

IN THE
Supreme Court of the United States

TODD BLANCHE, in his capacity as the person
claiming to be acting Librarian of Congress, *et al.*,
Applicants,
v.

SHIRA PERLMUTTER, Register of Copyrights and
Director of the U.S. Copyright Office,
Respondent.

ON APPLICATION FOR A STAY OF THE INJUNCTION PENDING APPEAL ISSUED BY THE
UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

OPPOSITION TO APPLICATION FOR A STAY

DONALD B. VERRILLI, JR.
GINGER D. ANDERS
MUNGER, TOLLES & OLSON LLP
601 Massachusetts Avenue, NW,
Suite 500E
Washington, D.C. 20001

KURUVILLA J. OLASA
MIRANDA E. REHAUT
ADEEL MOHAMMADI
MUNGER, TOLLES & OLSON LLP
350 South Grand Avenue, 50th Floor
Los Angeles, California 90071

BRIAN D. NETTER
Counsel of Record
ALLYSON R. SCHER
DEMOCRACY FORWARD FOUNDATION
P.O. Box 34553
Washington, DC 20043
(202) 448-9090
bnetter@democracyforward.org

Counsel for Respondent Shira Perlmutter

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INTRODUCTION

In their zeal to win this particular case, Applicants make an inexcusable mess of Congress's plans for the governance of its Library.

Despite the framing of the application, the question here is not whether the Register of Copyrights or the Librarian of Congress has any functions that can be characterized as “executive” for constitutional purposes; it is whether Congress decided to organize the Library as an “Executive agency”—not just for purposes of the Federal Vacancies Reform Act of 1998 (“FVRA”), 5 U.S.C. § 3345 *et seq.*, but for all of the purposes for which the same definition of “Executive agency” is used in Title 5, 5 U.S.C. § 105.

The statutory question that is actually presented by this case is not novel, and it is not particularly challenging. Every indicator of statutory meaning points in the same direction, and Title 5 would be left as an incoherent and unworkable jumble were Applicants to prevail. As Judge Sentelle has explained for the D.C. Circuit, interpreting the very same definitional statute at issue here, the “narrowing term ‘Executive agency’ . . . plainly does not contain the Library of Congress within the meaning of the statute.” *Davis v. Billington*, 681 F.3d 377, 386 (D.C. Cir. 2012). No court at any level has taken a contrary view. None of the judges below has accepted Applicants’ merits theory, and the D.C. Circuit denied en banc review without even a single judge calling for a response to the petition.

Given the unavoidable weakness of its merits position, the application boils down to this: in response to lawless executive action, Applicants are asking the Court to exercise its equitable authority to grant extraordinary relief that would upend the

status quo and defy Congress’s well-expressed intent. Worse yet, Applicants are asking this Court to act on an emergency basis, even though they waited 47 days from the issuance of an injunction—and 26 days after the denial of en banc review—to seek this Court’s intervention, and even though Applicants never exercised their supposed roles at the Library of Congress in the 121 days during which no injunction was in place.

For all of these reasons, the application should be denied.

BACKGROUND

1. Respondent Shira Perlmutter is the Register of Copyrights. The Register is the “director of the Copyright Office,” 17 U.S.C. § 701(a), which has a “longstanding role as advisor to Congress on matters within its competence.” H.R. Conf. Rep. No. 105–796, at 77 (1998). The Register’s role “is separate from testimony or other recommendations by the Administration pursuant to the President’s concurrent constitutional power to make recommendations to Congress.” *Id.* The Register is required to “[a]dvice Congress on national and international issues relating to copyright,” to “[c]onduct studies and programs regarding copyright,” and to “[p]erform such other functions as Congress may direct.” 17 U.S.C. § 701(b); see also *Register of Copyrights Selection and Accountability Act: Hearing on H.R. 1695 Before the S. Comm. on Rules and Admin.*, 115th Cong. 3 (2018) (statement of Sen. Klobuchar) (describing the Register of Copyrights as Congress’s “chief copyright policy adviser”).

In her role as advisor to Congress, Perlmutter has produced multiple reports on copyright law and policy issues, most recently addressing the thorny issues raised

by artificial intelligence. Perlmutter issued Part 3 of her report on fair use of copyrighted materials and generative artificial intelligence (“AI Report”) in pre-publication format on May 9, 2025, and has been working on the fourth and final installment, which she had expected to release over the summer prior to the events that gave rise to this case. See App.6a.

Pursuant to its authority “[t]o promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries,” U.S. Const. art. I, § 8, cl. 8, Congress has also entrusted the Register with the responsibilities to examine copyright applications, to issue copyright registrations, to maintain copyright deposits, and to record transfers of copyright ownership. 17 U.S.C. §§ 205, 410–11, 705; see App.15a. She proposes rules for the administration of the copyright system that may be promulgated after review by the Librarian of Congress, see 17 U.S.C. § 702. “The Register of Copyrights, together with the subordinate officers and employees of the Copyright Office, shall be appointed by the Librarian of Congress, and shall act under the Librarian’s general direction and supervision.” *Id.* § 701(a).

2. On Thursday, May 8, 2025, President Trump removed Dr. Carla D. Hayden from her Senate-confirmed position as Librarian of Congress. App.6a. In accordance with the Library’s regulations—issued pursuant to authority delegated by Congress, 2 U.S.C. § 136—Principal Deputy Librarian of Congress Robert Newlen replaced Dr. Hayden as acting Librarian. App.6a.

On Friday, May 9, Perlmutter issued the prepublication version of Part 3 of

the AI Report. *Id.* On Saturday, May 10, Trent Morse, Deputy Assistant to the President and Deputy Director of the White House Presidential Personnel Office, sent an email to Perlmutter, stating, on the President's behalf, that her position as the Register of Copyrights and Director of the U.S. Copyright Office was terminated, effective immediately. App.7a. The following Monday, May 12, Justice Department employees Paul Perkins and Brian Nieves arrived at the Library of Congress with a letter from the President purporting to appoint Deputy Attorney General Todd Blanche as acting Librarian of Congress pursuant to the FVRA, and an email from Blanche purporting to appoint Perkins and Nieves as acting Register and acting Deputy Librarian, respectively. App.7a. Officials at the Library did not recognize Blanche, Perkins, or Nieves as proper acting officials. At no point during the ensuing six months has any of them performed any of the responsibilities of an acting Library official. App.8a.

3. Perlmutter filed suit on May 22, 2025, and moved that same day for a temporary restraining order. *Perlmutter v. Blanche*, 1:25-cv-01659 (D.D.C.), ECF Nos. 1, 2. The district court denied the motion on May 28, 2025. See *id.*, May 28, 2025 Min. Order. Without addressing Perlmutter's likelihood of success on the merits, the district court concluded that Perlmutter had not demonstrated that the loss of her position as Register would cause her to be irreparably harmed in the next 14 days. See *id.*, Tr. of Oral Arg. at 37:22–24, 47:20–23, 51:23–24 (May 28, 2025), ECF No. 15. Perlmutter asked the court to proceed to expedited summary judgment proceedings, see *id.*, ECF No. 16, but the court declined to expedite consideration,

whereafter Perlmutter filed a motion for a preliminary injunction. See *id.*, ECF No. 24. On July 30, 2025, the district court denied that motion, again taking the view that, irrespective of the merits of her claim, Perlmutter would not be irreparably harmed during the pendency of litigation. See *id.*, ECF No. 40.

Perlmutter noticed an interlocutory appeal. On September 10, 2025, the D.C. Circuit entered an injunction pending appeal, precluding Applicants from interfering with Perlmutter’s continued service as Register of Copyrights. See App.2a.

Judge Pan, joined by Judge Childs, filed a concurring opinion, explaining that Perlmutter was likely to prevail on the merits of her challenge to the appointment of Blanche under the FVRA because “[t]he plain language of the statute indicates that the Library of Congress is not an ‘Executive agency’ for purposes of the FVRA.” App.13a. The court concluded that the President lacked extra-statutory authority to appoint an acting Librarian and noted that it did not need to decide whether the President could directly remove the Register, because the government had not so argued. App.11a–12a & n.1. The court concluded that Perlmutter had demonstrated irreparable harm from “[t]he President’s attempt to reach into the Legislative Branch to fire an official that he has no statutory authority to either appoint or remove, and to impede Congress’s ability to carry out an enumerated constitutional duty.” App.17a. As to the balance of the equities and public interest, the panel explained that an injunction “would not require the President to work with a removed principal officer at an Executive Branch agency; and it would not interfere with the President’s constitutional prerogative to supervise the Executive Branch.” App.20a.

Judge Walker dissented but did “not dispute that Perlmutter is likely to succeed on the merits of her lawsuit, that Perlmutter would suffer irreparable harm absent an injunction pending appeal, or that those two factors are the most critical in deciding whether to grant the requested injunction.” App.22a. Despite those factors, he thought that the balance of the equities favored Applicants. App.24a–27a.

A week later, Applicants filed a petition for a rehearing or rehearing en banc. See Pet. for Reh’g or Reh’g En Banc, *Perlmutter v. Blanche*, No. 25-5285 (D.C. Cir. Sept. 17, 2025). Two weeks later, without any judge having requested a response to the petition, the D.C. Circuit denied Applicants’ request. See App.1a; Supp.App.1a.

ARGUMENT

“To obtain a stay pending the disposition of an appeal, an applicant must show “(1) whether the applicant is likely to succeed on the merits, (2) whether it will suffer irreparable injury without a stay, (3) whether the stay will substantially injure the other parties interested in the proceedings, and (4) where the public interest lies.” *Ohio v. EPA*, 603 U.S. 279, 291 (2024). In addition, an applicant must establish “a reasonable probability” that this Court will eventually grant certiorari. *Teva Pharms. USA, Inc. v. Sandoz, Inc.*, 572 U.S. 1301 (2014) (Roberts, C.J., in chambers).

The President and his subordinates have not made the requisite showing on any of these factors.

I. Applicants Are Unlikely to Succeed on the Merits

Applicants cannot make the necessary “strong showing” that they would prevail on the merits, *Nken v. Holder*, 556 U.S. 418, 426 (2009), because they are not likely to persuade the Court that, contrary to plain statutory text, the Library of

Congress is an “Executive agency” under Title 5 of the U.S. Code. Nor are they likely to persuade the Court that the President has inherent Article II authority to directly remove inferior officers like the Register of Copyrights. No court has ever accepted this extraordinary and novel claim, which was not preserved below and is not properly before this Court.

Applicants also cannot show that they will prevail on their alternative claim—which is forfeited because they raise it for the first time here—that the court of appeals did not have authority to issue an injunction in this case. Contrary to Applicants’ argument, because Perlmutter was never lawfully removed from her post, she does not need to be “reinstated.” Neither attempt to remove Perlmutter (first by the President and then by Blanche) had any legal effect. See *infra* Parts I.A & I.B. And the President and his subordinates have conceded to the district court that Library officials and staff recognized Perlmutter as the Register during the pendency of this litigation, and at no point have Blanche and Perkins actually been performing their supposed jobs at the Library. See *Perlmutter v. Blanche*, 1:25-cv-01659 (D.D.C.), ECF No. 51-1 ¶¶ 11–14.

A. The President lacks statutory authority to appoint Blanche, who therefore does not possess the authority to remove Perlmutter

Blanche’s purported removal of Perlmutter was invalid because he was not properly serving as acting Librarian. The President purported to rely on the FVRA to appoint Blanche, App.7a, but the FVRA does not authorize the President to appoint an acting Librarian of Congress.

1. In the ordinary course, when a principal officer of the United States resigns a post, the position may be filled only after the President has nominated and the Senate has confirmed a successor. This limitation is a “critical ‘structural safeguard[] of the constitutional scheme.’” *NLRB v. SW Gen., Inc.*, 580 U.S. 288, 293 (2017) (quoting *Edmond v. United States*, 520 U.S. 651, 659 (1997)).

Through the FVRA, 5 U.S.C. § 3345, Congress “has given the President *limited authority* to appoint acting officials to temporarily perform the functions of a vacant [principal] office without first obtaining Senate approval.” *SW Gen., Inc.*, 580 U.S. at 294 (emphasis added). Critically, Congress applied the FVRA to any Senate-confirmed office in an “Executive agency.” For such offices, the FVRA permits the President to direct a person “to perform the functions and duties of the vacant office temporarily [and] in an acting capacity subject to the time limitations” set forth in the statute. 5 U.S.C. § 3345(a). The FVRA is “the exclusive means for temporarily authorizing an acting official to perform the functions and duties of any office of an Executive agency” for which Senate confirmation is required. *Id.* § 3347(a).

2. The FVRA straightforwardly does not supply the President with the authority to appoint Blanche as acting Librarian because Congress did not include the Library of Congress within its definition of “Executive agency.”

Congress did not provide a special definition of “Executive agency” in the FVRA, so the phrase takes on the definition prescribed “[f]or the purpose of [Title 5]” (5 U.S.C. § 105), where Congress defined “Executive agency” to include an agency (1) on the enumerated list of “Executive department[s]” (*id.* § 101); (2) that is a

“Government corporation” (*id.* § 103); or (3) that is an “independent establishment,” which is defined to mean either “an establishment in the executive branch” not previously covered or “the Government Accountability Office” (*id.* § 104). Applicants argue (at 14) that the Library is an “independent establishment,” but it quite obviously is not.

The D.C. Circuit has decided unequivocally that the “narrowing term ‘Executive agency’ . . . plainly does not contain the Library of Congress within the meaning of the statute.” *Davis*, 681 F.3d at 386. In *Davis*, the D.C. Circuit considered the availability of *Bivens* relief for a former Library of Congress employee alleging wrongful termination. The court reasoned that the answer turned on whether Congress had adopted a comprehensive remedial scheme that foreclosed an implied remedy. The court found such a scheme in the Civil Service Reform Act (CSRA), concluding that, although Library of Congress employees are generally covered by the Act, they are not entitled to invoke the Act’s remedial provisions, which are available only to employees of an “Executive agency”:

Here, the unambiguous use of the narrowing term “Executive agency”—a term which plainly does not contain the Library of Congress within the meaning of the statute, see 5 U.S.C. § 7103(a)(3)—and the express exclusion of probationary employees from the “agencies” and types of “employees” subject to the CSRA’s remedial protections evidences an explicit congressional design for the subsets of civil-service employees that would and would not have access to those protections.

681 F.3d at 386. As with the FVRA, 5 U.S.C. § 7103(a)(3) uses the very same definitional statute—5 U.S.C. § 105—to define “Executive agency.”

The D.C. Circuit was correct in *Davis*, as it was in this case, too. As Applicants acknowledge (at 15), “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, 422–23 (1989) (Scalia, J., dissenting); accord *Lebron v. Nat’l R.R. Passenger Corp.*, 513 U.S. 374, 392–93 (1995). Here, Congress has made it abundantly clear that the Library of Congress is not to be treated as an “Executive agency” for purposes of Title 5.

In the Ethics in Government Act, Congress defined “executive branch” to “include[] each Executive agency (as defined in section 105 of [title 5]), other than the Government Accountability Act” and separately defined “legislative branch” to “include[] . . . the Library of Congress.” 5 U.S.C. § 13101(4), (11). Under the statute, different ethics rules apply to employees of the “executive branch” and the “legislative branch,” see, e.g., *id.* § 13142, so the Library cannot be both an “Executive agency” and simultaneously part of the “legislative branch” as defined by Congress. Applicants do not dispute that a statutory definition should not be interpreted to make another application of the same definition incoherent. Instead, they observe (at 16) that § 13101(11) defines “legislative branch” only for purposes of the relevant subchapter. But that is beside the point—the problem for Applicants is the definition of “Executive agency” in 5 U.S.C. § 105. That same definition applies to both the FVRA and the Ethics in Government Act. Because the Ethics in Government Act makes clear that the Library of Congress cannot be a section 105 “Executive agency,”

it follows ineluctably that the Library of Congress is not an “Executive agency” to which the FVRA applies.

Elsewhere, Congress has made it abundantly clear that it does not consider the Library to be an “Executive agency” for purposes of Title 5. *First*, in more than a dozen parts of Title 5, Congress distinguished between an “Executive agency” or an “independent establishment,” on one hand, and the “Library of Congress,” on the other. See, e.g., 5 U.S.C. § 5948(g)(2) (“‘agency’ means an Executive agency, as defined in section 105 of this title, the Library of Congress, and the District of Columbia government”); see also *id.* §§ 3102(a)(1), 3401(1), 4101(1), 4501(1), 5102(a)(1), 5521(1), 5541(1), 5584(g), 5595(a)(1), 5721(1), 5921(2), 6121(1), 7103(a)(3). Clearly, then, Congress does not regard the Library to be an “independent establishment” or an “Executive agency,” as it defined those terms for purposes of Title 5. See *Haddon v. Walters*, 43 F.3d 1488 (D.C. Cir. 1995) (per curiam) (holding that the Executive Residence is not an “independent establishment” for purposes of Title 5 because Congress had distinguished between the Executive Residence and an “independent establishment”).

Second, Congress has elsewhere regulated the Library as part of the legislative branch, so there is good reason why it would not have given the President *carte blanche* to designate an acting Librarian without any congressional input. Congress established the Library in Title 2 (“The Congress”) and has repeatedly defined the Library as a “legislative branch agency.” E.g., 2 U.S.C. § 181(b)(1); 31 U.S.C. § 1105 note (132 Stat. 5430, 5430); 2 U.S.C. § 141 note (107 Stat. 1043, 1044). Indeed, when

Congress last “clarifie[d] the duties and functions of the Register of Copyrights,” the Conference Report emphasized “the Copyright Office’s role as a legislative branch agency.” H.R. Conf. Rep. No. 105-796, at 77 (1998). And courts have recognized, for a host of purposes, that Congress intended to treat the Library as part of the legislative branch for statutory purposes. See, e.g., *Kissinger v. Reps. Comm. for Freedom of the Press*, 445 U.S. 136, 145–46 (1980) (FOIA does not apply to Library of Congress because it does not apply to “Congress”); *Wash. Legal Found. v. U.S. Sent’g Comm’n*, 17 F.3d 1446, 1449 (D.C. Cir. 1994) (APA does not apply to Library of Congress because it does not apply to “Congress”); *Judd v. Billington*, 863 F.2d 103, 104 (D.C. Cir. 1988) (provisions of the Rehabilitation Act do not apply to Library of Congress employees because those provisions are “limited in scope to the executive branch” and “the Library of Congress, as part of the legislative branch, was not included”). Congress has routinely organized the Library within the legislative branch; it did so here, too, which means that it did not authorize the President to appoint an acting Librarian without the advice and consent of the Senate.

3. Faced with this unambiguous proof of Congress’s intent, Applicants offer two unsatisfying responses, neither of which has a scintilla of support anywhere in the U.S. Code. Applicants contend (at 17) that Congress referenced the Library of Congress as distinct from “Executive agency” and “independent establishment” merely because it chose to adopt a “belt-and-suspenders” approach. But that argument ignores the innumerable decisions applying the canon against superfluity, fails to explain the Ethics in Government Act (which would, under Applicants’ theory,

impose conflicting obligations on Library of Congress employees that are most assuredly not superfluities), and defies common sense. If Congress considered the Library of Congress to be an “independent establishment” and “Executive agency,” it surely would have said so expressly, *somewhere* (as it did when it established other “independent establishment[s],” see, e.g., 44 U.S.C. § 2102 (establishing the National Archives and Records Administration as “an independent establishment in the executive branch”); 5 U.S.C. § 1101 (same for the Office of Personnel Management); 39 U.S.C. § 201 (same for the United States Postal Service); 42 U.S.C. § 2286 (same for the Defense Nuclear Facilities Safety Board)). And if it was so important across Title 5 to be redundantly clear that the Library of Congress was an “Executive agency,” then surely it would have been just as important to be redundantly clear for the FVRA, given all of the powers that flow from acting agency leadership. But Applicants can point to no specific statutory language, anywhere, to support their never-before-accepted theory.

Applicants likewise fail with their strained assertion (at 17) that redundancy was especially important because Congress was elsewhere using “Executive agency” to define the term “agency.” *First*, Applicants identify no authority for the proposition that Congress needs to distinguish, or has a practice of distinguishing, other local definitions when it adopts a definition for one statutory subchapter—a proposition that would have profound implications for the interpretation of the U.S. Code. *Second*, even if Congress had a practice of expressly distinguishing D.C. Circuit interpretations of other statutes (see Appl. 17 (citing *Ethnic Emps. v. Boorstin*, 751

F.2d 1405, 1416 n.15 (D.C. Cir. 1985)), it could not have been doing so when it adopted these statutory provisions well before the cases at issue, see, *e.g.*, Act to Enact Title 5, Pub. L. No. 89–554, §§ 3102(a)(1), 4101(1), 4301(1), 4501(1), 5102(a)(1), 5521(1), 5541(1), 5721(1), 5921(2), 80 Stat. 378, 414, 432, 440, 442, 444, 479, 485, 500, 510. *Third*, many provisions in Title 5 define “agency” by incorporation of the definition of “Executive agency,” but do not separately list the Library, see, *e.g.*, 5 U.S.C. §§ 306, 3304, 3701, 5701, including at least one statute in which the Library of Congress was listed and then removed, compare Act to Enact Title 5, 80 Stat. at 440 (codifying 5 U.S.C. § 4301), *with* Civil Service Reform Act of 1978, Pub. L. No. 95–454, § 203(a), 92 Stat. 1111, 1131–32 (revising § 4301).

Applicants’ only other statutory argument (at 15) is that Congress intended to define “Executive agency” to be coextensive with the Constitution’s definition of “executive Departments” in Article II. But Congress obviously was not required to use that constitutional standard. See *Lebron*, 513 U.S. at 392–93 (holding that Congress has the “dispositive” ability to define government entities “for purposes of matters that are within Congress’s control”). And it clearly did not choose voluntarily to do so. If Congress had wanted to import a standard from Article II, why would it have used different words? Why would it not have referenced the Constitution? Why would it have partitioned the constitutional standard into three distinct components? And why would it have listed some (but not all) of the “Departments”? The answer is that Congress intended to adopt its own standard, as the text of the statute demonstrates. And it would have been illogical for Congress to have adopted a

standard that would depend on future legal developments and that would not provide clear guidance as to how to handle entities (like the Library of Congress) that may wield enough executive authority to trigger the Appointments Clause (see *Intercollegiate Broad. Sys., Inc. v. Copyright Royalty Bd.*, 684 F.3d 1332 (D.C. Cir. 2012) (addressing the Copyright Royalty Board, which is not a part of the Copyright Office)), but that also quite obviously perform critical legislative functions (see *id.* at 1341–42 (identifying the Congressional Research Service as one of the Library’s legislative functions)).

B. The President lacks authority to remove Perlmutter directly

Applicants contend (at 18) in the alternative that if the President cannot appoint an acting Librarian under the FVRA, then he is entitled to remove the Register himself, as an unwritten power implied by Article II. They raised this argument in the district court but chose not to do so in the D.C. Circuit, either at the panel or rehearing stages. Applicants are not entitled to seek certiorari, let alone emergency relief, on a theory that they did not present and that the court below did not pass upon. See *Moyle v. United States*, 603 U.S. 324, 336–37 (2024) (Barrett, J., concurring) (“We should not jump ahead of the lower courts, particularly on an issue of such importance.”); *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005) (“Because these defensive pleas were not addressed by the Court of Appeals, and mindful that we are a court of review, not of first view, we do not consider them here.”). In any event, Applicants’ Article II theory is meritless.

1. The Appointments Clause confers on Congress the authority to vest the appointment of inferior officers in “the President alone, in the Courts of Law, or in

the Heads of Departments” as it “think[s] proper.” *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 487 (2010); U.S. Const. art. II, § 2, cl. 2. If Congress vests the authority to appoint inferior officers in a Head of Department, “it is ordinarily the department head, rather than the President, who enjoys the power of removal.” *Free Enter. Fund*, 561 U.S. at 493. In other words, the power to fire follows the power to hire. Congress may depart from this default rule; “[a]bsent relevant legislation,” however, “the power to remove is held by the appointing authority, and *only by the appointing authority.*” *Nat’l Treasury Emps. Union v. Reagan*, 663 F.2d 239, 247 (D.C. Cir. 1981) (emphasis added); see also *Kennedy v. Braidwood Mgmt., Inc.*, 145 S. Ct. 2427, 2444 (2025) (“[W]hen as here Congress vests appointment of inferior officers in ‘heads of departments,’ ‘it is ordinarily the department head . . . who enjoys the power of removal.’”).

Congress did not depart from the default rule here. Congress vested the Librarian of Congress with the authority to appoint the Register. See 17 U.S.C. § 701(a) (“The Register of Copyrights . . . shall be appointed by the Librarian of Congress, and shall act under the Librarian’s general direction and supervision.”); see also *Eltra Corp. v. Ringer*, 579 F.2d 294, 300 (4th Cir. 1978) (“The Librarian of Congress is an Officer of the United States, with the usual power of such officer to appoint such inferior officers (i.e., the Register), as he thinks proper.”) (cleaned up). It therefore follows that only the Librarian of Congress has the authority to remove her. The President does not have the power to do so. See App.11a (“[T]he Librarian—not the President—has the power to remove Perlmutter.”); *Nat’l Treasury Emps.*

Union, 663 F.2d at 247; see also *In re Hennen*, 38 U.S. 230, 260 (1839) (if Congress vests a department head with the power to appoint and remove an inferior officer, “the President has certainly no power to remove” the inferior officer directly). Accordingly, the purported termination of Perlmutter from her position as the Register of Copyrights by the President was *ultra vires* and did not have the legally binding effect of displacing Perlmutter from her role.

2. Because settled law does not provide the President with the authority that Applicants require, they ask this Court to recognize an unprecedented expansion of executive power: that “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.” Appl. 19.

Putting aside the impropriety of seeking such a sweeping expansion of presidential authority (and derogation of congressional authority) in an application for emergency relief, Applicants’ position is impossible to reconcile with the unambiguous text of the Appointments Clause. The Constitution entitles Congress to adopt legislation to “vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.” Art. II, § 2, cl. 2. Under Applicants’ approach, however, the President could render Congress’s choice to vest authority to appoint an inferior officer in someone other than the President a nullity by serially firing whomever the appointing authority selected for the post. Indeed, this line of reasoning has troublesome implications. For example, the President could circumvent the general restriction on firing inferior

officers by simply firing the principal officer first to create a vacancy and then using that vacancy as a justification to usurp the appointment power that Congress vested elsewhere. And if the President has inherent constitutional authority to hire or fire any officer in the executive branch, the FVRA, which definitionally restricts who can fill certain vacancies, would necessarily be unconstitutional.

Applicants' approach would also improperly dilute Congress's role. Congress is not obligated to authorize the President to appoint an acting principal officer; it can require the President to nominate a candidate whom the Senate deems qualified for the post. Congress can therefore reserve the appointment of an inferior officer to an official who has been confirmed by the Senate—a process that preserves the Constitution's balance of power between the executive and legislative branches. That balance is of paramount importance here, when applied to an institution as to which Congress has such obvious equities.

C. The court of appeals' injunction pending appeal was proper

The President and his subordinates' final merits contention (at 20–21) is that the court of appeals' injunction “exceeded its remedial authority” because reinstatement is not available as an equitable remedy. Applicants did not raise this argument before the district court or the court of appeals. Again, because this is “a court of review, not of first view,” *Cutter*, 544 U.S. at 718 n.7, Applicants cannot introduce this theory through an emergency application. Their contention is meritless in all events.

Perlmutter does not seek to be “reinstated” because she was never removed in the first place. Perlmutter did not come to court seeking reinstatement; she has asked

for an injunction to prohibit individuals who lack the authority to displace her from pretending that they have such powers. As the court of appeals recognized, “[n]otwithstanding Perlmutter’s purported removal, and the purported appointment of Blanche as acting Librarian, it appears that Perlmutter is still serving in her role as Register.” App.8a. The President and his subordinates have conceded to the district court that Perlmutter has remained in her Library employment since her purported removal, and that Blanche, Perkins, and Nieves have not assumed control over the Library of Congress’s or Copyright Office’s operations. See *Perlmutter v. Blanche*, 1:25-cv-01659 (D.D.C.), ECF No. 51-1 ¶¶ 11–14. The court of appeals accordingly did *not* reinstate Perlmutter but instead maintained the status quo by ordering that the President’s subordinates be “enjoined from interfering with [Perlmutter’s] service as Register of Copyrights and Director of the U.S. Copyright Office pending further order of the court.” App.2a.

Applicants do not contend that courts lack equitable power to maintain the status quo. Nor could they. “The purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held.” *Lackey v. Stinnie*, 604 U.S. 192, 200 (2025) (citation omitted). Indeed, the principal treatise cited by Applicants demonstrates that a court sitting in equity has the same power to preserve the status quo in the context of an attempted removal. As it explains, “[w]hile . . . courts of equity uniformly refuse to interfere by the exercise of their preventive jurisdiction to determine questions relating to the title to office, they frequently recognize and protect the possession of officers *de facto*.” 2 James L. High,

Treatise on the Law of Injunctions § 1315, at 866 (2d ed. 1880). In particular, “the actual incumbents of an office may be protected, pending a contest as to their title, from interference with their possession, and with the exercise of their functions.” *Id.*; see, e.g., *Reemilin v. Mosby*, 26 N.E. 717, 718 (Ohio 1890). “[T]he granting of an injunction in such case in no manner determines the questions of title involved, but merely goes to the protection of the present incumbents.” 2 High, *supra*, § 1315, at 867.

The fact that Perlmutter has not been removed thus is one important element that distinguishes this case from other removal cases before the Court in recent months, in which the President’s removal took effect immediately. See, e.g., *Trump v. Wilcox*, 145 S. Ct. 1415 (2025).

Moreover, Applicants’ view of executive authority has no limiting principle. They insist that courts are powerless to do anything about the President’s attempt to seize control of the Library of Congress, even if a court correctly concludes that the President’s actions are in reckless disregard of the law. Under this theory, the President’s lawless misconduct would be rewarded—creating an unchecked power that is antithetical to the Constitution’s design. If Applicants were correct, the President could fire the Senate parliamentarian before she issued a ruling that would prevent a bill supported by the President from becoming law. Or the President could temporarily replace a U.S. District Judge who was about to enjoin a policy that the President preferred. Both officials would simply get backpay under Applicants’ theory (at 21). Of course, they are wrong. The availability of backpay is not a silver

bullet that gives the President limitless authority to lawlessly fire public officials in any branch of government.

II. The Remaining Factors Cut Decisively Against a Stay

The application also falls far short on the remaining stay factors.

1. One of the “most critical” stay factors is “whether the applicant will be irreparably injured absent a stay.” *Nken*, 556 U.S. at 434. But when the President is highly unlikely to succeed on the merits, there is no “likelihood that irreparable harm will result from the denial of a stay.” *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010). As the court of appeals explained, “the injunction requested by Perlmutter would not require the President to work with a removed principal officer at an Executive Branch agency; and it would not interfere with the President’s constitutional prerogative to supervise the Executive Branch.” App.20a. Applicants decisively fail on this factor. They have shown no harm to the President in the six weeks that elapsed between the D.C. Circuit’s injunction and their stay application to this Court.

This Court’s order in *Wilcox* does not suggest otherwise. In *Wilcox*, the Court determined that there would be a greater risk of harm to the President from allowing removed multi-member board officials to continue working where the President was likely to succeed on the merits that the removals were lawful. 145 S. Ct. at 1415. Accordingly, the Court issued a stay in *Wilcox* to minimize the risk that an injunction would wrongly impose harm during the pendency of litigation. See *id.* (citing *Trump v. Int’l Refugee Assistance Project*, 582 U.S. 571 (2017) (per curiam)); *Int’l Refugee Assistance Project*, 582 U.S. at 580 (“The purpose of ... interim equitable relief is not

to conclusively determine the rights of the parties, but to balance the equities as the litigation moves forward.”). This case differs in at least three critical respects.

First, the premise of the Court’s reasoning in *Wilcox* is that injunctions should minimize the expected irreparable harms to the parties. The Court in *Wilcox* expressed the view that the President would likely succeed on the merits; here, by contrast, Applicants have a scant chance of success. Applicants face no harm from an injunction that temporarily halts their lawless attempt to oust the Register.

Second, Perlmutter is not a principal officer who reports directly to the President. She reports to the Librarian of Congress. It is the acting Librarian or a new permanent Librarian, if the President works with Congress to appoint one (he has not done so in the six months since firing Dr. Hayden), who is subject to Presidential supervision. Cf. *United States v. Arthrex, Inc.*, 594 U.S. 1, 13 (2021) (discussing how inferior officers are “directed and supervised at some level” by principal officers).

Third, the Register does not exercise “considerable executive power” of the kind that was at issue in *Wilcox*. See App.10a–11a. The Register’s primary function is to advise Congress on how to exercise its authority under the Constitution’s Copyright Clause. See 17 U.S.C. § 701(b)(1). And there is no evidence to substantiate Applicants’ implication that Congress decided to transfer all copyright authority to the executive branch. Rather, Congress has provided the President with his own advisor on intellectual property policy, including copyright policy, and required that advisor to consult with the Register on all copyright-related matters. See 35 U.S.C.

§ 2.

Applicants emphasize the Library’s rulemaking authority under the Copyright Act. But “rulemaking power originates in the Legislative Branch and becomes an executive function only when delegated by the Legislature to the Executive Branch.” *Mistretta*, 488 U.S. at 386 n.14 (1989). In any event, the rules at issue here are not “executive” in nature; they consist merely of “regulations not inconsistent with law for the administration of the functions and duties made the responsibility of the Register under [the Copyright Act].” 17 U.S.C. § 702. The rules must be promulgated by the Librarian, again underscoring that any presidential oversight runs through the Librarian. *Id.* Accordingly, the regulations that the Register recommends to the Librarian relate primarily to the administration of the copyright system—*i.e.*, regulations that pertain to the required formats and numbers of deposit copies submitted with an application for registration. See *id.* §§ 407(c), 408(c), (d).

Nor does the Register exercise executive power via her adjudication of copyright applications (at 25), which is ministerial in nature, see 17 U.S.C. § 410 (directing that the Register examine applications for copyright registration and register them if they contain copyrightable subject matter), or her international duties (at 25–26), which are delineated by statute as conducting educational programs and participating in meetings, including as a member of United States delegations as authorized by the appropriate executive branch authority, see 17 U.S.C. § 701(b)(3), (4).

Against this backdrop, the President’s request to alter the status quo now—

more than six weeks after the injunction was issued—through an emergency stay would create a “disruptive effect,” not avoid one. *Wilcox*, 145 S. Ct. at 1415; see App.20a.

2. Perlmutter, in vivid contrast, will suffer serious harm from a stay. The President and his subordinates sidelined Perlmutter unlawfully, in the midst of her efforts to discharge her statutory obligations to advise Congress, during a period of time when her advice to Congress is particularly critical. Perlmutter’s unlawful removal deprives her of the opportunity to influence legislative decisionmaking on copyright matters of national importance: it causes her to forfeit opportunities to advise on artificial intelligence; direct rulemakings; make time-sensitive, critical staff decisions; and determine standards for copyright registration. App.15a–16a. These opportunities, once passed, do not come around again. If Perlmutter is barred from performing her duties, no amount of money will repair that injury.

3. Finally, a stay is not in the “public interest.” *Nken*, 556 U.S. at 436. There is a substantial public interest in requiring the executive branch to “abide by the federal laws that govern their existence and operations.” *League of Women Voters*, 838 F.3d 1, 12 (D.C. Cir. 2016). That substantial public interest has particular bite here. If Applicants were permitted to disregard Congress’s restrictions on the President’s appointment and removal powers, the Appointments Clause would be rendered a practical nullity—in defiance of the careful balance of executive and legislative power that the Constitution itself strikes. It is also undoubtedly in the

public interest that the Court prevent the President's unconstitutional actions, rather than permit him to act illegally and have his way.

Moreover, the public has a profound interest in the Register's continued work because "requiring that Perlmutter be removed while this litigation proceeds would deprive Congress of her valuable services as Register while it considers important issues such as the intersection of copyright law and the development of generative AI." App.22a. The same is true for the Library of Congress and Copyright Office's ability to continue their statutory role as a neutral advisor to Congress. Access to the Library's records, including confidential research and advice for Members of Congress on potential legislation, by unconfirmed executive branch officials outside the established line of succession will damage the credibility and reliability of the institution as a non-partisan advisor, place confidential congressional correspondence and work product at risk, and, specifically with respect to the records of the Copyright Office, jeopardize the security of the copyright registration system and the value of the deposited works.

CONCLUSION

The application for a stay should be denied.

Respectfully submitted,

DONALD B. VERRILLI, JR.
GINGER D. ANDERS
MUNGER, TOLLES, & OLSON LLP
601 Massachusetts Avenue, NW,
Suite 500E
Washington, D.C. 20001

KURUVILLA J. OLASA
MIRANDA E. REHAUT

BRIAN D. NETTER
Counsel of Record
ALLYSON R. SCHER
DEMOCRACY FORWARD FOUNDATION
P.O. Box 34553
Washington, DC 20043
(202) 448-9090
bnetter@democracyforward.org

ADEEL MOHAMMADI
MUNGER, TOLLES, & OLSON LLP
350 South Grand Avenue, 50th Floor
Los Angeles, California 90071

Counsel for Respondent Shira Perlmutter

Dated: November 10, 2025

SUPPLEMENTAL APPENDIX

Court of appeals order denying rehearing en banc (Oct. 1, 2025)Supp.App.1a

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 25-5285**September Term, 2025****1:25-cv-01659-TJK****Filed On:** October 1, 2025

Shira Perlmutter, Register of Copyrights and
Director of the U.S. Copyright Office,

Appellant

v.

Todd Blanche, in his capacity as the person
claiming to be acting Librarian of Congress,
et al.,

Appellees

BEFORE: Srinivasan, Chief Judge, and Henderson, Millett, Pillard, Wilkins,
Katsas, Rao, Walker, Childs, Pan, and Garcia, Circuit Judges

ORDER

Upon consideration of the petition for rehearing en banc, construed as a motion for en banc reconsideration of the court's September 10, 2025 order granting appellant's motion for injunction pending appeal, it is

ORDERED that the motion for en banc reconsideration be denied.

Per Curiam

FOR THE COURT:
Clifton B. Cislak, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk