No. 25A

In the Supreme Court of the United States

TODD BLANCHE, ACTING LIBRARIAN OF CONGRESS, ET AL., APPLICANTS

v.

SHIRA PERLMUTTER

APPLICATION TO STAY THE INTERLOCUTORY INJUNCTION OF THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

D. JOHN SAUER
Solicitor General
Counsel of Record
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

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PARTIES TO THE PROCEEDING

Applicants (defendants-appellees below) are Todd Blanche, Acting Librarian of Congress; Paul Perkins, Acting Register of Copyrights; Sergio Gor, Director, White House Presidential Personnel Office; Trent Morse, Deputy Director, White House Presidential Personnel Office; Executive Office of the President; and Donald J. Trump, President of the United States. Respondent (plaintiff-appellant below) is Shira Perlmutter.

RELATED PROCEEDINGS

United States District Court (D.D.C.):

Perlmutter v. *Blanche*, No. 25-cv-1659 (July 30, 2025)

United States Court of Appeals (D.C. Cir.):

Perlmutter v. *Blanche*, No. 25-5285 (Sept. 10, 2025)

Perlmutter v. *Blanche*, No. 25-5285 (Oct. 1, 2025)

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Pursuant to Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, the Solicitor General—on behalf of applicants Todd Blanche, Acting Librarian of Congress, et al.—respectfully requests that this Court stay the interlocutory injunction issued by the D.C. Circuit (App., *infra*, 2a) pending further proceedings in the D.C. Circuit and this Court.

This application involves another case of improper judicial interference with the President's power to remove executive officers—here, the Register of Copyrights. The Register is an inferior officer appointed by the Librarian of Congress, who is, despite his title, a principal *executive* officer—"a 'Head of Department' within the Executive Branch" appointed by the President and confirmed by the Senate. *Medical Imaging & Technology Alliance* v. *Library of Congress*, 103 F.4th 830, 833 (D.C. Cir. 2024). The Register, acting under the Librarian's supervision, wields executive power by exercising "significant regulatory authority over copyrights," *ibid.*— impacting a wide array of crucial intellectual-property issues. The Register issues rules governing, and adjudicates applications for, copyright registration, which copyright owners must obtain before they may sue for infringement. The Register also interprets copyright law and issues legal rulings that bind the Copyright Royalty Board, a "powerful" federal agency whose decisions affect "billions of dollars and the fates of entire industries." *SoundExchange, Inc.* v. *Librarian of Congress*, 571 F.3d 1220, 1226 (D.C. Cir. 2009) (Kavanaugh, J., concurring). The Register, in addition, participates in meetings and negotiations with foreign governments concerning copyright issues—an increasingly sensitive issue in international diplomacy.

Earlier this year, the President removed the previous Librarian; designated an Acting Librarian under the Federal Vacancies Reform Act of 1998 (FVRA), 5 U.S.C. 3345 *et seq.*; and directed the Acting Librarian to remove respondent as Register. The Acting Librarian carried out the President's directive, prompting respondent to sue for reinstatement. Respondent did not dispute that the President may remove the Librarian at will or that the Librarian may remove the Register at will. Instead, she pointed out that the FVRA extends only to executive officers, and urged that the Librarian and Register are both legislative officers. For this reason, she claimed, the President lacked the power to name an Acting Librarian under the FVRA, and the Acting Librarian accordingly had no authority to remove her.

The district court denied a preliminary injunction, but a divided panel of the D.C. Circuit granted respondent an extraordinary injunction pending appeal restoring her to office. Notwithstanding clear circuit precedent holding that the Librarian and Register are executive officers, the D.C. Circuit accepted respondent's theory that the Librarian and Register are legislative officers because they are "housed within the Legislative Branch." App., *infra*, 3a. "The President's attempt to reach into the Legislative Branch," the court reasoned, "is akin to the President trying to fire a federal judge's law clerk." *Id.* at 17a.

As Judge Walker's dissent observed, that analysis contravenes settled precedent and misconceives the Librarian's and Register's legal status. See App., *infra*, 24a. The Librarian and Register exercise powers that this Court has repeatedly classified as executive, such as the power to issue rules implementing a federal statute, to issue orders in administrative adjudications, and even to conduct foreign relations relating to copyright issues. The Librarian and Register are appointed under Article II's Appointments Clause, not under Article I's provisions authorizing each House of Congress to choose its own officers. Treating the Librarian and Register as legislative officers would set much of federal copyright law on a collision course with the basic principle that Congress may not vest the power to execute the laws in itself or its officers. See *Bowsher* v. *Synar*, 478 U.S. 714 (1986). Ironically, it would also invalidate respondent's own appointment as Register, for it would mean that the Librarian is not a "Hea[d] of Departmen[t]" capable of making appointments under the Appointments Clause, U.S. Const. Art. II, § 2, Cl. 2.

In previous cases, the D.C. Circuit had no difficulty recognizing that "the Library is undoubtedly 'a component of the Executive Branch,'" *Intercollegiate Broadcasting System, Inc.* v. *Copyright Royalty Board*, 684 F.3d 1332, 1342 (2012), and that the Librarian is a department head "within the Executive Branch," *Medical Imaging*, 103 F.4th at 833. Yet it held the opposite here, providing no plausible justification for its startling about-face. As in past cases where lower courts have impaired the President's constitutional authority to oversee executive agencies, this Court should grant a stay: the case is certworthy, the President had authority to direct respondent's removal, the D.C. Circuit lacked equitable authority to reinstate her, and the balance of equities favors the government. See *Trump* v. *Wilcox*, 145 S. Ct. 1415, 1415 (2025); *Bessent* v. *Dellinger*, 145 S. Ct. 515, 517 (2025) (Gorsuch, J., dissenting).

STATEMENT

1. Congress established the Library of Congress in 1800. See Act of Apr. 24, 1800, ch. 37, § 5, 2 Stat. 56. Despite its name, the Library provides services to all three branches of the federal government, not just to Congress. "[I]t is a misnomer to call it the Congressional Library. It is a great national Library and belongs to the Government of the United States." 29 Cong. Rec. 318-319 (1897) (Rep. Dockery).

In 1802, Congress established the office of Librarian of Congress. See Act of Jan. 26, 1802, ch. 2, § 3, 2 Stat. 129. The Librarian was originally appointed by the President alone for an indefinite term, see *ibid.*; today, he is appointed by the President with the advice and consent of the Senate for ten years, see 2 U.S.C. 136–1. Because no statutory provision expressly addresses the Librarian's removal, it is undisputed that the President may remove him at will. See *Intercollegiate Broadcasting System, Inc.* v. *Copyright Royalty Board*, 684 F.3d 1332, 1341 (D.C. Cir. 2012); see also *Kennedy* v. *Braidwood Management, Inc.*, 145 S. Ct. 2427, 2448 (2025). And, historically, Presidents have done so—including Presidents Lincoln and Jackson. See p. 12, *infra*.

"Although best known as the Nation's library, the Library of Congress quietly exercises significant regulatory authority over copyrights." *Medical Imaging & Technology Alliance* v. *Library of Congress*, 103 F.4th 830, 833 (D.C. Cir. 2024). Congress first authorized the Librarian to administer federal copyright law in 1870. See Act of July 8, 1870, ch. 230, § 85, 16 Stat. 212. Then, in 1897, Congress recognized the Copyright Office as a distinct division of the Library. See Act of Feb. 19, 1897, ch. 265, 29 Stat. 545.

The Copyright Office is led by the Register of Copyrights, an inferior officer appointed by the Librarian and subject to his "general direction and supervision." 17

U.S.C. 701(a). No statutory provision explicitly addresses the Register's removal, so the Librarian may remove the Register at will. See *Braidwood*, 145 S. Ct. at 2448. The Register reviews applications for copyright registration, which copyright owners must file before they may sue for infringement. See 17 U.S.C. 409-411. The Register, with the approval of the Librarian, also promulgates regulations concerning copyright registration. See 17 U.S.C. 702, 708. The Librarian and Register together oversee the Copyright Royalty Board, which, among other things, sets royalty rates for statutory copyright licenses. See *Intercollegiate Broadcasting*, 684 F.3d at 1338-1339.

2. In 2016, President Obama appointed Carla Hayden as Librarian. See Compl. ¶ 17. In 2020, Hayden appointed respondent Shira Perlmutter as Register. See *id.* ¶ 3.

On May 8, 2025, President Trump removed Hayden as Librarian. See App., *infra*, 6a. Invoking the Federal Vacancies Reform Act of 1998 (FVRA), 5 U.S.C. 3345 *et seq.*—a statute that empowers the President to designate an acting officer when a Senate-confirmed officer of an executive agency is unable to perform his duties—the President designated Todd Blanche, the Deputy Attorney General, as Acting Librarian. See App., *infra*, 7a.

On May 10, the President directed Perlmutter's removal as Register. See App., *infra*, 28a. Blanche executed the removal by appointing Paul Perkins, an Associate Deputy Attorney General, to serve as Acting Register. See *id.* at 7a; see also 2 Daniel Webster, *Speeches and Forensic Arguments* 469 (8th ed. 1844) ("If one man be [an officer], and another be appointed, the first goes out by the mere force of the appointment of the other, without any previous act of removal whatever. And this is the practice of the Government, and has been, from the first. In all the removals which have been made, they have generally been effected simply by making other appointments."). The day before her removal, Perlmutter had released a pre-publication version of a report about the use of copyrighted materials to train generative artificial-intelligence models. App., *infra*, 6a. Perlmutter alleges that the President removed her because he disagreed with her report. *Id.* at 7a.

3. Respondent sued the President and other government officials in the U.S. District Court for the District of Columbia, claiming that she remains the lawful Register and seeking reinstatement. See App., *infra*, 33a. Respondent did not dispute that the President may remove the Librarian at will or that the Librarian may in turn remove the Register at will. But she claimed that the President's designation of Blanche as Acting Librarian violates the FVRA because the Librarian is a legislative officer, not an executive officer; and that, as a result, Blanche had no power to remove her. See *id.* at 7a.

The district court denied respondent's motions for a temporary restraining order (TRO), see 5/28/25 Hr'g Tr. 51-52; a preliminary injunction, see App., *infra*, 32a-46a; and an injunction pending appeal, see *id.* at 28a-31a. At each stage, the court found that respondent failed to show irreparable harm. In denying a preliminary injunction, the court also determined that the balance of equities favors the government because "the Government faces greater risk of harm from an order allowing a removed officer to continue exercising the executive power than a wrongfully removed officer faces from being unable to perform her statutory duty." *Id.* at 40a (quoting *Trump* v. *Wilcox*, 145 S. Ct. 1415, 1415 (2025)).

3. Respondent appealed the denial of the preliminary injunction. See App., *infra*, 28a. A divided panel of the D.C. Circuit granted respondent an injunction pending appeal, which prohibits the defendants (other than the President) from "interfering with [respondent's] service as Register of Copyrights and Director of the

U.S. Copyright Office pending further order of the court." *Id.* at 2a.

Judge Pan issued a concurring opinion, which Judge Childs joined. App., *infra*, 3a-23a. Judge Pan characterized the Librarian and Register as part of "the Legislative Branch." App., *infra*, 3a; see *id.* at 4a. Reasoning from that premise, she concluded that respondent is likely to succeed on the merits and that the equities support granting an injunction pending appeal. See *id.* at 11a-23a. On the merits, Judge Pan concluded that, because the FVRA extends only to executive agencies and the Library is a legislative body, the Act does not authorize the President to designate Blanche as Acting Librarian, and Blanche in turn lacks the power to remove respondent. See *id.* at 11a-14a. On the equities, Judge Pan concluded that respondent suffered irreparable harm from the President's "attempt to reach into the Legislative Branch," likening respondent's removal to "the President trying to fire a federal judge's law clerk." *Id.* at 17a.

Judge Walker dissented. App., *infra*, 24a-27a. He determined that the Librarian and Register form part of the Executive Branch and exercise executive power. See *id.* at 24a-25a. He thus reasoned that the injunction should be denied on the ground that the balance of equities favors the government under this Court's orders in *Wilcox* and *Trump* v. *Boyle*, 145 S. Ct. 2653 (2025), staying the reinstatement of removed executive officers. See App., *infra*, 25a.

The D.C. Circuit denied the government's petition for rehearing en banc. See App., *infra*, 1a.

ARGUMENT

Under Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, an applicant for a stay of a lower court's injunction must show a reasonable probability that this Court would grant certiorari, a likelihood of success on the merits, and a likelihood of irreparable harm. See *Hollingsworth* v. *Perry*, 558 U.S. 183, 190 (2010) (per curiam). In "close cases," the Court also considers the balance of the equities and the public interest. See *ibid.*

The underlying issue in this case, whether respondent may continue serving as Register of Copyrights despite her removal, is certworthy. The Copyright Office is an important federal agency that exercises "significant regulatory authority over copyrights." *Medical Imaging & Technology Alliance* v. *Library of Congress*, 103 F.4th 830, 833 (D.C. Cir. 2024). The Librarian of Congress and the Register oversee the Copyright Royalty Board, *Intercollegiate Broadcasting System* v. *Copyright Royalty Board*, 684 F.3d 1332, 1338-1339, 1342 (D.C. Cir. 2012), a "powerful" agency whose decisions affect "billions of dollars and the fates of entire industries," *SoundExchange, Inc.* v. *Librarian of Congress*, 571 F.3d 1220, 1226 (D.C. Cir. 2009) (Kavanaugh, J., concurring). Like recent disputes concerning control of other executive agencies, this case warrants this Court's review. See *Trump* v. *Slaughter*, No. 25A264 (Sept. 22, 2025) (Federal Trade Commission); *Trump* v. *Boyle*, 145 S. Ct. 2653 (2025) (Consumer Product Safety Commission); *Trump* v. *Wilcox*, 145 S. Ct. 1415 (2025) (National Labor Relations Board and Merit Systems Protection Board). Underscoring the need for this Court's intervention, the D.C. Circuit's injunction generates uncertainty and confusion for holders of intellectual-property rights. The standoff over respondent's office is already generating collateral litigation over the validity of copyrights, as private parties argue that the Copyright Office's actions "are unauthorized, ultra vires, and void" because respondent has been validly removed from office. Stay Mot. at ii n.2, *Munro* v. *U.S. Copyright Office*, No. 24-5136 (D.C. Cir. Sept. 26, 2025); see also Ivan Moreno, *Unsigned Copyright Certificates Raise Validity Questions* (June 3, 2025), https://www.law360.com/ip/articles/2348985 ("[A]ttorneys and legal scholars have expressed concerns regarding the validity of registrations[.] * * * [A] law professor * * * said the 'serious question' about whether the registrations being issued right now are valid might make content creators consider delaying projects.").[1]

The other stay factors, too, favor the government. Contrary to the court of appeals' analysis, the Librarian and Register belong to the Executive Branch, not the Legislative Branch. As a result, the government is likely to succeed on the merits of respondent's claim, is independently likely to succeed in showing that the injunction pending appeal exceeded the court's remedial authority, faces irreparable harm, and has the stronger equities.

A. The Librarian Of Congress And Register Of Copyrights Are Part Of The Executive Branch For Constitutional Purposes

Every step of the court of appeals' analysis depends on the premise that the Librarian and Register are legislative rather than executive officials. The court concluded that respondent is likely to succeed on the merits because the Library is "part of the Legislative Branch" and the Copyright Office is "housed within the Legislative Branch"; that she faces irreparable harm because her removal involves an "attempt to reach into the Legislative Branch"; that the balance of equities favors her because she "leads an agency that is housed in the Legislative Branch"; and that an injunction is in the public interest because she "is a Legislative Branch official." App., *infra*, 3a, 4a, 17a, 20a, 22a.

That core premise of the court's reasoning is fundamentally wrong. As the D.C. Circuit and other courts have recognized in previous cases, the Librarian and Regis-

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[1] The government does not here endorse such claims or concerns about the validity of registrations under the D.C. Circuit's injunction restoring respondent to office; instead, we merely contend that the case is certworthy in part because the injunction generates ongoing confusion and uncertainty about the validity of registrations in a crucial intellectual-property sector.

ter are part of the Executive Branch. See *Intercollegiate Broadcasting*, 684 F.3d at 1341 ("[T]he Library is undoubtedly a 'component of the Executive Branch.'"); *Medical Imaging*, 103 F.4th at 840 n.4 ("[W]e have * * * recognized the important executive power exercised by the Library, suggesting that whatever the Library's historical association with Congress, it is squarely a component of the Executive Branch in its role as a copyright regulator."); *Eltra Corp* v. *Ringer*, 579 F.2d 294, 301 (4th Cir. 1978) ("[T]he Copyright Office is an executive office, operating under the direction of an Officer of the United States."). Courts have relied on that settled understanding in a variety of contexts, including in rejecting Appointments Clause challenges to copyright royalty adjudications, see *Intercollegiate Broadcasting*, 684 F.3d at 1341-1342, and constitutional challenges to the Librarian's exercise of rulemaking power, see *Medical Imaging*, 103 F.4th at 835.

The Constitution "sets out three branches and vests a different form of power in each—legislative, executive, and judicial." *Seila Law LLC* v. *CFPB*, 591 U.S. 197, 239 (2020) (Thomas, J., concurring in part and dissenting in part). The Librarian and Register form part of the Executive Branch because they both exercise executive power. See App., *infra*, 24a-25a (Walker, J., dissenting). For example:

- The Register, with the Librarian's approval, issues regulations concerning copyright registration. See 17 U.S.C. 702, 708(b).
- The Register, under the Librarian's supervision, interprets and applies the copyright laws in adjudicating applications for copyright registration. See 17 U.S.C. 410.
- The Register enforces the requirement that copyright owners deposit copies of their works with the Library of Congress, including by seeking fines from those who violate that requirement. See 17 U.S.C. 407.

- The Librarian and Register oversee the Copyright Royalty Board, which adjudicates statutory copyright-royalty proceedings. See 17 U.S.C. 801. The Librarian appoints and removes the Board's members. See 17 U.S.C. 801(a); *Intercollegiate Broadcasting*, 684 F.3d at 1342. A Board member or a party to a copyright-royalty adjudication also may refer a legal issue to the Register, and the Board "shall apply the legal interpretation embodied in the [Register's] response." 17 U.S.C. 802(f)(1)(A)(ii).
- The Register, under the Librarian's supervision, participates "in meetings of international intergovernmental organizations and meetings with foreign government officials relating to copyright," "including as a member of United States delegations." 17 U.S.C. 701(b)(3).

Rulemaking, administrative adjudication, law enforcement, and diplomacy are all exercises of executive power. See *Seila Law*, 591 U.S. at 219; *City of Arlington* v. *FCC*, 569 U.S. 290, 304 n.4 (2013); *United States* v. *Curtiss-Wright Export Corp.*, 299 U.S. 304, 319 (1936).

The Librarian's and Register's mode of appointment confirms that they are part of the Executive Branch. Under Article I, congressional officers, such as the Speaker of the House of Representatives and the Senate Parliamentarian, are appointed by the Houses of Congress. See U.S. Const. Art. I, § 2, Cl. 5; § 3, Cl. 5. Under Article II, by contrast, executive and judicial officers are appointed by the President with the advice and consent of the Senate; or, for some inferior officers, by the President alone, department heads, or courts. See U.S. Const. Art. II, § 2, Cl. 2. The selection of the Librarian and Register conforms to Article II, not Article I: The President appoints the Librarian with the advice and consent of the Senate, and the Librarian (a department head) appoints the Register.

The Librarian's and Register's mode of removal leads to the same conclusion. No statute expressly restricts their removal, so under the "default rule" that "removal is incident to the power of appointment," *Free Enterprise Fund* v. *PCAOB*, 561 U.S. 477, 509 (2010), the President may remove the Librarian at will, and the Librarian may remove the Register at will. Congress, by contrast, has no authority to remove either the Librarian or the Register (except through impeachment). Cf. *Bowsher* v. *Synar*, 478 U.S. 714, 721-727 (1986) (deeming the Comptroller General a legislative officer because Congress could remove him outside the impeachment process).

Consistent with the Library's status as an entity in the Executive Branch, Presidents have long overseen and removed Librarians. President Jefferson oversaw the first Librarian's purchase of books. See Library of Congress, *Librarians of Congress 1802-1974*, at 20 (1977). In 1829, newly elected President Jackson, a Democrat, removed Librarian George Watterston, a Whig, and replaced him with Democrat John Silva Meehan. See Library of Congress, *George Watterston (1783-1854)*.[2] Three decades later, President Lincoln removed Meehan and appointed a Republican Librarian. See Library of Congress, *John Silva Meehan* (1790-1863).[3]

If the Librarian and Register were legislative officers, much of federal copyright law would violate the Constitution. Article II vests the entire executive power in the President alone, and Article I vests Congress with only legislative power. Congress accordingly may not vest itself or its agents with responsibility for "the execution of the laws." *Bowsher*, 478 U.S. at 736; see *MWAA* v. *Noise Abatement Citizens*, 501 U.S. 252, 274 (1991). If the Librarian and Register were in the Legislative Branch, their authority to execute federal copyright law would involve an invalid self-

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[2] https://loc.gov/item/n83041676/george-watterston-1783-1854

[3] https://loc.gov/item/n86070561/john-silva-meehan-1790-1863

delegation by Congress.

In fact, if the Library were a legislative body, respondent's own appointment as Register would be invalid. The Register is appointed by the Librarian, see 17 U.S.C. 701(a), a method of selection that complies with the Appointment Clause only if the Librarian is the "Hea[d]" of a "Departmen[t]," U.S. Const. Art. II, § 2, Cl. 2. A "Department" is a "free-standing, self-contained entity *in the Executive Branch*." *Free Enterprise Fund*, 561 U.S. at 511 (quoting *Freytag* v. *Commissioner*, 501 U.S. 868, 915 (1991) (Scalia, J., concurring in the judgment)) (emphasis added). The lawfulness of respondent's appointment therefore rests on the premise that the Library belongs to the Executive Branch. Indeed, the D.C. Circuit has recognized that the Library is in the Executive Branch precisely because of concerns that, otherwise, the Librarian's appointments would violate the Constitution. See, *e.g.*, *Intercollegiate Broadcasting*, 684 F.3d at 1341-1342.

The Library of Congress's name does not prove otherwise. An agency's status depends on its power, not its title. See *Free Enterprise Fund*, 561 U.S. at 485-486; *Lebron* v. *National Railroad Passenger Corp.*, 513 U.S. 374, 397 (1995). For example, the Court of Appeals for Veterans Claims is an executive agency despite being called a court, see *United States* v. *Arthrex, Inc.*, 594 U.S. 1, 20 (2021), and administrative law judges are executive officers despite being called judges, see *Braidwood*, 145 S. Ct. at 2450-2451. Because the Library exercises executive power, it forms part of the Executive Branch.

The court of appeals reasoned that the Register of Copyrights is a legislative officer because he serves as an "advisor to Congress on copyright issues." App., *infra*, 3a. But the Register provides advice and information on copyright issues not just to "Congress," but also to "Federal departments and agencies and the Judiciary." 17

U.S.C. 701(b)(1)-(2). The Register's responsibility for advising all three branches of the federal government cannot somehow establish that the Register is part of the Legislative Branch. Moreover, providing advice and information to Congress is not an exclusively legislative function. The Constitution requires the President to "give to the Congress Information of the State of the Union," to "recommend to [Congress's] consideration such Measures as he shall judge necessary and expedient," and to inform Congress of his "Objections" when vetoing legislation. U.S. Const. Art. I, § 7, Cl. 2; Art. II, § 3. Congress also receives thousands of statutorily required reports from executive agencies every year, and executive officers routinely provide documents and testimony to congressional committees. The Register's advisory functions are fully consistent with his status as an executive officer.

B. The Government Is Likely To Succeed In Showing That Respondent Has Been Lawfully Removed

Because the Library and Copyright Office form part of the Executive Branch, respondent's removal was lawful. First, the FVRA authorized the President to designate Blanche as Acting Librarian, and the Acting Librarian undisputedly has the power to remove the Register. Alternatively, if the President lacked the power to designate an Acting Librarian, Article II allowed him to remove Perlmutter directly.

1. The FVRA authorizes the President to designate an acting officer if a Senate-confirmed "officer of an Executive agency" dies, resigns, or is otherwise unable to perform his duties. 5 U.S.C. 3345(a). The term "Executive agency," as used in that provision, "means an Executive department, a Government corporation, [or] an independent establishment." 5 U.S.C. 105.

The Library is an "independent establishment," 5 U.S.C. 104, and thus an "Executive agency" covered by the FVRA, 5 U.S.C. 105, 3345(a). To be an independent establishment, an entity must satisfy three criteria: (1) it must be "an establishment in the executive branch"; (2) "other than the United States Postal Service or the Postal Regulatory Commission"; (3) "which is not an Executive department, military department, [or] Government corporation, or part thereof, or part of an independent establishment." 5 U.S.C. 104(1). The Library satisfies all three criteria. First, for the reasons discussed above, it is "in the executive branch." *Ibid.* Second, the Library is not the United States Postal Service or Postal Regulatory Commission. Third, it is undisputed that the Library is not an "Executive department," "military department," "Government corporation," a part of one of those entities, or a part of another independent establishment. See 5 U.S.C. 101-103 (defining those terms).

To be sure, Congress could, if it wished, define the term "executive branch," for purposes of the FVRA, to exclude the Library—but it did not do so. "Congress can divide up the Government any way it wishes, and employ whatever terminology it desires, for nonconstitutional purposes." *Mistretta* v. *United States*, 488 U.S. 361, 422-423 (1989) (Scalia, J., dissenting) (emphasis omitted). But the statutory provisions at issue here do not include any special definition of the term "executive branch." The term therefore bears its ordinary meaning: the branch of government "which carries [laws] into effect or secures their due performance." *Webster's New International Dictionary* 892 (2d ed. 1958); see *Buckley* v. *Valeo*, 424 U.S. 1, 135 (1976) (per curiam). Because the Library (which contains the Copyright Office) is responsible for executing federal copyright law, it fits within the ordinary meaning of the term "executive branch." No statutory text suggests that the Library's statutory status differs from its constitutional status.

Instead of simply applying the controlling statutory definitions, the court of appeals sought to infer the Library's status from other statutory provisions. See App., *infra*, 13a-14a. That is not how courts normally interpret statutes. When a statue defines a term ("Executive agency" or "independent establishment"), courts must apply the definition; and when a statute does not define a term ("executive branch"), courts must apply its ordinary meaning. See *Feliciano* v. *Department of Transportation*, 145 S. Ct. 1284, 1291 (2025). Either way, courts may not subordinate the clear text of the directly applicable provision to "contextual cues" from other provisions. *Ali* v. *FBP*, 552 U.S. 214, 226 (2008). Such oblique contextual cues may illuminate the meaning of an ambiguous provision, but the court of appeals identified no plausible ambiguity in the provisions at issue here.

In any event, the court of appeals' contextual arguments lack merit on their own terms. The court cited two statutory provisions that define the Library as part of the Legislative Branch, see App., *infra*, 14a, but neither provision applies here. One provision, which concerns the exchange of information among legislative agencies, defines the term "offices and agencies of the legislative branch," "*[a]s used in this section*," to include "the Library of Congress." 2 U.S.C. 181(b)(1) (emphasis added). The other, a financial-disclosure statute, defines the term "legislative branch," as used "*in this subchapter*," to include "the Library of Congress." 5 U.S.C. 13101(11) (emphasis added). The FVRA, 5 U.S.C. 3345(a)(1), does not appear in either "th[at] section," 2 U.S.C. 181, or "th[at] subchapter," 5 U.S.C. 13101-13111. If anything, the provisions on which the court of appeals relied cut *against* respondent, for they show that, when Congress means to treat the Library of Congress as part of the Legislative Branch for purposes of a statute, it says so expressly—presumably because it recognizes the Library's constitutional status within the Executive Branch.

The court of appeals also cited multiple statutory provisions defining the term "agency" to include both an "Executive agency" and the "Library of Congress," see

App., *infra*, 13a-14a (citing 5 U.S.C. 3401(1), 4501(1), 5102(a)(1), 5521(1), 5541(1), 5584(g), 5595(a)(1), 5921(2), 5948(g)(2), 6121(1), 7103(a)(3)), as well as one provision defining the term "agency" to include both an "independent establishment" and the "Library of Congress," *id.* at 13a (citing 5 U.S.C. 4101(a)). The court suggested that, if the Library is an "Executive agency" or "independent establishment," those separate references to the Library would be redundant. But the court "overstate[d] the significance of statutory surplusage or redundancy," which "is not a silver bullet" in statutory interpretation. *Rimini Street, Inc.* v. *Oracle USA, Inc.*, 586 U.S. 334, 346 (2019). "[R]edundancies are common in statutory drafting—sometimes in a congressional effort to be doubly sure, sometimes because of congressional inadvertence or lack of foresight, or sometimes simply because of the shortcomings of human communication." *Barton* v. *Barr*, 590 U.S. 222, 239 (2020).

Moreover, the court of appeals' examples all involved definitions of the term "agency." The D.C. Circuit has held that the Library is not an "agency" within the meaning of the Administrative Procedure Act, 5 U.S.C. 551(1). See *Ethnic Employees* v. *Boorstin*, 751 F.2d 1405, 1416 n.15 (1985). It thus makes sense that Congress listed the Library by name when drafting specialized definitions of "agency" in other statutes. By contrast, Congress did not need to adopt that belt-and-suspenders approach in the statutory provisions at issue here. In all events, even if Congress assumed in drafting some other statutes that the Library may be part of the Legislative Branch, "assumptions are not laws." *Oklahoma* v. *Castro-Huerta*, 597 U.S. 629, 648 (2022).

The Library, in short, is an "independent establishment" and an "Executive agency" under the FVRA. The President thus lawfully designated Blanche as Acting Librarian, and Blanche lawfully removed respondent as Register.

2. Alternatively, if the FVRA did not authorize the President to designate an Acting Librarian who could remove the Register, Article II empowered the President to remove the Register directly. The President exercised that power here by directing respondent's removal. See App., *infra*, 28a.

Article II vests the President with the "power to remove—and thus supervise—those who wield executive power on his behalf." *Seila Law*, 591 U.S. at 204. That removal power extends to both principal and inferior executive officers. Thus, *Myers* v. *United States*, 272 U.S. 52 (1926), invalidated a statute restricting the President's removal of an inferior officer (a postmaster), explaining that the "power to remove inferior executive officers * * * is in its nature an executive power." *Id.* at 161. *Free Enterprise Fund* invalidated a statute that infringed "the President's removal power" by granting inferior officers two layers of tenure protection. 561 U.S. at 495. And *Seila Law* described "tenure protections [for] certain inferior officers" as falling within an "exceptio[n] to the President's unrestricted removal power." 591 U.S. at 204 (emphasis omitted).

When Congress vests the appointment of an inferior officer in a department head, the President ordinarily exercises the power to remove that inferior officer through the department head rather than on his own. See *Free Enterprise Fund*, 561 U.S. at 493. As a constitutional matter, Congress's power "to vest the appointment of * * * inferior officers in the heads of departments carries with it authority * * * to invest the heads of departments with power to remove." *Myers*, 272 U.S. at 161. And as a statutory matter, courts presume that "removal is incident to the power of appointment." *Free Enterprise Fund*, 561 U.S. at 509. That approach does not impair the President's oversight of the Executive Branch because the President retains the ability to remove inferior officers through the department head, who "is and must be the President's *alter ego* in the matters of that department." *Myers*, 272 U.S. at 133.

But when there is no department head and the President lacks the power to designate an acting department head, Article II empowers the President to remove inferior officers in that department directly. See *Aviel* v. *Gor*, No. 25-5105, 2025 WL 1600446, at *5 (D.C. Cir. June 5, 2025) (Rao, J., dissenting). Under Article II, the power to remove executive officers belongs to the President. See, *e.g.*, *Free Enterprise Fund*, 561 U.S. at 495 ("the President's removal power"). If the President cannot exercise that power through someone else, he must be able to exercise it himself.

A contrary rule would upend Article II's structure. Article II seeks to establish a "chain of dependence" among "those who are employed in the execution of the laws," ensuring that "the lowest officers, the middle grade, and the highest, will depend, as they ought, on the President, and the President on the community." *Free Enterprise Fund*, 561 U.S. at 498 (quoting 1 Annals of Cong. 499 (James Madison)). To that end, Article II requires that inferior officers be subject to the "direction and supervision" of principal officers, who are in turn subject to the direction and supervision of the President. *Arthrex*, 594 U.S. at 18. But if the President lacks the power to remove inferior officers in circumstances such as these, inferior officers could wield executive power without answering to anyone. Under the decision below, for example, respondent may continue serving as Register outside the Article II chain of command: According to the D.C. Circuit, the President may neither designate an Acting Librarian who can remove her, nor remove her himself. That result breaks the "chain of political accountability" that Article II demands. *Braidwood*, 145 S. Ct. at 2461.

Moreover, the decision below effectively allows the Senate to veto the President's removal of the Register. If the President may neither designate an Acting Librarian nor remove respondent directly, he may achieve her removal only by appointing a new Librarian with the Senate's advice and consent. If the Senate does not consent to a new appointment, respondent could continue serving as Register indefinitely. Handing such authority to the Senate would violate the basic rule that Congress may not "draw to itself, or to either [House], the power to remove or the right to participate in the exercise of that power." *Myers*, 272 U.S. at 161; see *Morrison* v. *Olson*, 487 U.S. 654, 686 (1988) (Article II forbids "an attempt by Congress to gain a role in the removal of executive officials"); *Bowsher*, 478 U.S. at 725 ("congressional participation in the removal of executive officers is unconstitutional"); cf. *Swan* v. *Clinton*, 100 F.3d 973, 986 (D.C. Cir. 1996) (extending removal protection to "holdover members" of an executive agency would "raise constitutional problems" because it would enable the Senate to "keep holdover members in office by not acting on the President's nominations for successors").

At a minimum, the statute establishing the office of Register, 17 U.S.C. 701(a), should be read to allow the President to remove respondent directly. The statute expressly addresses the Register's appointment but says nothing about his removal. See *ibid.* Courts should not construe silent statutes to restrict the President's removal power. See *Collins* v. *Yellen*, 594 U.S. 220, 250 (2021). Courts also should construe statutes, if reasonably possible, to avoid serious constitutional doubts, see *Perttu* v. *Richards*, 605 U.S. 460, 468 (2025)—here, the serious doubts raised by allowing respondent to continue exercising the President's executive power, over the President's objection, until the Senate confirms a new Librarian.

C. The Government Is Likely To Succeed In Showing That Respondent Is Not Entitled To Equitable Relief Restoring Her To Office

The government also is likely to succeed on the independent ground that the court of appeals' interlocutory injunction reinstating respondent exceeded its remedial authority. The traditional remedy for the unlawful removal of an executive officer is back pay, not a preliminary injunction granting interim reinstatement. See *Bessent* v. *Dellinger*, 145 S. Ct. 515, 516-518 (2025) (Gorsuch, J., dissenting); Appl. at 20-31, *Wilcox*, *supra* (No. 24A966). Even assuming that respondent could obtain some form of reinstatement remedy at the end of the litigation—an issue the Court need not decide now—the interim relief granted here is plainly unlawful.

a. Courts of appeals derive their powers to issue interim orders from the All Writs Act, 28 U.S.C. 1651(a), which Congress originally enacted as Section 14 of the Judiciary Act of 1789, ch. 20, 1 Stat. 80-81. Like injunctions issued by district courts, interim injunctions issued by courts of appeals must comport with "traditional principles of equity jurisdiction," *Grupo Mexicano de Desarrollo S.A.* v. *Alliance Bond Fund, Inc.*, 527 U.S. 308, 318 (1999), as understood "at the time of the adoption of the Constitution and the enactment of the original Judiciary Act," *Trump* v. *CASA, Inc.*, 606 U.S. 831, 841-842 (2025). Indeed, the All Writs Act specifically requires that orders be "agreeable to the usages and principles of law." 28 U.S.C. 1651(a).

One of the most well-established principles of equity jurisprudence is that a court may not enjoin the removal of an executive officer. This Court has recognized that principle time and again. For instance, the Court has explained:

- "[T]o sustain a bill in equity to restrain * * * the removal of public officers, is to invade the domain of the courts of common law, or of the executive and administrative department." *In re Sawyer*, 124 U.S. 200, 210 (1888).
- "[A] court of equity will not, by injunction, restrain an executive officer from making a wrongful removal of a subordinate appointee, nor restrain the appointment of another." *White* v. *Berry*, 171 U.S. 366, 377 (1898).

- "[T]he general rule, both in England and in this country, is that courts of equity have no jurisdiction * * * over the appointment and removal of public officers." *Harkrader* v. *Wadley*, 172 U.S. 148, 165 (1898).
- "A court of equity has no jurisdiction over the appointment and removal of public officers." *Walton* v. *House of Representatives*, 265 U.S. 487, 490 (1924).
- A "traditional limit upon equity jurisdiction" precludes "federal equity from staying removal of a federal officer." *Baker* v. *Carr*, 369 U.S. 186, 231 (1962) (emphasis omitted).

That principle is longstanding and well established. "No English case has been found of a bill for an injunction to restrain" a "removal." *Sawyer*, 124 U.S. at 212. American courts have likewise "denied" the "power of a court of equity to restrain" a "removal" in "many well considered cases." *Ibid.* One 19th-century scholar wrote that "[n]o principle of the law of injunctions, and perhaps no doctrine of equity jurisprudence, is more definitely fixed or more clearly established than that courts of equity will not interfere by injunction to determine questions concerning the appointment of public officers or their title to office." 2 James L. High, *Treatise on the Law of Injunctions* § 1312, at 863 (2d ed. 1880).

Because reinstatement is not a traditional equitable remedy, Congress affirmatively authorizes reinstatement when it means to make that relief available. For example, the statute in *Morrison* provided that a removed independent counsel "may be reinstated" by a reviewing court. Independent Counsel Reauthorization Act of 1987, § 2, 101 Stat. 1305 (stating that a removed independent counsel "may be reinstated" by a reviewing court). Congress likewise has authorized "reinstatement" as a remedy for employment discrimination, see 42 U.S.C. 2000e–5(g)(1), and unfair labor practices, see 29 U.S.C. 160(c). But Congress did not authorize such relief for the

Register, and that omission is decisive. The "remedies available are those 'that Congress enacted into law,'" not those that courts consider "desirable." *Alexander* v. *Sandoval*, 542 U.S. 275, 286-287 (2001).

b. To resolve this stay application, this Court need recognize only that courts of appeals lack the power to issue interlocutory injunctions reinstating removed officers. It need not consider whether courts could issue other types of relief, such as writs of mandamus ordering reinstatement or declaratory judgments stating that removals are unlawful. The government has argued against those remedies as well, see, *e.g.*, Appl. at 20-31, *Wilcox*, *supra* (No. 24A966), but the court of appeals did not grant them, so this case presents no occasion to consider their lawfulness.

Reinstatement injunctions pose a more severe threat to the Executive Branch than writs of mandamus or declaratory judgments. A party may obtain a writ of mandamus only if he has a "clear and indisputable" entitlement to relief, *Cheney* v. *U.S. District Court*, 542 U.S. 367, 381 (2004), and a declaratory judgment only if he prevails on the merits, see *Doran* v. *Salem Inn, Inc.*, 422 U.S. 922, 931 (1975). By contrast, the court of appeals awarded an interlocutory injunction based on its view that respondent is likely to succeed on the merits. See App., *infra*, 11a-14a.

Regardless of whether removed officers could obtain mandamus or declaratory judgments at the end of the litigation, they have no right to interlocutory injunctions reinstating them while the litigation remains pending. In debates leading to the Decision of 1789, those members of the First Congress who thought that removal required Senate consent agreed that the President could suspend officers pending Senate action. See *Myers*, 272 U.S. at 124-125. In *Wiener*, this Court suggested that the President could make a "suspensory removal" of a tenure-protected Commissioner "until the Senate could act upon it by confirming the appointment of a new Commissioner or otherwise dealing with the matter." 357 U.S. at 356. Even the Tenure of Office Act, ch. 154, 14 Stat. 430—the most aggressive congressional incursion on the President's removal power in the Nation's history—allowed the President to "suspend [an] officer" until the Senate could meet and decide whether to consent to a removal. § 2, 14 Stat. 430. That history strongly supports allowing removals to take effect while their lawfulness is resolved.

D. The Other Factors Support Granting A Stay

In deciding whether to grant interim relief, this Court also considers whether the applicant likely faces irreparable harm and, in close cases, the balance of equities. See *Hollingsworth*, 558 U.S. at 190. Those factors support granting a stay of the D.C. Circuit's extraordinary decision to grant an injunction pending appeal.

This Court has repeatedly recognized in recent months that the government faces a serious risk of irreparable harm when a federal court reinstates a removed executive officer. See *Slaughter*, No. 25A264; *Boyle*, 145 S. Ct. at 2563; *Wilcox*, 145 S. Ct. 1415. Such an order harms the Executive Branch by "allowing a removed officer to continue exercising the executive power" over the President's objection. *Wilcox*, 145 S. Ct. at 1415. Such an order also subjects the agency to "the disruptive effect of the repeated removal and reinstatement of officers." *Ibid.* The district court and Judge Walker both recognized that, under those principles, the government faces irreparable harm from respondent's reinstatement. See App., *infra*, 40a-41a; *id.* at 27a (Walker, J., dissenting).

By contrast, as the district court repeatedly determined, respondent does not face irreparable harm from her removal. See 5/28/25 Hr'g Tr. 51-52 (denying TRO); App., *infra*, 35a-46a (denying preliminary injunction); *id.* at 29a-30a (denying injunction pending appeal). Respondent's removal deprives her of employment and salary, but such harms ordinarily are not considered irreparable. See *Sampson* v. *Murray*, 415 U.S. 61, 92 n.68 (1974). Respondent's removal also prevents her from exercising the powers of the Register, but a public official's "loss of political power" is not a judicially cognizable harm, much less the type of irreparable harm that can justify issuing an injunction. *Raines* v. *Byrd*, 521 U.S. 811, 821 (1997). In all events, "the Government faces greater risk of harm from an order allowing a removed officer to continue exercising the executive power than a wrongfully removed officer faces from being unable to perform her statutory duty." *Wilcox*, 145 S. Ct. at 1415.

The court of appeals provided three reasons for its contrary balancing of the equities. None of them is sound.

First, the court reasoned that, because respondent "leads an agency that is housed in the Legislative Branch," her reinstatement does not meaningfully harm the government, but her removal harms her and the public. App., *infra*, 20a. That argument is wrong because, as discussed above, the Register is an executive officer, not a legislative one.

Second, the court of appeals stated that the Executive Branch faces minimal harm because the Register "does not exercise *substantial* executive power." App., *infra*, 21a (emphasis added). Article II, however, vests the entire executive power—not just "substantial" executive power—in the President alone. See *Seila Law*, 591 U.S. at 213. "Courts are not well-suited to weigh the relative importance of the regulatory and enforcement authority of disparate agencies." *Collins*, 594 U.S. at 253. In any event, the court's argument fails on its own terms. The Register makes regulations governing the copyright registration system, issues legal rulings that control copyright royalty adjudications, adjudicates applications for copyright registration, and conducts diplomacy on sensitive questions regarding respect for intellectual property in international affairs. Those powers are "substantial" by any reasonable measure. See, *e.g.*, *Seila Law*, 591 U.S. at 220 (describing the power to promulgate binding rules and issue binding orders as "significant"); *Medical Imaging*, 103 F.4th at 833 (describing the Copyright Office's "regulatory authority" as "significant").

Third, the court of appeals stated that respondent's removal would "deprive Congress of her valuable services" and threaten the public's "profound interest in the Register's continued work." App., *infra*, 22a. But the Acting Librarian has appointed an Acting Register, who will provide such services and carry out the office's other duties. Perhaps the court of appeals thought that respondent would do the work better than her replacement, but the Constitution entrusts that judgment to the President, not the federal courts.

CONCLUSION

This Court should stay the interlocutory injunction of the U.S. Court of Appeals for the D.C. Circuit pending the resolution of the government's appeal to that court and pending any proceedings in this Court.

Respectfully submitted.

D. JOHN SAUER
Solicitor General

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