented.

Scholars have likewise exhaustively debated that question. One subject-matter expert has concluded that the regional Federal Reserve Banks have no "discretion over which member banks and depository institutions are allowed to open accounts." Hill 150-163. Other scholars agree, explaining that the MCA "eliminate[s] the Fed's discretion entirely." Peter Conti-Brown, *The Fed Wants To Veto State Banking Authorities. But Is That Legal?*, Brookings (Nov. 14, 2018) <tinyurl.com/vetostatebanking>; see David Zaring, Comment Letter on Proposed Guidelines for Evaluating Account and Services Requests 2 (July 7, 2021) <tinyurl.com/DavidZaring>. The voluminous scholarly commentary concerning the question presented underscores its importance. See, *e.g.*, Lev Menand, *The Logic and Limits of the Federal Reserve Act*, 40 Yale J. on Regul. 197, 235 (2023); Timothy K. Armstrong, *Chevron Deference and Agency Self-Interest*, 13 Cornell J.L. & Pub. Pol'y 203, 231 n.148 (2004); Thomas C. Baxter, Jr. & James H. Freis, Jr., *Fostering Competition in Financial Services: From Domestic Supervision to Global Standards*, 34 New Eng. L. Rev. 57, 70 (1999); Fred H. Miller, Robert G. Ballen & Hal S. Scott, *Commercial Paper, Bank Deposits and Collections, and Commercial Electronic Fund Transfers*, 39 Bus. Law. 1333, 1365 (1984).

This Court routinely grants review in cases presenting significant separation-of-powers concerns even in the absence of a circuit conflict. See, *e.g.*, *Braidwood Management*, *supra*; *Seila Law LLC* v. *Consumer Financial Protection Bureau*, 591 U.S. 197 (2020); *Free Enterprise*

Fund v. *Public Company Accounting Oversight Board*, 561 U.S. 477 (2010); *Clinton* v. *City of New York*, 524 U.S. 417 (1989); *Metropolitan Washington Airports Authority* v. *Citizens for Abatement of Aircraft Noise, Inc.*, 501 U.S. 252 (1991); *Edmond* v. *United States*, 520 U.S. 651 (1997); *Morrison* v. *Olson*, 487 U.S. 654 (1988); *INS* v. *Chadha*, 462 U.S. 919 (1983). Especially given that practice, the Court's review is amply warranted here.

2. This case is an ideal vehicle in which to address the question presented. That question is cleanly raised. It was passed upon by both the district court and the court of appeals and was fully briefed by both parties and numerous amici below. The question presented is also a pure question of statutory interpretation, and the resolution of the question will be dispositive of petitioner's claims.

At the same time, this case presents a rare opportunity for the Court to resolve the question. Few applicants have taken the hard road of waiting for the Federal Reserve to make a final decision and then challenging that determination in court. Instead, the Federal Reserve Banks have been "simply starving the master account applicant[s] until [they] die[]" by methodically slow-walking the approval process. *Nomination of Jerome H. Powell: Hearing Before the Comm. on Banking, Housing, and Urban Affairs*, 117th Cong., 2d Sess. 335 (2022) (statement of Sen. Lummis). And in the subset of cases that have resulted in actual denials, few banks have the resources and fortitude to withstand the costs of litigating the question presented through appeal—which will be all the more the case in the wake of the adverse precedent established by the decision below.

The impact of the question presented—on the separation of powers, on state authority over banking, and on the futures of individual banks—is profound. As things stand, the Fed is exercising unfettered discretion to decide if lawfully chartered banks can live or die without even a whiff of statutory authority. But the opportunities to settle the question are few and far between. The Court's review is urgently needed, and this case is an ideal vehicle for that review.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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