No. 26-62

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,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

BRIEF OF THE BLOCKCHAIN ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

The Blockchain Association is the leading non-profit membership organization dedicated to promoting a pro-innovation policy environment for digital assets. The Association works to achieve regulatory clarity and educate policymakers, regulators, courts, and the public about how blockchain technology can pave the way for a more secure, competitive, and consumer-friendly digital marketplace. The Association represents more than 100 companies that reflect the diversity of the blockchain industry, including software developers, infrastructure providers, exchanges, custodians, investors, and others.

Any effective regulatory regime for digital assets must ensure that digital-asset firms have access to essential banking services on equal footing with other lawful businesses. The Tenth Circuit's decision in this case threatens to endow federal agencies—which recently engaged in a coordinated shadow campaign to debank digital-asset firms—with plenary discretion to veto safe, state-approved banking models that cater

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[1] Pursuant to this Court's Rule 37.2, all parties have received timely notice of *amicus*'s intent to file this brief. Pursuant to this Court's Rule 37.6, *amicus* states that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the brief's preparation or submission. No person other than *amicus*, its members, or its counsel made a monetary contribution to the brief's preparation or submission.

specifically to digital-asset firms. The Blockchain Association has a strong interest in supporting review of that harmful decision.

SUMMARY OF ARGUMENT

Millions of Americans hold and use digital assets, and thousands of U.S. companies operate in the digital-asset industry or accept digital assets as a form of payment. Yet federal agencies recently waged a campaign against the industry, pulling the levers of government power in a misguided attempt to push digital assets to the periphery of the national economy. This case involves a particularly troubling aspect of that campaign. In recent years, federal banking agencies sought to debank the digital-asset industry by exerting pressure on federally supervised banks. In this case, the Federal Reserve seeks a lever to exert similar pressure over state-chartered banks such as Custodia Bank.

The Federal Reserve asserts, and the Tenth Circuit blessed, plenary discretion to deny access to "master accounts"—a Federal Reserve service permitting electronic settlement of bank transactions that is "vital for functioning banks." Pet. App. 49a. The apparent motivation for the denial here was that the applicant, Custodia Bank, hopes to provide services related to digital assets—an industry the Federal Reserve and other federal banking regulators sought to excommunicate from the U.S. financial system.

As Judge Tymkovich explained below in his dissents, the Tenth Circuit's decision contradicts the plain text of the governing statute, which requires that the Fed's payment services "shall be available to nonmember depository institutions." 12 U.S.C. § 248a(c)(2). That text "issues a command beyond the

Fed's discretion" to grant master accounts—which are necessary to facilitate the Fed's payment services—to *all* eligible institutions. Pet. App. 57a.

In addition to misconstruing the law, the Tenth Circuit's decision has even more concerning practical consequences. The decision ratifies the Fed's misuse of its payment services to further an impermissible policy goal—debanking the digital-asset industry. In so doing, the decision upsets the balance of federal-state power in the banking sector. States have traditionally chartered banks in parallel with the federal government. But the decision below effectively gives the Fed veto power over chartering judgments by state regulators. That subversion of the Nation's traditional dual banking system will stifle innovation and provides a blueprint for federal regulators to debank disfavored industries or companies in the future without interference from state regulators. The Fed's stark approach is unnecessary to protect national payment systems. And its recent proposal to relax its constraints on access to certain payment services does not nearly fix the problem that the Tenth Circuit's decision creates.

The Tenth Circuit's decision requires correction by this Court. Whether federal regulators, based on their own discretionary whims, can intrude on state prerogatives and debank lawful businesses is a question of exceptional importance with broad consequences for the national economy.

ARGUMENT

I. BUSINESSES NEED ACCESS TO SAFE AND RELIABLE BANKING SERVICES THAT ONLY THE FEDERAL RESERVE PROVIDES

An efficient and accessible banking system is vital to the modern economy. Companies rely on banks for essential transactions—for example, to pay employees and vendors, and to receive payments from customers. Virtually no modern business could operate effectively without a banking relationship. And that is equally true for many digital-asset firms, which (at least today) generally need to pay employees and vendors in fiat currencies like U.S. dollars.

In today's economy, the Federal Reserve provides the infrastructure for these critical banking services. It does so in large part by providing private banks with access to Federal Reserve "master accounts." Master accounts "are vital for functioning banks." Pet. App. 49a. In the old days, "banks had to move physical currency between themselves" to settle transactions. *Id.* at 48a. A master account allows a bank to transfer and settle funds electronically; "the Fed simply records credits and debits between the banks." *Ibid.* Master accounts also enable banks to use other Fed services, including Fedwire and FedNow, which facilitate trillions of dollars a day in secure, time-sensitive transactions; automated clearinghouse (ACH) services; and services allowing banks to deposit checks drawn on accounts at other financial institutions.[2]

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[2] *See* Federal Reserve Fin. Servs., *FRB Operating Circular No. 3* § 12.0 (Mar. 18, 2024), https://tinyurl.com/ypfnuy9s; *Fedwire Funds Service*, FRBServices.org, https://tinyurl.com/5fwb782b; *FedNow Service*, FRBServices.org, https://tinyurl.com/bdezx9h5;

Banks like Custodia that are denied master accounts can use these critical services (if at all) only through a "'correspondent'" bank, which "'imposes additional costs and counterparty credit risk, injects settlement risk[,] … and exposes institutions to existential risks if the correspondent bank terminates the relationship.'" C.A. Doc. 32-7 (Joint App'x), at 1452 (June 27, 2024). Businesses forced to rely on banks without master-account access face similar problems. Partnering with those banks results in increased fees that drive up operating costs, threaten profitability, and harm consumers.

That is why Congress provided in the Monetary Control Act of 1980 ("MCA") that "[a]ll Federal Reserve bank services covered by the fee schedule *shall be available* to nonmember depository institutions." 12 U.S.C. § 248a(c)(2) (emphasis added). Only direct master-account access can fulfill that congressional command.

II. FOR YEARS, FEDERAL REGULATORS DEBANKED THE DIGITAL-ASSET INDUSTRY

Even though the Federal Reserve's banking services are the lifeblood of the modern financial system, not all industries and businesses have had access to those services on equal footing. The root cause of that problem has been efforts by the federal government—including the Fed—to debank lawful businesses.

Over the last fifteen years, federal banking regulators increasingly targeted disfavored industries or groups by seeking to cut them off from critical banking

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Federal Reserve, *Fedwire® Funds Service – Monthly Statistics*, https://tinyurl.com/3wffb8m3.

services. In the 2010s, the federal government implemented Operation Choke Point—a coordinated pressure campaign designed to "foreclose bank access to legal and legitimate merchants" like firearms dealers and payday lenders. *See* Staff of H. Comm. on Oversight & Gov't Reform, 113th Cong., *Federal Deposit Insurance Corporation's Involvement in "Operation Choke Point,"* at 3 (Dec. 8, 2014), https://tinyurl.com/yjsdb6fr.

The digital-asset industry is one of the latest victims. In a well-documented campaign termed Operation Choke Point 2.0, the federal government under the prior administration "used vague rules, excessive discretion, informal guidance, and aggressive enforcement actions to pressure banks away from serving digital asset clients" and engaging with digital assets. *Chairman Hill, Oversight Chair Meuser Issue Final Staff Report on Biden's Debanking of Digital Assets*, House.gov (Dec. 1, 2025), https://tinyurl.com/4nu8wd9a.

The Federal Deposit Insurance Corporation ("FDIC"), for example, issued letters to regulated banks directing them to "'pause all crypto asset-related activities'" and "'not proceed with any crypto-asset activity'" pending supervisory feedback that never came. FDIC Off. of Inspector Gen., *FDIC Strategies Related to Crypto-Asset Risks* 11 (Oct. 2023), https://tinyurl.com/2x59s533. In disclosing these "pause letters" in response to a Freedom of Information Act lawsuit, the FDIC's then-acting (and now current) Chair acknowledged that the "result" of the FDIC's campaign was that "the vast majority of banks simply stopped trying" to move forward with "crypto- or blockchain-related activity." *FDIC Releases Docu-*

ments Related to Supervision of Crypto-Related Activities, FDIC.gov (Feb. 5, 2025), https://tinyurl.com/yc2twt9n.

Other federal regulators pursued similar measures. For example, the Federal Reserve, the Office of the Comptroller of the Currency, and the FDIC issued joint policy statements expressing "significant safety and soundness concerns with business models that are concentrated in" digital assets and warning of "liquidity risks associated with" digital-asset deposits.[3] Around the same time, the Securities and Exchange Commission launched a wave of unlawful enforcement actions against digital-asset firms and issued informal "guidance" that made it cost-prohibitive for financial institutions to hold digital assets on their balance sheets. *See Staff Accounting Bulletin No. 121*, 87 Fed. Reg. 21,015 (Apr. 11, 2022).

The Federal Reserve compounded the debanking problem by denying master accounts. Whereas other regulatory actions discouraged existing federally regulated banks from engaging with crypto firms and digital assets, the Fed's assertion of plenary discretion to deny master accounts allowed it to prevent States from approving upstart banks to fill the void. As Petitioner points out, the Fed has denied virtually all applications for master accounts submitted by banks with innovative business models in the last decade.

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[3] *Joint Statement on Crypto-Asset Risks to Banking Organizations* 2 (Jan. 3, 2023), https://tinyurl.com/55zuyktm; *Joint Statement on Liquidity Risks to Banking Organizations Resulting from Crypto-Asset Market Vulnerabilities* 1 (Feb. 23, 2023), https://tinyurl.com/36yve8b7.

See Pet. 29-30; *see also Master Account & Services Database*, Federal Reserve, https://tinyurl.com/5e5nby3k (last accessed Aug. 12, 2026).

This case provides a vivid illustration of the problem. Custodia sought to provide necessary custody and payment services to the digital-asset industry through an innovative banking model, which the Wyoming legislature and state regulators approved for precisely that purpose. *See* Wyo. Stat. Ann. § 13-12-101 *et seq.* Under that conservative regulatory regime, Custodia (unlike most banks) was required to back 100% of its customer deposits with high-quality liquid reserves and therefore could not make loans using those deposits. *Id.* § 13-12-105(a). Obtaining a Federal Reserve master account was critical to Custodia's business plan; without it, Custodia could not provide the payment services that its customers need.

The Kansas City Fed informed Custodia that "there were 'no showstoppers' with its [master account] application." Pet. App. 105a. Yet Custodia's application languished for years, until the Federal Reserve's Board directed the Kansas City Fed to reverse course, sending the Kansas City Fed a redlined denial letter and a clear message: The digital-asset industry is unwelcome in the banking sector. Pet. App. 51a.

These coordinated federal debanking actions have had "immense harmful consequences for the digital asset ecosystem." Staff of H. Comm. on Fin. Servs., *Operation Choke Point 2.0: Biden's Debanking of Digital Assets* 21, House.gov (Dec. 2025), https://tinyurl.com/4j76by9u. Fearing reprisals from hostile regulators, banks abruptly closed accounts of digital-asset firms with little notice, which "strained companies' ability to meet payment deadlines." *Id.* at 22. That, in turn, inhibited innovation in the digital-asset space and pushed lawful businesses offshore. *See id.* at 23.

III. THE TENTH CIRCUIT'S DECISION GIVES THE FEDERAL RESERVE UNPRECEDENTED POWER

The Tenth Circuit's decision to leave the Fed's denial in place and approve the agency's asserted plenary discretion to deny master accounts will profoundly alter the balance of power between state and federal banking regulators. It will encroach on States' traditional authority to charter banks, preventing States from serving as a counterweight to the massive discretionary power that federal banking agencies hold over the financial system and from acting as laboratories of innovation for banking services.

Congress has long sought to "maintai[n] a dual banking system in the United States" under which federal and state regulators have parallel authority to charter banks. *In re S. Indus. Banking Corp.*, 872 F.2d 1257, 1260 (6th Cir. 1989). The dual banking system provides a crucial check on the federal government's power to push disfavored industries and groups out of the financial system. Federal banking agencies have vast supervisory power over federally chartered banks and state-chartered banks that insure their deposits through the FDIC. As shown above, in recent years federal agencies have increasingly abused that power to pressure banks to exile politically disfavored industries from the banking system. The availability of a state charter like the one Custodia obtained here is an important limit on the ability of the federal government to cut off access to the financial system altogether.

The dual banking system also allows States to serve as "laboratories for devising solutions to difficult … problems," as they have done for centuries in banking. *Oregon v. Ice*, 555 U.S. 160, 171 (2009). Services now regarded as mundane began as revolutionary innovations at the state level—including electronic funds transfers and ATMs. *See* Arthur E. Wilmarth, Jr., *The Expansion of State Bank Powers, the Federal Response, and the Case for Preserving the Dual Banking System*, 58 Fordham L. Rev. 1133, 1156 (1990). Wyoming's pathbreaking efforts to charter a digital-asset bank fall squarely within that tradition.

The Tenth Circuit's decision subverts the dual banking system by giving the Fed effective veto power over state-chartered banks. That will undermine innovation in financial services and limit access to banking services, while rendering toothless a crucial state-law check on federal power over the banking system. The decision below effectively blesses the Fed's 2022 guidelines, which give federally supervised banks streamlined, largely automatic access to vital services, while reserving the strictest scrutiny and discretionary denials for those banks outside of direct federal control. Pet. App. 50a-51a (discussing *Guidelines for Evaluating Account and Services Requests*, 87 Fed. Reg. 51,099 (Aug. 19, 2022)). That consolidation of power gives federal agencies a chokehold over the U.S. financial system, providing a blueprint to debank whatever disfavored groups they please in the future.

If left standing, the decision also would create a serious Appointments Clause problem by giving regional Federal Reserve Bank presidents unchecked authority over master accounts. That authority renders regional presidents "inferior" officers at a minimum, and likely "principal" officers. *See Lucia v. SEC*, 585 U.S. 237, 245 (2018); *United States v. Arthrex, Inc.*, 594 U.S. 1, 14 (2021) (citation omitted). Yet those presidents are not appointed by a "court of law" or "head of a department," much less by the President. *Lucia*, 585 U.S. at 244 & n.3. The Tenth Circuit majority should have "avoid[ed]" the Appointments Clause problem by properly construing the statute, Pet. App. 68a, but instead brought the problem to the fore by misreading the MCA's text in the Fed's favor.

IV. THE FEDERAL RESERVE'S NEW PROPOSED "PAYMENT ACCOUNTS" ARE AN INSUFFICIENT SUBSTITUTE FOR MASTER ACCOUNTS

In response to these developments, President Trump issued an executive order in May 2026 declaring it "the policy of the United States to streamline regulatory processes" and "reduce barriers to entry" for "fintech firms" from "Federal financial regulators." *Integrating Financial Technology Innovation into Regulatory Frameworks*, 91 Fed. Reg. 30,475 (May 22, 2026). To that end, the President directed federal regulators to "update regulations to allow integration of digital assets and innovative technology into traditional financial services and payment systems." *Ibid.* The President also specifically called out the Fed, requesting a "comprehensive evaluation of the legal, regulatory, and policy framework governing access to Reserve Bank payment accounts" and "options for expanding … access" to those needed services. *Id.* at 30,476.

Days later, the Fed responded with a proposal that, while an improvement over the status quo, does not remedy the problems created by the Tenth Circuit's decision and continues to flout Congress's command that the services listed in Section 248a(b) be made available to all banks. *See Proposed Revisions to the Federal Reserve Policy on Payment System Risk and the Guidelines for Account and Services Requests*, 91 Fed. Reg. 30,627 (May 26, 2026). The Fed suggested giving eligible financial institutions access to so-called "Payment Accounts"—limited, "special-purpose accounts" that stop far short of the full-fledged master accounts to which eligible digital-asset firms are entitled. *Id.* at 30,627/1, 30,630/2.

The Fed's contemplated Payment Accounts bear only a passing resemblance to the master accounts enjoyed by traditional banks. Most importantly, the proposed Payment Accounts would lack access to the Fed's automated-clearing functionality (FedACH)—the principal service used for payroll, consumer billing, and business-to-business payments in the United States. *Id.* at 30,630/1. The MCA expressly requires the Fed to provide "automated clearinghouse services" like FedACH to all eligible institutions on a nondiscriminatory basis. 12 U.S.C. § 248a(c)(2), (b)(4). Yet the proposed Payment Accounts would continue to deny eligible institutions that critical payments service, severely constraining the commercial use cases for Payment Accounts. The proposed Payment Accounts also would pay no interest on account balances, *id.* at 30,629/1, and would limit closing balances to $1 billion (a material constraint for large digital-asset firms), *id.* at 30,646/3. Genuine master accounts do not have these limitations.

As a result of these extensive restrictions, digital-asset firms in practice must "'continue relying on expensive partner bank intermediaries for the vast majority of transactional volume.'" Justin Bachman, *Fed 'Skinny Account' Idea Draws Criticism*, Payments Dive (Feb. 9, 2026), https://tinyurl.com/yp9z4fs5. That imposes significant costs on digital-asset firms and, as the Board has recognized, can create "concentration risks" when a firm is forced to rely on "one or a few correspondents for a disproportionate share of its total funding." Board of Governors of the Federal Reserve System, *Correspondent Concentration Risks*, Supervisory Letter 10-10 (Apr. 30, 2010), https://tinyurl.com/yc24cjuj.

To be sure, the Fed's latest move marks a welcome retreat from the open hostility that characterized its last decade of interactions with the digital-asset industry. But it also signals that the Fed may continue treating the industry as second-class. This Court should properly construe the MCA and cabin the scope of the Fed's purported discretion to the lawful bounds imposed by Congress.

V. THE FEDERAL RESERVE DOES NOT NEED UNCHECKED POWER OVER MASTER ACCOUNTS TO MANAGE RISK

Below, the Tenth Circuit majority suggested that the Federal Reserve's unilateral and discretionary power to deny access to master accounts is necessary to protect national "payment systems from risk." Pet. App. 37a. The Fed has attempted to justify its restrictions on the proposed Payment Accounts on similar grounds. 91 Fed. Reg. at 30,630/2. For starters, those policy concerns are not a legitimate basis to ignore the unambiguous text of the MCA, where Congress provided that "[a]ll Federal Reserve bank services covered by the fee schedule shall be available to nonmember depository institutions." 12 U.S.C. § 248a(c)(2). And in any event, Congress provided the Fed multiple other tools to ensure the safety and soundness of its payment systems.

The MCA itself permits the Fed to subject "nonmembers … to any other terms, including a requirement of balances sufficient for clearing purposes," that the Fed applies to member banks. 12 U.S.C. § 248a(c)(2). The Fed therefore can (among other things): require depository institutions to maintain an extra balance in their account; reject transactions if the bank's balance hits zero; limit the amount of money that banks can hold; deny banks' access to the discount window; and deny access to services *not* covered by Section 248a(b). *See Guide to the Federal Reserve's Payment System Risk Policy on Intraday Credit*, Federal Reserve (July 20, 2023), https://tinyurl.com/2p8x6mbd. In addition, state regulators can (as here) impose their own restrictions to ensure banks' safety and soundness. The dual banking system created by Congress assumes that state regulators are up to the task.

Indeed, the Fed itself has issued statements recognizing that the risks are overstated. In December 2025, for example, the Fed issued a policy statement recognizing that state-chartered banks with "high-quality liquid assets equal to 100 percent of the bank's demand deposits and other short-term liabilities"—in other words, banks with Custodia's exact business model—may "minimiz[e] the risk of deposit runs and contagion." *Policy Statement on Section 9(13) of the Federal Reserve Act*, 90 Fed. Reg. 59,731, 59,732 (Dec. 22, 2025). This acknowledgment underscores that the agency has no need for unchecked authority to deny master accounts.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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