

No. 26-62

In the Supreme Court of the United States

CUSTODIA BANK, INC., PETITIONER

v.

FEDERAL RESERVE BOARD OF GOVERNORS, ET AL.

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

**BRIEF FOR THE FEDERAL RESERVE BOARD
OF GOVERNORS IN OPPOSITION**

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QUESTION PRESENTED

In *Farmers & Merchants Bank v. Federal Reserve Bank*, 262 U.S. 649 (1923), this Court held that the Federal Reserve Act, 12 U.S.C. 342, grants Federal Reserve Banks discretion over whether to accept deposits. The question presented is as follows:

Whether a provision of the Monetary Control Act of 1980, 12 U.S.C. 248a(c)(2), eliminates the Federal Reserve Banks' prior discretion to decide whether to accept deposits from particular entities.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-71a) is reported at 157 F.4th 1235. The opinion of the district court (Pet. App. 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 (Pet. App. 102a-113a). 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 petition was filed on July 10, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Federal Reserve Act, ch. 6, 38 Stat. 251 (12 U.S.C. 221 *et seq.*), establishes the Federal Reserve System, which includes the Board of Governors and twelve regional Federal Reserve Banks. Pet. App. 5a. Each Reserve Bank is led by a president and a board of directors. *Ibid.* Federally chartered banks are required to become members of the Federal Reserve System by buying stock in their regional Reserve Banks; state-chartered banks may become members with the Board of Governors' approval. *Id.* at 5a-6a.

As originally enacted, the Federal Reserve Act provided that a Reserve Bank "may receive from any of its member banks, and from the United States, deposits." § 13, 38 Stat. 263-264. In *Farmers & Merchants Bank v. Federal Reserve Bank*, 262 U.S. 649 (1923) (*Farmers Bank*), this Court construed the phrase "may receive" in that provision to mean that a Reserve Bank has the discretion to accept or reject deposits. *Id.* at 662. In the Monetary Control Act of 1980 (Monetary Control Act), Pub. L. No. 96-221, Tit. I, 94 Stat. 132, Congress amended that provision to state that a Reserve Bank "may receive, from any of its member banks, *or other depository institutions*, and from the United States, deposits." 12 U.S.C. 342 (emphasis added); see Monetary Control Act § 105(a)(1), 94 Stat. 139. As a result, a Reserve Bank today "may receive * * * deposits" from both member and nonmember banks. 12 U.S.C. 342.¹

¹ The statute provides that a Reserve Bank may receive deposits from a "depository institution," 12 U.S.C. 342, a term that includes not only banks but also other types of entities, such as credit unions and savings associations, see 12 U.S.C. 461(b)(1)(A). Because the distinction between banks and other types of depository institutions is not relevant here, this brief, like the court of appeals' opinion, uses

Consistent with its role as a “bank for banks,” a Reserve Bank provides to depositors services that are “similar to those that ordinary banks provide [to] individual and business customers.” Pet. App. 5a (citation omitted). Those services include “the equivalent of checking accounts; loans; coin and currency; safekeeping services; and payment services.” *Ibid.* (citation omitted). The Monetary Control Act directs the Board of Governors to publish a fee schedule for several services. See 12 U.S.C. 248a(a) and (b). The schedule of fees must “be based on [specified] principles,” one of which is that “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).

Reserve Banks historically offered different types of deposit accounts, but since 1998, those accounts have been consolidated into a single “master account” for each bank. See Pet. App. 7a n.3. The Board of Governors has issued guidance concerning the Reserve Banks’ evaluation of requests to open master accounts. 87 Fed. Reg. 51,099 (Aug. 19, 2022). Those guidelines direct the Reserve Bank to consider risks to the Reserve Bank, the payment system, the stability of the U.S. financial system, the overall economy, and the Federal Reserve System’s ability to implement monetary policy. *Id.* at 51,099-51,100.

2. Petitioner, a Wyoming-chartered bank that is not a member of the Federal Reserve System, provides banking services to companies that deal in digital assets such as cryptocurrencies. Pet. App. 1a, 9a. Petitioner applied for a master account from the Federal Reserve

the terms “bank” and “depository institution” interchangeably. See Pet. App. 6a n.2.

Bank of Kansas City. *Id.* at 10a. The Reserve Bank’s president eventually denied the application, concluding that petitioner’s business model posed unacceptable risks that were “inconsistent with safe and sound banking practices.” *Id.* at 11a (citation omitted).

While the application was pending, petitioner sued the Board of Governors and the Reserve Bank (respondents here) in the United States District Court for the District of Wyoming. Pet. App. 12a. Petitioner initially sought an order directing the Reserve Bank to act on its still-pending request for a master account; after the request was denied, petitioner amended its complaint to seek an order compelling the Reserve Bank to grant the request. *Id.* at 14a.

The district court granted summary judgment to respondents. Pet. App. 72a-101a. The court determined that, by providing that a Reserve Bank “‘may receive’” deposits, the Federal Reserve Act grants Reserve Banks “discretion to grant or deny master accounts.” *Id.* at 96a. The court rejected the contention that the Monetary Control Act had eliminated that discretion. *Id.* at 88a-98a.

3. The Tenth Circuit affirmed. Pet. App. 1a-71a.

Like the district court, the court of appeals rejected petitioner’s contention that petitioner is “statutorily entitled to a nondiscretionary award of a master account.” Pet. App. 20a. The court agreed that, because the Federal Reserve Act provides that a Reserve Bank “‘may receive’” deposits, a Reserve Bank’s “authority to issue master accounts” is “discretionary.” *Id.* at 22a, 26a (quoting 12 U.S.C. 342) (emphasis omitted). The court of appeals then determined that the Monetary Control Act “does not override th[at] discretionary authority.” *Id.* at 27a.

Judge Tymkovich dissented. Pet. App. 45a-71a. He invoked the provision of the Monetary Control Act stating that “services covered by the fee schedule shall be available to nonmember depository institutions.” *Id.* at 54a (quoting 12 U.S.C. 248a(c)(2)) (brackets and emphasis omitted). In his view, that provision limits the Reserve Banks’ discretion to decide whether to accept deposits from particular entities. *Id.* at 61a-62a.

4. The court of appeals denied petitioner’s petition for rehearing by a vote of 7-3. Pet. App. 102a-103a. Judge Tymkovich issued a dissenting opinion, *id.* at 104a-113a, which Judge Eid joined, *id.* at 103a.

ARGUMENT

Petitioner contends (Pet. 13-35) that Federal Reserve Banks lack discretion to deny a master account to a nonmember bank that applies for one. The court of appeals correctly rejected that contention, and its decision does not conflict with any decision of this Court or of another court of appeals. The petition for a writ of certiorari should be denied.

A. The Decision Below Is Correct

1. The Federal Reserve Act states that “[a]ny Federal reserve bank *may receive* from any of its member banks, or other depository institutions, and from the United States, deposits.” 12 U.S.C. 342 (emphasis added). Relying on the phrase “may receive,” this Court held in *Farmers & Merchants Bank v. Federal Reserve Bank*, 262 U.S. 649 (1923), that the Act “confers authority” upon Federal Reserve Banks to receive deposits but imposes no “obligation” to do so. *Id.* at 662. That holding reflects the ordinary meaning of “may,” a word that “clearly connotes discretion.” *Bouarfa v. Mayorkas*, 604 U.S. 6, 13 (2024) (citation and emphasis omitted). It also

reflects the fact that, throughout the Federal Reserve Act, “the distinction is clearly made between what the Board and the reserve banks ‘shall’ do and what they ‘may’ do.” *Farmers Bank*, 262 U.S. at 663.

This Court’s holding and analysis in *Farmers Bank* logically imply that a Reserve Bank’s authority to open a master account is likewise discretionary. See Pet. App. 27a. A “master account” is simply an account in which a Reserve Bank holds a bank’s deposits. See *id.* at 7a. “[I]t makes little sense to suggest that a Reserve Bank would be obligated to open an account but then have discretion to render that account useless by rejecting all deposits into it.” *Id.* at 27a. Indeed, petitioner does not dispute the proposition that discretion to refuse deposits implies discretion to reject master-account applications. Petitioner simply argues that Congress has eliminated the Reserve Banks’ prior discretion to refuse deposits, at least with respect to non-member institutions. See Pet. 18.

2. Congress’s enactment of the Monetary Control Act in 1980 did not eliminate the Reserve Banks’ discretion over deposits that the Federal Reserve Act previously conferred.

a. The Monetary Control Act provision that directly addresses the acceptance of deposits confirms that Congress retained the rule announced in *Farmers Bank*. As originally enacted, the Federal Reserve Act provided that a Reserve Bank “may receive from any of its member banks, and from the United States, deposits.” § 13, 38 Stat. 263-264. The Monetary Control Act amended that provision to state that a Reserve Bank “may receive from any of its member banks, *or other depository institutions*, and from the United States, deposits.” 12 U.S.C. 342 (emphasis added). By retaining

the word (“may”) that this Court had previously construed to confer discretion, while adding nonmember depository institutions to the list of entities from which Reserve Banks “may receive * * * deposits,” *ibid.*, Congress made clear that the Reserve Banks are authorized but not required to accept deposits from nonmember banks.

When Congress meant a provision of the Monetary Control Act to override preexisting statutory law, it took care to specify that the provision would operate “notwithstanding” the statutes being overridden. See §§ 302, 303, 308(d), 608(a), 701(b), 711, 712(a), 713, 94 Stat. 145-146, 148, 171-173, 186, 189-190. The absence of similar language overriding the Federal Reserve Act’s grant of discretion to receive deposits confirms that Congress meant to leave that discretion intact. See *Epic Systems Corp. v. Lewis*, 584 U.S. 497, 514 (2018) (drawing inference from Congress’s inclusion of a notwithstanding clause in one provision but not another); *Rubin v. Islamic Republic of Iran*, 583 U.S. 202, 216 (2018) (same).

b. Petitioner offers no substantive analysis of Section 342 and makes no effort to reconcile its claim with that provision. Petitioner instead relies (Pet. 13-17) on a separate provision of the Monetary Control Act, 12 U.S.C. 248a. That provision directs the Board of Governors to publish a fee schedule for various services provided by the Reserve Banks. 12 U.S.C. 248a(a) and (b). The provision then states that “[t]he schedule of fees prescribed pursuant to this section shall be based on the following principles: * * * .” 12 U.S.C. 248a(c). One of those principles is that “[a]ll 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). Petitioner argues that, by specifying that services “shall be available” to nonmember depository institutions, Section 248a(c)(2) “imposes a nondiscretionary duty on a regional bank to provide a master account to any nonmember depository institution.” Pet. 14-15. That argument is incorrect.

Section 248a(c)(2) focuses on the pricing of Reserve Banks’ services. Section 248a(c)(2) is one of a series of four provisions introduced by the phrase, “The schedule of fees prescribed pursuant to this section shall be based on the following principles: * * * .” 12 U.S.C. 248a(c). “All clauses in [a] series [after a colon] are limited by what precedes th[e] colon.” *Andresen v. Maryland*, 427 U.S. 463, 481 (1976). Here, the text preceding the colon suggests that Section 248a(c)(2) sets forth a principle that guides the Board’s setting of fees. That reading is confirmed by Section 248a’s caption, “PRICING OF SERVICES.” Monetary Control Act § 107, 94 Stat. 140-141 (12 U.S.C. 248a).

Even assuming that Section 248a(c)(2) nonetheless sets forth a freestanding directive concerning access to Reserve Bank services, the provision does not go as far as petitioner claims. Section 248a(c)(2) applies only to “Reserve bank services covered by the fee schedule.” 12 U.S.C. 248a(c)(2). The list of “services which shall be covered by the [fee] schedule,” in turn, does not include deposit-taking. 12 U.S.C. 248a(b). Nothing in Section 248a(c)(2), therefore, obliges Reserve Banks to accept deposits from nonmember depository institutions. At most, the provision may mean that, once a Reserve Bank accepts a nonmember depository institution’s deposits, it may not discriminate against that institution

by withholding services or charging higher prices simply because the institution is a nonmember.

In addition, Section 248a(c)(2)’s statement that “[a]ll Federal Reserve bank services * * * shall be available to nonmember depository institutions,” 12 U.S.C. 248a(c)(2), contemplates at most that the services will be available to nonmember depository institutions as a class; it does not guarantee the provision of those services to every nonmember. See Pet. App. 30a. Reinforcing the point, Section 248a(c)(2) refers to “nonmember depository institutions,” *ibid.*, not “*all* nonmember depository institutions.” The omission of “all” as a modifier there is notable because Section 248a repeatedly uses that word to modify other nouns, including another noun within Section 248a(c)(2) itself. See 12 U.S.C. 248a(c)(2) (“[a]ll Federal Reserve bank services”); 12 U.S.C. 248a(c)(3) (“all direct and indirect costs”); 12 U.S.C. 248a(e) (“[a]ll depository institutions”).

In enacting the Monetary Control Act, moreover, Congress did not write on a blank slate. For decades, the Federal Reserve Act, as authoritatively construed in *Farmers Bank*, had granted Reserve Banks discretion to decide whether to accept deposits from particular applicants. If Congress had meant to change that rule, it would have done so directly. Yet Section 248a(c) does not mention deposits. And the only affirmative commands in Section 248a are directed to “the Board,” 12 U.S.C. 248a(a) and (d)—not to the Reserve Banks, the entities that receive deposits. Enacting Section 248a(c)(2) would therefore have been “a fairly oblique way of attempting to overturn [a] settled body of law.” *Helsinn Healthcare S.A. v. Teva Pharmaceuticals USA, Inc.*, 586 U.S. 123, 131 (2019) (citation omitted).

Finally, petitioner’s theory would render the Monetary Control Act internally inconsistent by introducing a conflict between the Act’s addition of Section 248a(c) and its amendment of Section 342. “[I]t is § 342 of the [Federal Reserve Act] that addresses the Fed’s authority to open master accounts by granting the Reserve Banks authority to receive deposits, and it makes this authority discretionary.” Pet. App. 3a. The Monetary Control Act amended that provision to authorize the acceptance of deposits from nonmember banks, while preserving the Reserve Banks’ discretion to accept or reject deposits from particular eligible institutions. If Section 248a(c)(2)’s statement that Reserve Banks’ services “shall be available to nonmember depository institutions,” 12 U.S.C. 248a(c)(2), is understood to mean at most that nonmember banks *as a class* may receive the Reserve Banks’ services, then Section 248a(c)(2) and Section 342 will work together harmoniously. Petitioner’s approach, by contrast, would read an ambiguous (at best) general provision to override an unambiguous and more specific one. See Pet. App. 28a (“To conclude that Congress removed Reserve Bank discretion over master account access in a clause tucked away in a list of principles for the Board (rather than Reserve Banks) to follow in pricing services would be akin to finding an elephant in a mousehole.”).

Petitioner asserts (Pet. 16) that “[t]he [Monetary Control Act] 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.” But that would not be the effect of petitioner’s position. Even assuming that Section 248a(c)(2)’s “shall be available” language required Reserve Banks to accept deposits from “*nonmember* depository institu-

tions,” 12 U.S.C. 248a(c)(2) (emphasis added), that language plainly does not abrogate Reserve Banks’s discretion whether to accept deposits from *member* banks, see pp. 5-6, *supra*. Thus, rather than “level[ing] the playing field,” Pet. 16, petitioner’s reading of Section 248a(c)(2) would create the further anomaly of “elevat[ing] nonmembers above members, granting them guaranteed unencumbered access to the exchange of funds when member banks do not have such a privilege.” Pet. App. 36a n.21.

c. A Federal Reserve Act amendment enacted in 2022 provides further evidence that Reserve Banks retain discretion to reject deposits from particular applicants. See 12 U.S.C. 248c. The amendment requires the Board to create a database of depository institutions that have requested “access to a reserve bank master account and services,” and the database must indicate whether the request “was approved, rejected, pending, or withdrawn.” 12 U.S.C. 248c(a)(1) and (b)(1)(B)(ii). Each database entry must also indicate whether the applicant was “an insured depository institution,” “an insured credit union,” or a “depository institution” that belongs to neither of those categories. 12 U.S.C. 248c(b)(1)(C). Each of those types of entities is legally eligible to make deposits, and so to open master accounts. See Pet. App. 8a n.4, 31a. The amendment accordingly shows that a legally eligible entity’s application to open a master account may still be “rejected.” 12 U.S.C. 248c(b)(1)(B)(ii).

In discussing the 2022 amendment, petitioner describes the court of appeals as “assum[ing] 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.’” Pet. 20 (citation omitted). But the court of appeals did not suggest that the 2022 amendment itself gave the Reserve Banks “new” discretionary authority. Rather, the court simply (and appropriately) treated the 2022 amendment as further evidence that Congress understood the Reserve Banks to have pre-existing power to reject master-account applications, even from eligible entities. And that is a far more plausible understanding of the provision than petitioner’s position (Pet. 20-21) that Congress was aware that Reserve Banks were *unlawfully* rejecting master accounts for nonmembers and merely required the Reserve Banks to report rather than cease their violations.

Finally, petitioner’s reading would impair Reserve Banks’ “ability to carry out their duty to safeguard our financial system from risky institutions.” Pet. App. 37a. On petitioner’s view, a Reserve Bank must do business with all comers—no matter the risks that a customer poses to the Reserve Bank, the Federal Reserve System, or the overall economy. Even if the institution lacks sufficient liquidity to meet its financial obligations, or sufficient controls to comply with money-laundering laws, the Reserve Bank would be obliged to grant it a master account. The statutory text does not support that extreme contention.

3. Petitioner’s contrary arguments lack merit.

Petitioner invokes (Pet. 14) Section 248a(c)(2)’s statement that “Federal Reserve bank services * * * shall be available to nonmember depository institutions.” 12 U.S.C. 248a(c)(2). But petitioner construes that statement in isolation, dismissing the surrounding text of Section 248a, see Pet. 14, and ignoring both Section 342 and the *Farmers Bank* Court’s construction of the pre-1980 Federal Reserve Act, see Pet. 18. That ap-

proach flouts the “fundamental” rule that “the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.” *United States v. Miller*, 604 U.S. 518, 533 (2025) (citation omitted).

In particular, petitioner essentially ignores Section 342 and the ways in which the Monetary Control Act did and did not amend that provision. Relying on Section 248a(b) and (c)(2), petitioner asserts that the Monetary Control Act “amended the Federal Reserve Act * * * precisely to remove the Fed’s discretionary authority over ‘payment services.’” Pet. 18 (citation omitted). But the Reserve Banks’ power over master accounts flows from the Banks’ authority to receive deposits, and that authority is conferred by Section 342, not Section 248a. Section 342 therefore would have been the logical place for language curbing the Reserve Banks’ discretion in this sphere if Congress had intended that result. As explained above, however, the Monetary Control Act added “other depository institutions” to the list of entities from which Reserve Banks “may receive” deposits under Section 342, while retaining the word (“may”) that this Court had previously construed as making that power discretionary. That approach would have been inexplicable if the 1980 Congress was pursuing the objective that petitioner attributes to it. See Pet. App. 29a (“We find it particularly unlikely that Congress intended to depart from the discretion afforded by § 342 when, in the [Monetary Control Act], Congress amended § 342 but retained its discretionary nature.”).

Petitioner in any event misreads Section 248a(c)(2). Petitioner observes (Pet. 15) that the principles set out in Section 248a(c) apply to “new services,” 12 U.S.C. 248a(b)(8), and it contends that master accounts are a

new service because they were created in 1998 (18 years after the enactment of the Monetary Control Act). But master accounts were not a new service first authorized in 1998. Rather, the term “master account” was simply a new name for the deposit accounts that Reserve Banks had offered all along. See Pet. App. 7a n.3. And the list of services to which Section 248a(c)’s principles apply do not include deposit-taking. See 12 U.S.C. 248a(b).

Relying on statements in the Monetary Control Act’s legislative history, petitioner further contends (Pet. 16) that Congress viewed the “mandatory provision of Federal Reserve services to nonmember depository institutions [as] a central feature” of that statute. But the statements that petitioner invokes “do not clearly address the question presented in this case” because they “do not evince any intention to establish unregulated master account access to nonmember depository institutions.” Pet. App. 36a. Instead, “they simply reinforce the statutory language prohibiting discrimination against nonmembers in pricing and service terms.” *Ibid.*

Petitioner is wrong to contend (Pet. 17) that respondents’ position here “departs from decades of Fed practice.” Ever since other types of deposit accounts were consolidated into master accounts in 1998, “the Fed’s official master account policy” “has consistently stated that Reserve Banks have discretion with respect to master account access.” Pet. App. 38a. Petitioner emphasizes (Pet. 17) that, until recently, Reserve Banks generally did not exercise that discretion to deny account requests. But until recently, Reserve Banks have “not been faced with access requests from novel institutions like [petitioner].” Pet. App. 37a n.22.

Finally, principles of constitutional avoidance do not support petitioner’s interpretation. Contra Pet. 22. Constitutional avoidance “comes into play only when, after the application of ordinary textual analysis, the statute is found to be susceptible of more than one construction.” *Clark v. Martinez*, 543 U.S. 371, 385 (2005). The application of ordinary textual analysis here shows that the Federal Reserve Act unambiguously grants the Reserve Banks discretion to reject deposits, and that the Monetary Control Act clearly does not limit that discretion. Constitutional avoidance, moreover, requires reading statutes “to avoid *serious* constitutional doubts,” “not to eliminate all possible contentions that the statute *might* be unconstitutional.” *Reno v. Flores*, 507 U.S. 292, 314 n.9 (1993). Allowing a Reserve Bank to decide whose deposits to accept does not raise serious constitutional doubts. See pp. 17-18, *infra*.

B. Further Review Is Unwarranted

Petitioner concedes (Pet. 13) that “no circuit conflict has yet developed” on the question presented. The only other court of appeals to address the issue, the Second Circuit, agreed that Reserve Banks possess “discretionary authority over master account access” and that “this discretionary authority is not disrupted or otherwise abridged by § 248a(c)(2).” *Banco San Juan Internacional, Inc. v. Federal Reserve Bank*, 176 F.4th 163, 178 (2026). Petitioner identifies no sound reason to grant certiorari in the absence of a circuit conflict.

1. Petitioner argues (Pet. 23-31) that the decision below warrants this Court’s review because of its “implications for the separation of powers,” its “impact on the state-federal balance,” and its “massive” “practical stakes.” Pet. 23, 27, 29 (citation omitted). Those arguments all rest on three erroneous premises.

First, petitioners’ arguments assume (Pet. 13) that the decision below grants Reserve Banks “unbounded, unreviewable discretion” to deny master accounts. But petitioner argued below only that it had an “absolute right” to a master account; it did not challenge the Kansas City Reserve Bank’s reasons for denying its application or contend that the Reserve Bank had exceeded or abused its discretion. Pet. App. 14a. The court of appeals rejected petitioner’s assertion of “an absolute right to a master account,” but it had no occasion to consider the outer limits of the Reserve Banks’ discretion with respect to master-account applications. *Id.* at 35a n.19. Respondents, moreover, disclaimed unbounded, unreviewable authority in the court of appeals. See C.A. Oral Arg. at 42:40-43:20, 48:20-49:50 (Jan. 21, 2025).² And the Board of Governors has issued guidelines for Reserve Banks to consider when reviewing requests for master accounts, see 87 Fed. Reg. at 51,099-51,100.

Second, petitioners’ arguments assume (Pet. 5, 13) that the denial of a master account is tantamount to a “death sentence” or a “veto” of a bank’s state charter. That assumption, too, is wrong. Federal Reserve Banks were not even allowed to accept general deposits from nonmember banks until 1980; and today, only about half of the depository institutions in the United States have master accounts. See David W. DeCarlo & Jonathan D. Rose, *Who Opened Federal Reserve Accounts After the 1980 Monetary Control Act?* 13-15 (Aug. 12, 2026).³ A depository institution that lacks its own master account can enter into an agreement with a Reserve Bank and

² <https://www.ca10.uscourts.gov/sites/ca10/files/oralarguments/24-8024.mp3>

³ <https://www.chicagofed.org/publications/working-papers/2026/2026-15>

another institution to obtain services through the other institution’s account. See Federal Reserve Financial Services, *Account Relationships* ¶ 2.7, at 6-7 (effective Sept. 1, 2023). A bank also can (as petitioner has done) privately arrange with the other institution to execute transactions on its behalf. See Compl. ¶ 8. And because the Monetary Control Act required Reserve Bank services to compete with the private-sector services—indeed, that was one of its central purposes, see *Jet Courier Services, Inc. v. Federal Reserve Bank*, 713 F.2d 1221, 1227 (6th Cir. 1983)—banks can and do make use of services offered by private companies.

Third, petitioner’s arguments assume (Pet. 29) that “the Fed’s claim of authority is relatively novel.” But under the original Federal Reserve Act and this Court’s decision in *Farmers Bank*, Reserve Banks unquestionably possessed the discretion to reject deposits. In holding that the Monetary Control Act did not eliminate that discretion, the court of appeals did not approve a “novel” “aggrandizement of the Fed’s power” or work a “fundamental shift in the balance between state and federal authority over banking.” Pet. 26, 29. The court determined only that, in allowing Reserve Banks to take deposits from nonmember banks, the Monetary Control Act allowed Reserve Banks to continue exercising their preexisting discretion to reject deposits.

2. Petitioner’s various arguments for this Court’s review fail in other respects as well.

Contrary to petitioner’s suggestion (Pet. 23-27), the decision below does not threaten the separation of powers. “The Federal Reserve is a uniquely structured, quasi-private entity that follows in the distinct historical tradition of the First and Second Banks of the United States.” *Trump v. Wilcox*, 605 U.S. 922, 923

(2025). All the directors of the First Bank, and 20 of the 25 directors of the Second Bank, were “appointed by and accountable only to private stockholders.” *Trump v. Cook*, 609 U.S. 528, 537 (2026); see *id.* at 536. The activity at issue here, accepting deposits from and providing services to a customer, is precisely the type of banking function that the First and Second Banks performed; both those banks were authorized but not required to accept deposits. See Act of Feb. 25, 1791, ch. 10, § 7, 1 Stat. 195; Act of Apr. 10, 1816, ch. 44, § 11, 3 Stat. 273. This case does not involve the exercise of any regulatory powers at all, much less “regulatory powers that are attenuated from monetary policy.” *Cook*, 609 U.S. at 555 n.6. History accordingly shows that the discretion to reject deposits is not the type of sovereign power that might render someone an officer of the United States who must be appointed and removable by the President. Indeed, were it otherwise, the Reserve Banks’ directors would have been unconstitutionally appointed from the outset in 1913, since they were selected by the Banks’ stockholders, see Federal Reserve Act § 4, 38 Stat. 254-255, and indisputably possessed the discretion to reject deposits from member banks, see pp. 5-6, *supra*.

Petitioner is likewise wrong to suggest (Pet. 27-29) that the court of appeals’ decision threatens federalism. This case does not involve federal intrusion into a traditional state domain like marriage or public schooling; instead, federal involvement in banking dates to the founding. See *McCulloch v. Maryland*, 4 Wheat. 316, 353 (1819). Nor does this case involve federal regulation of state banks; instead, it concerns whether Reserve Banks may choose whether to transact business with a particular customer. Petitioner contends (Pet. 5) that

the decision below gives Reserve Banks “an effective veto” over States’ chartering decisions. But as explained above, approximately half of the depository institutions in the United States today lack master accounts, and institutions without master accounts have ample alternative means of obtaining banking services. See pp. 16-17, *supra*.

Finally, petitioner’s discussion of the “practical stakes” for “innovative banks,” Pet. 29, ignores the Board of Governors’ ongoing initiative to encourage innovation by expanding access to Reserve Bank services. Earlier this year, the Board solicited public comment on a proposal to establish a new type of account that eligible banks could use to clear and settle payments. See 91 Fed. Reg. 30,627 (May 26, 2026). In a report requested by the President, a member of the Board explained that the proposed account “would be tailored to support innovation * * * while also mitigating risks to the Reserve Banks and the payment system.” Letter from Christopher J. Waller, Member, Bd. of Governors, to Kevin Hassett, Assistant to the President for Economic Policy 4 (Aug. 31, 2026) (Waller Letter)⁴; see 91 Fed. Reg. 30,475, 30,475-30,476 (May 22, 2026) (Executive Order requesting report). The report explains that “[t]he comment period recently closed” and that “the Board is reviewing the comments received.” Waller Letter 4. Earlier this year, approval for such an account was granted on a trial basis to an entity that, like petitioner, is a Wyoming-chartered bank that focuses on the digital-asset sector. See Alexander Osipovich & Dylan Tokar, *Kraken Becomes First Crypto Firm to Win Ac-*

⁴ <https://www.federalreserve.gov/foia/files/waller-hassett-letter-20260831.pdf>

cess to Fed's Core Payments System, Wall St. J., Mar. 4, 2026.

3. At a minimum, this Court's review is premature. Only two courts of appeals have considered the question presented, and both agree that Reserve Banks may reject deposits from eligible nonmember institutions. Denying review here would give the lower courts the opportunity to consider the limits of the Reserve Banks' discretion, and the Board of Governors the opportunity to complete its ongoing initiative to establish a new type of account that is tailored to support innovation.

Petitioner's separation-of-powers arguments (Pet. 22-27) underscore the benefits that further percolation would entail. The court of appeals' decision and denial of rehearing both predate this Court's decision in *Cook*. See Pet. App. 1a, 102a. The court of appeals declined to consider petitioner's "bare assertion of Appointments Clause concerns" with the method of selecting Reserve Bank presidents, observing that respondents "were unable to respond to the argument due to [petitioner's] inadequate briefing." *Id.* at 44a. Petitioner also did not raise its current contentions concerning the removal power (Pet. 26-27), so the court of appeals did not address them. See Pet. C.A. Br. 55-57. To the extent the Reserve Banks' discretion to reject deposits raises separation-of-powers concerns, this Court should give the lower courts the opportunity to consider those concerns in light of *Cook*, in cases where those objections have been properly briefed.

Petitioner seeks (Pet. 33) to compensate for the dearth of judicial analysis by pointing to what it calls "voluminous scholarly commentary" on the question presented. But most of the sources it cites (*ibid.*) focus on other topics, making only passing, one-line remarks

about the question presented here. And while petitioner cites one work that provides more than cursory analysis, the author of that work has expressed shifting views on the issue in different iterations of the same paper. Compare Julie Andersen Hill, *From Cannabis to Crypto*, 109 Iowa L. Rev. 117, 158 (2023) (“The Federal Reserve’s reading * * * is, at best, awkward.”), with 2 C.A. S.J.A. 8 (2022 draft) (“While some believe that the Federal Reserve has no authority to limit access, I conclude that the Federal Reserve’s long claim of authority to limit access based on risk is a reasonable interpretation of its statutory authority.”).

Finally, petitioner claims (Pet. 13) that this Court is “unlikely” to have “another opportunity” to consider the question presented. That claim is in tension with petitioner’s own assertion (Pet. 31) that the question presented is “[f]requently [r]ecurring.” It also ignores that cases raising the question have reached three different courts of appeals in recent years. See Pet. App. 12a; *Banco San Juan*, 176 F.4th at 176 (2d Cir.); *PayServices Bank v. Federal Reserve Bank*, No. 23-cv-305, 2024 WL 1347094, at *6 (D. Idaho Mar. 30, 2024), appeal pending, No. 24-2355 (9th Cir. argued Dec. 4, 2024).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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