

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

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

REPLY BRIEF FOR THE PETITIONER

KANNON K. SHANMUGAM
Counsel of Record
MASHA G. HANSFORD
JAKE L. KRAMER
ELEANOR K. RITTER
KEITH E. ZIMMERMAN
DAVIS POLK & WARDWELL LLP
1050 17th Street, N.W.
Washington, DC 20036
(202) 962-7000
kshanmugam@davispolk.com

TABLE OF CONTENTS

	Page
A. The decision below is incorrect	3
B. The question presented is exceptionally important.....	7
C. The question presented is frequently recurring, and this case presents a perfect opportunity for the Court’s review	10

TABLE OF AUTHORITIES

Cases:

<i>Farmers & Merchants Bank v. Federal Reserve Bank</i> , 262 U.S. 649 (1923)	3
<i>Kennedy v. Braidwood Management, Inc.</i> , 606 U.S. 748 (2025).....	7
<i>Law v. Siegel</i> , 571 U.S. 415 (2014)	3
<i>Trump v. Cook</i> , 609 U.S. 528 (2026)	10
<i>U.S. Forest Service v. Cowpasture River Preservation Association</i> , 590 U.S. 604 (2020)	10
<i>Utility Air Regulatory Group v. EPA</i> , 573 U.S. 302 (2014).....	6
<i>Watson v. Republican National Committee</i> , 609 U.S. 672 (2026).....	6
<i>Yates v. United States</i> , 574 U.S. 528 (2015).....	4

Constitution and statutes:

U.S. Const.:	
Art. II	9
Art. II, § 2, cl. 2	7
Administrative Procedure Act, 5 U.S.C. 701-706	8
Monetary Control Act of 1980,	
Pub. L. No. 96-221, 94 Stat. 132.....	2, 3
12 U.S.C.:	
§ 248a	3-7
§ 248a(c)(2)	3, 4
§ 248c	5

II

	Page
Statutes—continued:	
§ 342	3
§ 461(b)(1)(A)(i)	4
Miscellaneous:	
Federal Reserve Financial Services, <i>Account Relationships</i> (effective Sept. 1, 2023).....	8
Hearing of the Wyoming Select Committee on Blockchain, Financial Technology & Digital Innovation Technology (July 15, 2026) < youtube.com/watch?v=LfErJ-Q0aPA >	9

In the Supreme Court of the United States

No. 26-62

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*

REPLY BRIEF FOR THE PETITIONER

Respondents suggest that this is an ordinary case where the court of appeals adopted an uncontroversial statutory interpretation to reach a common-sense result and the Court can safely look the other way. That is wrong in every respect. This case presents the question whether unappointed officials heading regional Federal Reserve Banks can deny master accounts to eligible state-chartered institutions, debanking disfavored institutions on a whim. The legal and practical stakes are profound, and there can be no serious debate that this Court's review is needed. The time for that review is now. The question presented has resulted in deep disagreement among a range of respected jurists, with thoughtful opinions on both sides of the issue. Given the stakes and the rarity

with which a bank can sue the Fed, review is warranted despite the absence of a circuit conflict.

Respondents offer no compelling reason to deny review. On the merits, respondents call petitioner's position too "extreme" to adopt. That would come as a surprise to the multiple distinguished judges who have expressed support for petitioner's position. As Judge Tymkovich (joined by Judge Eid) explained in his well-reasoned opinions below, the plain text of the Monetary Control Act instructs that Reserve Banks "shall" make the Fed's payment services accessible to all eligible institutions. There is no need to wait for a circuit conflict where, as here, the arguments on both sides are already well ventilated and primed for this Court's review.

Respondents try to downplay the importance of the question presented. But the decision below ties States' hands in regulating financial institutions, undermining the Nation's dual banking system and crippling States' ability to promote financial innovation. And the decision vests extensive regulatory authority in unappointed bureaucrats, creating a judicially sanctioned safe harbor for a newly constituted fourth branch of government.

The practical stakes are likewise staggering. The Fed's asserted discretion to deprive depository institutions of master-account access hangs over every bank like a sword of Damocles. Respondents suggest the Fed may soon offer slimmed-down master accounts that it might consider granting to a subset of institutions like petitioner. But it is cold comfort to replace petitioner's statutory entitlement with the possibility of bureaucratic grace. The regional Fed banks' conduct, retaliating against disfavored institutions while allowing favored ones to access the Fed's services, only underscores the dangers of the power respondents seek. Nor is it any answer to say that disfavored depository institutions can

access the Fed's services through third parties. Those relationships, too, are subject to the Fed's approval, and unaccountable Fed regulators have pressured banks not to do business with its disfavored institutions (as they have done to petitioner).

Only this Court can fulfill Congress's command to provide full access to the Fed's basic services and put an end to the Fed's tyranny over financial innovation. The petition for a writ of certiorari should be granted.

A. The Decision Below Is Incorrect

The Monetary Control Act mandates that the Fed's services "shall be available to nonmember depository institutions." 12 U.S.C. 248a(c)(2). Respondents try to write that command out of the United States Code, but their efforts miss the mark.

1. Respondents principally contend that another provision, 12 U.S.C. 342, grants regional banks discretion to deny master-account applications by providing that a regional bank "may receive * * * deposits." See Fed Br. in Opp. 5-7; K.C. Fed Br. in Opp. 24-26; *Farmers & Merchants Bank v. Federal Reserve Bank*, 262 U.S. 649, 662 (1923). But Section 342 is "simply the background legal principle that gives the regional banks legal authority to accept deposits." Pet. App. 63a (Tymkovich, J., dissenting). Section 248a, in turn, "limits the Kansas City Fed's discretion in light of [Section] 342's backdrop." *Ibid.* As this Court has recognized, "a statute's general permission to take actions of a certain type must yield to a specific prohibition found elsewhere." *Law v. Siegel*, 571 U.S. 415, 421 (2014). Section 342's general grant of discretion to accept deposits must yield to Section 248a's specific prohibition on denying Fed services to nonmember depository institutions.

Respondents further contend that Section 248a does not apply because it speaks only to the Board of Governors. See Fed Br. in Opp. 9; K.C. Fed Br. in Opp. 27. Not so. That obligation extends to the *entire* Federal Reserve System, including individual Reserve Banks. Section 248a’s covered-services requirement applies to “[a]ll Federal Reserve bank services,” which “shall be available to nonmember depository institutions.” 12 U.S.C. 248a(c)(2).

In a similar vein, respondents argue that Section 248a is merely a pricing provision. See Fed Br. in Opp. 8-9; K.C. Fed Br. in Opp. 27, 29. But the relevant text of Section 248a 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) (emphasis added). Respondents rely on Section 248a’s title, “Pricing of services.” See Fed Br. in Opp. 8; K.C. Fed Br. in Opp. 29-30. But headings are tools “for the resolution of a doubt,” *Yates v. United States*, 574 U.S. 528, 540 (2015) (plurality opinion) (citation omitted), and cannot override a statute’s unambiguous operative text.

Emphasizing the omission of the word “all” before the phrase “nonmember depository institutions,” respondents claim that Section 248a makes services available to those banks “as a class.” See Fed Br. in Opp. 9; K.C. Fed Br. in Opp. 28. 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, and it thereby requires Reserve Banks to make the covered services available to “*any*” legally eligible nonmember bank. 12 U.S.C. 461(b)(1)(A)(i) (emphasis added). On the Fed’s view (Br. in Opp. 9), providing services to a single nonmember bank on equal terms, while

discriminating against all others, would be sufficient. That cannot be correct.

Respondents invoke the Toomey Amendment, 12 U.S.C. 248c, arguing that its requirement to report “rejected” master-account applications presupposes that Reserve Banks have discretion to reject eligible applicants. See Fed Br. in Opp. 11-12; K.C. Fed Br. in Opp. 31-32. But the Toomey Amendment is an information-gathering provision, which Congress enacted after the Fed refused to provide it the requested information voluntarily. See Pet. App. 63a-64a (Tymkovich, J., dissenting). As the eponymous Senator Toomey explains in his amicus brief, Congress mandates reporting when it “suspects that an agency is exercising authority it may not possess, or exercising authority it does possess in ways Congress has not sanctioned.” Loomis & Toomey Br. 10. It does not bless rejections by collecting data about them.

2. Respondents’ remaining arguments offer no compelling reason to override the clear text of Section 248a. Echoing the majority below, respondents suggest that Section 248a is a “mousehole.” See Fed Br. in Opp. 10; K.C. Fed Br. in Opp. 30. Far from it: the obligation to provide equal access to Fed services was the centerpiece of the MCA’s bargain, under which nonmembers became subject to reserve requirements and the Fed began charging for its services in exchange for equal access. See Pet. 16-17.

Respondents’ historical evidence does not help either. See K.C. Fed Br. in Opp. 24-25. The 1935 letter sheds no light on Section 248a (which did not exist until 1980). And the 1985 policy statement and 1998 circulars contain nothing more than the Fed’s own confirmation that it possesses risk-management tools that Reserve Banks can continue to use after granting master-account access. See Pet. 21; Pet. App. 67a (Tymkovich, J., dissenting). While

respondents suggest that the authority to deny access to master accounts has long been the norm, they do not identify *any* instances where they denied account requests by legally eligible banks before 2015. Respondents contend that is because they have only recently received “requests from novel institutions.” K.C. Fed Br. in Opp. 25; Fed Br. in Opp. 14. But respondents’ disdain for an entire class of institutions is the problem: a newly claimed power to de-bank a disfavored category of lawfully chartered banks is exactly the sort of “unheralded power” that should warrant skepticism. *Utility Air Regulatory Group v. EPA*, 573 U.S. 302, 324 (2014).

Finally, the Fed warns that, absent unreviewable discretion, its “ability to carry out [its] duty to safeguard our financial system from risky institutions” would be impaired. Br. in Opp. 12. Of course, “policy cannot override the words Congress chose.” *Watson v. Republican National Committee*, 609 U.S. 672, 685 (2026). But regardless, the Fed does not dispute that it has numerous risk-management tools at its disposal, short of outright denying master-account access, to address its concerns. See Blockchain Br. 14. And respondents entirely ignore the central role of the States in weeding out risky applicants before chartering a bank—the very bedrock of the state-federal dual banking system that respondents would replace with a federal-federal one.

3. Respondents resist the canon of constitutional avoidance because they view Section 248a as unambiguous. See Fed Br. in Opp. 15; K.C. Fed Br. in Opp. 32-33. But if Section 248a is unambiguous in any direction, it unambiguously compels the Fed to offer its services to all nonmember banks. There can be little genuine dispute that petitioner’s reading—embraced to date by Judges Tymkovich, Eid, and Bacharach—is at least “fairly possible.” Pet. 22 (citation omitted). And there can similarly

be little genuine dispute that the Appointments Clause questions engendered by the decision below are at least “serious” ones. See Pet. 22; pp. 9-10, *infra*. The court of appeals erred by reading Section 248a “in a way that makes the current method of appointment” of Reserve Bank presidents unconstitutional. *Kennedy v. Braidwood Management, Inc.*, 606 U.S. 748, 775 (2025).

B. The Question Presented Is Exceptionally Important

The implications of the decision below are startling. Far from minimizing those implications, respondents lean into them, embracing the full scope of power arrogated to unappointed regional Fed bank presidents by the court of appeals. That decision vests unreviewable power in regional Fed bank presidents to debank disfavored state-chartered depository institutions, while allowing others to operate at the mercy of unappointed officials’ good graces. If allowed to stand, the decision below will have profound consequences for every bank and for the States’ role in the dual banking system, replacing their policy judgments with those of politically unaccountable regional Fed bank presidents. Respondents’ efforts to brush aside those concerns are unavailing.

1. Respondents do not meaningfully dispute that, under the decision below, the Reserve Banks’ discretion over master-account access is plenary and not subject to judicial review. They ask the Court to disregard that reality because the decision below did not have occasion to directly address it. See Fed Br. in Opp. 16; K.C. Fed Br. in Opp. 19. But respondents fail to identify *any* constraints on that discretion or avenues of review to challenge its exercise. As to the former, the best respondents can do is to point to the Board’s “guidelines”—which can be changed at any time—for Reserve Bank presidents in deciding whether to grant master-account access. See Fed Br. in

Opp. 16. But the Board’s guidelines are not worth the paper on which they are printed if, as the Kansas City Fed says, “the Board does not exercise direct authority over [account-access] decisions.” Br. in Opp. 7.

As to the latter, the Kansas City Fed gestures at a potential claim under the Administrative Procedure Act. See Br. in Opp. 20. In the district court, however, it argued that the APA does not apply to it because it is not an “agency” under the Act. See C.A. App. 181-185. The implications of that view are enormous. In fact, at oral argument before the Ninth Circuit, the San Francisco Fed told the court that judicial review would not be available even if a regional Fed bank denied a master-account application on the basis of race—a point neither respondent disputes here. See Pet. 25.

2. Respondents downplay the practical implications of the denial of a master account. They contend that a nonmember depository institution can access Federal Reserve services through a third-party institution with a master account. See Fed Br. in Opp. 16-17. But that offers little solace, because third-party access also requires Reserve Bank approval. See Federal Reserve Financial Services, *Account Relationships* ¶ 2.7, at 6-7 (effective Sept. 1, 2023). Petitioner’s own efforts to access Fed services through a third party have been repeatedly obstructed by the Fed. See Pet. C.A. Br. 13-14 n.10; C.A. App. 2097. And operating through a third-party bank is far more expensive; comes with unwanted counterparty credit risk; and can slow services to the point of competitive obsolescence. See Compl. ¶ 8; Blockchain Ass’n Br. 5; Digital Chamber Br. 4-5.

Respondents contend that the Fed’s proposed “Payment Accounts” undercut the importance of the question presented. See Fed Br. in Opp. 19; K.C. Fed Br. in Opp.

16-17. But those accounts—if ever granted—would impose severe constraints on access to the Fed’s services, including a lack of access to the Fed’s automated-clearing functionality; a limit on the account’s closing balance; and a refusal to pay interest on that balance. See Blockchain Ass’n Br. 12; Digital Chamber Br. 21. And the Fed’s proposal further entrenches the regional Fed banks’ unreviewable discretion over account services. For example, a limited-purpose account has been granted to Kraken Financial—a Wyoming Special Purpose Depository Institution similarly situated to petitioner—but denied to others. See Digital Chamber Br. 17. And even Kraken’s “access” has been illusory, as its chief executive testified that its account was still not operational six months into the one-year trial period. See Hearing of the Wyoming Select Committee on Blockchain, Financial Technology & Digital Innovation Technology, at 5:40-6:20 (July 15, 2026) <[youtube.com/watch?v=LfErJ-Q0aPA](https://www.youtube.com/watch?v=LfErJ-Q0aPA)>. Congress did not intend for access to the Nation’s banking system to depend on unaccountable regional Fed banks’ whim.

3. Respondents brush aside the substantial constitutional problems triggered by the decision below. See Fed Br. in Opp. 17-18, 20; K.C. Fed Br. in Opp. 21-23. Respondents acknowledge that no one “exercise[s] direct authority over” the regional Reserve Bank presidents’ decisions, K.C. Fed Br. in Opp. 7, confirming that those presidents serve as principal officers. But those presidents are not appointed as principal (or even inferior) officers under Article II. See Pet. 23-26. The Fed suggests (Br. in Opp. 18) that the regional Fed banks are above Article II because they are carrying out monetary policy. But providing a master account is not an exercise in setting rates or buying government bonds; it is a basic regulatory decision that must be made by a properly appointed of-

ficer. See Pet. 28-29. The Court’s intervention is especially important to ensure that its recent holding that the Federal Reserve can implement monetary policy “independent of executive influence,” *Trump v. Cook*, 609 U.S. 528, 559 (2026), does not become a carte blanche for the Fed to expand its mandate, wielding regulatory authority free of constraint. See Pet. 25.

The decision below also undermines the traditional federal-state balance in regulating banking. See Pet. 27-29. The Kansas City Fed admits that States have “begun to experiment with new charters” and are “increasingly” authorizing them. Br. in Opp. 9, 15. Respondents breeze past the federalism concerns, contending that, under the decision below, “Wyoming remains free to charter banks as it pleases.” K.C. Fed Br. in Opp. 33; see Fed Br. in Opp. 18-19. Yet under respondents’ view, Wyoming can effectively do so only with the approval of the regional Fed bank—so Wyoming’s charter of Kraken is permitted, but its charter of Custodia is not. See p. 9, *supra*. The Fed brushes away centuries of historical practice granting States the power to incorporate banks. But when Congress “significantly alter[s] the balance between federal and state power,” it must do so with “exceedingly clear language.” *U.S. Forest Service v. Cowpasture River Preservation Association*, 590 U.S. 604, 621-622 (2020). No such language is present here.

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

Review is warranted despite the absence of a circuit conflict. As the government recently explained, “the absence of a circuit conflict should not preclude review” by this Court when the court of appeals’ reasoning confirms that the question presented is one “only this Court can re-

solve” and where “[s]everal judges and scholars have detailed the arguments” pertinent to that question. Pet. at 28, *Department of Health & Human Services v. Texas Medical Association*, No. 26-491 (Oct. 14, 2026). Such is the case here. And the stakes are simply too high to allow the decision below to stand.

Respondents suggest that future opportunities to address the question presented will arise. See Fed Br. in Opp. 21; K.C. Fed Br. in Opp. 23. But that question is likely to percolate up to this Court only rarely. Respondents do not dispute that Reserve Banks often delay review of master-account applications rather than outright reject them—as the Kansas City Fed did here for years—complicating any pathways to judicial review. See Pet. 32. And when a bank does receive a final rejection, rarely will it be hardy enough to withstand the costs of an appeal and pursue it all the way to this Court. The Court should take the opportunity this case presents to review the important statutory question resolved by the court of appeals.

This case is a perfect vehicle to resolve the question presented. Respondents do not dispute that the statutory question was pressed and passed upon below. They instead contend that petitioner did not adequately preserve a constitutional argument. See Fed Br. in Opp. 20; K.C. Fed Br. in Opp. 22. But this case presents a pure question of statutory interpretation, not a stand-alone constitutional claim, and the constitutional-avoidance argument is simply being made in support of petitioner’s statutory interpretation. If anything, the presence of constitutional concerns simply underscores the urgent need for review.

* * * * *

The petition for a writ of certiorari should be granted.

Respectfully submitted.

KANNON K. SHANMUGAM
MASHA G. HANSFORD
JAKE L. KRAMER
ELEANOR K. RITTER
KEITH E. ZIMMERMAN
DAVIS POLK & WARDWELL LLP
1050 17th Street, N.W.
Washington, DC 20036
(202) 962-7000
kshanmugam@davispolk.com

OCTOBER 2026