No. 20-138

In the Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL., PETITIONERS,

v.

SIERRA CLUB, ET AL.

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL., PETITIONERS,

v.

STATES OF CALIFORNIA AND NEW MEXICO

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF FORMER MEMBERS OF CONGRESS AS *AMICI CURIAE* SUPPORTING RESPONDENTS

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INTEREST OF *AMICI CURIAE*[1]

Amici curiae are a bipartisan group of over 100 former Members of the House of Representatives. *Amici* have served an aggregate of approximately 1,500 years in Congress and hail from 36 States. *Amici* disagree on many issues of policy and politics. But all *amici* agree that the Executive Branch is undermining the separation of powers by spending billions of tax dollars to build a border wall that Congress repeatedly and emphatically refused to fund.

Amici, as former members of Congress and as citizens of our nation, have a strong interest in preventing Executive Branch overreach from degrading Congress's unique and important role in America's tripartite system of separated powers. For that reason, they have filed briefs at every stage of this case. All of the *amici* are uniquely positioned to offer their perspective because they are former members of the Legislative Branch intimately familiar with the appropriations process. Each of them swore an oath to protect the Constitution; each has seen firsthand how the separation of powers safeguards the rights of the American people; and each firmly believes that defending Congress's power of the purse is essential to preserving democracy's promise that Americans' hard-earned tax dollars will be spent in accordance with the will and needs of the people.

A full listing of *amici* appears in the Appendix.

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[1] No counsel for a party authored this brief in whole or part, and no counsel or party made a monetary contribution to fund the preparation or submission of this brief. No one other than the *amici curiae* and their counsel made any monetary contribution to its preparation and submission. The parties were given timely notice and consented to this filing.

INTRODUCTION AND SUMMARY OF ARGUMENT

This suit concerns the continued viability of the separation of powers—the foundation upon which "the whole American fabric has been erected," *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137, 176 (1803)—as a limit on executive power. The Executive Branch has taken billions of dollars that Congress appropriated for other pressing national needs and is spending it instead on a wall along the United States–Mexico border. It is doing so despite repeated votes in both Houses expressly declining to fund construction of a border wall, on the heels of a multi-month government shutdown provoked, in large part, by the dispute over wall funding, and in the face of a national public health emergency for which funds are desperately needed.

Rarely in our nation's history has the Executive Branch launched such an assault on Congress's exclusive legislative powers. Petitioners' essential rationalization for unilateral action is that Congress refused to authorize the President's requested appropriation. This subversion of Article I has caused, and continues to cause, grave harm to the House as an institution. The authority to decide whether and how to appropriate and spend tax dollars—the People's money—belongs exclusively to the Congress. The Framers regarded this power of the purse as the defining power of the Legislative Branch, and as a fundamental check on Executive overreaching.

For the Executive to justify expenditures Congress explicitly disapproved, by invoking an "unforeseen" emergency where none exists, usurps congressional power and threatens liberty. Using scarce federal funds to build a massive wall contrary to the repeated votes of Congress significantly impairs the ability of Congress to fund genuine exigencies like the devastating global pandemic gripping the nation.

The judiciary is the only branch that can restore the balance of power. That is why the decision below refused to endorse the Executive Branch's efforts to subvert the separation of powers and then render those violations unreviewable—efforts that extend not just to these plaintiffs, but also to Congress. That decision should be affirmed.

ARGUMENT

I. The Executive Branch Is Usurping Congress's Exclusive Power Over Appropriations

The constitutional stakes of allowing the Executive Branch's action to go unreviewed could hardly be higher: The Executive here has blatantly violated the Appropriations Clause. The Constitution guarantees the House the central role in any expenditure of public funds. It requires, before the funds are spent, that the House initiate appropriations, that both Houses pass identical appropriations bills, and that the President sign them or allow them to become law. See U.S. Const. art. I, § 1; *id.* § 7 cl. 2; *id.* § 9, cl. 7. Put another way, the House's affirmative vote is a necessary precondition of any public expenditure by the Executive. The Executive's expenditure of public funds that Congress expressly declined to appropriate, as the President has done here, directly injures the House by nullifying a central constitutional power. If the Executive Branch can spend money for purposes the House specifically refused to fund, the House's appropriations power would no longer be an effective check in the constitutional structure.

A. Congress Must Appropriate Money Before the Executive Branch Can Spend It.

The Executive Branch does not have the power to appropriate money, nor does it have the power to spend money not appropriated. Congress alone controls appropriations. As the decision below recognized, the Executive

Branch's expenditure of money on the border wall, which Congress explicitly refused to appropriate, violates this "straightforward and explicit" tenet of the separation of powers. Pet. App. 17a.

The Appropriations Clause, Article I, section 9 of the Constitution, states that "[n]o Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law." The words "No Money" and "in Consequence of Appropriations" are not ambiguous. This straightforward language "was intended as a restriction upon the disbursing authority of the Executive department." *Cincinnati Soap Co.* v. *United States*, 301 U.S. 308, 321 (1937). The Appropriations Clause "assure[s] that public funds will be spent according to the letter of the difficult judgments reached by Congress as to the common good and not according to the individual favor of Government agents." *Office of Pers. Mgmt.* v. *Richmond*, 496 U.S. 414, 428 (1990).

This Court has strictly enforced the Appropriations Clause. Nearly 170 years ago, the Court ruled that, "No officer, however high, *not even the President*, much less a Secretary of the Treasury or Treasurer, is empowered to pay debts of the United States generally, when presented to them. * * * [in] the want of any appropriation by Congress to pay this claim." *Reeside* v. *Walker*, 52 U.S. 272, 291 (1850) (emphasis added). The Court emphasized that under Article 1, Section 9, "no money can be taken or drawn from the Treasury except under an appropriation by Congress." *Id.* Indeed, the Court held, "[h]owever much money may be in the Treasury at any one time, not a dollar of it can be used in the payment of anything not thus previously sanctioned. Any other course would give to the fiscal officers a *most dangerous discretion*." *Id.* (emphasis added). The Court has been no less emphatic in its more recent expressions of this point. See *Richmond*, 496 U.S. at 424 ("Our cases underscore the straightforward and explicit command of the Appropriations Clause.

'It means simply that no money can be paid out of the Treasury unless it has been appropriated by an act of Congress.'" (quoting *Cincinnati Soap*, 301 U.S. at 321)); *United States* v. *MacCollom*, 426 U.S. 317, 321 (1976) ("[T]he expenditure of public funds is proper only when authorized by Congress * * * ." (emphasis added)); see also *Dep't of the Navy* v. *FLRA*, 665 F.3d 1339, 1348 (D.C. Cir. 2012) ("Congress's control over federal expenditures is 'absolute.'" (quoting *Rochester Pure Waters Dist.* v. *EPA*, 960 F.2d 180, 185 (D.C. Cir. 1992))); *Rochester*, 960 F.2d at 185 (Congress has "exclusive power over the federal purse"); *Hart's Adm'r* v. *United States*, 16 Ct. Cl. 459, 484 (1880) ("[A]bsolute control of the moneys of the United States is in Congress, and Congress is responsible for its exercise of this great power only to the people."), *aff'd*, *Hart* v. *United States*, 118 U.S. 62 (1886).

The Court has likewise made clear that the appropriations power may be exercised only through the "single, finely wrought, and exhaustively considered, procedure," *Clinton* v. *City of New York*, 524 U.S. 417, 439-40 (1998), that requires the cooperation of different constituencies and interests to secure passage of identical bills by the House and Senate (bicameralism), and delivery to the President for his signature or veto (presentment), U.S. Const. art. I, § 7, cl. 2. In striking down the line-item veto, this Court held that even where Congress intended to empower a President to repeal a portion of a spending bill, the two political branches could not violate the procedures set forth in Article I of the Constitution. *Clinton*, 524 U.S. 417. That case invalidated the President's decisions *not* to spend funds appropriated by Congress. It is even more obviously unconstitutional for the President to spend funds that Congress repeatedly declined to appropriate, even if the President claims that there is inapplicable legislation that authorizes it.

The Framers viewed it as critical that Executive Branch officials not have the power of the purse. As Joseph Story described their concerns, "In arbitrary governments the prince levies what money he pleases from his subjects, disposes of it, as he thinks proper, and is beyond responsibility or reproof." 3 Joseph Story, *Commentaries on the Constitution* § 1342 (1833). The Framers feared that giving even an elected executive the power of the purse would be just as dangerous. *Id.* If not for the Appropriations Clause, "the executive would possess an unbounded power over the public purse of the nation; and might apply all its monied resources at his pleasure." *Id.* This concern about unchecked executive spending motivated Congress in 1884 to enact *criminal* penalties for officials who spent money without an appropriation. Such penalties remain in force today. See Antideficiency Act, 31 U.S.C. §§ 1341 *et seq*.

Instead of bestowing this power on the Executive, the Framers instead gave the people, through their elected representatives, a "check upon profusion and extravagance, as well as upon corrupt influence and public peculations." 3 *Commentaries on the Constitution* § 1342. "This power over the purse," James Madison believed, "may, in fact, be regarded as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure." *The Federalist* No. 58 (C. Rossiter, ed. 1961).

Amici know firsthand the serious responsibilities that come with the power of the purse. In particular, they understand the gravity of denying an appropriation requested by the President. Withholding a requested appropriation renders the Executive Branch unable to complete projects for which it sought those funds. And while the President can veto appropriations bills and force

Congress to return to the negotiating table, that power is only negative. The ultimate result of the negotiations still must be initiated and approved by Congress. Congress followed this procedure when it crafted the 2019 Consolidated Appropriations Act and presented it to the President. The Constitution gave the President two options: he could sign it or veto it.

The President, in effect, did both; he signed the bill, and then ignored the law he signed. After signing the bill and purporting to accept the congressional decisions, he then seized money that Congress had appropriated for other purposes to divert it to one that Congress had repudiated. That conversion of funds was in direct violation of the Appropriations Clause. The separation of powers is "violated when one branch assumes a function that more properly is entrusted to another." *INS* v. *Chadha*, 462 U.S. 919, 963 (1983). That is precisely what happened here. The President is not just acting without constitutional authority of his own; he is *usurping* Congress's exclusive authority over appropriations. Courts, including this one, have not hesitated to block executives from exercising legislative powers. See, *e.g.*, *Clinton*, 524 U.S. at 447 (Presentment Clause, Article I, §7, forbade President from exercising "unilateral power to change the text of duly enacted statute"); *Consumer's Union of U.S., Inc.* v. *Kissinger*, 506 F.2d 136, 142 (D.C. Cir. 1974) (President has no inherent power to adjust tariffs or to regulate foreign commerce because those are enumerated legislative powers).

B. No Appropriation Authorizes the Executive's Spending Here.

The court of appeals correctly held that the defendants cannot use Section 8005 to channel funds toward barrier construction, both because the "need for which the funds were reprogrammed was not 'unforeseen,' and

because it was an item for which funds were previously 'denied by the Congress.'" Pet. App. 6a-7a.

The President asked Congress to authorize and appropriate $5.7 billion to fulfill his campaign promise of a wall at the Southern Border, which he had assured the electorate that Mexico (and not the American taxpayer) would fund. White House, *Remarks by President Trump on the Humanitarian Crisis on our Southern Border and the Shutdown* (Jan. 19, 2019), https://tinyurl.com/y7gdj6s8. Congress debated the President's proposal and, after weeks of negotiation, passed the 2019 Consolidated Appropriations Act allocating only $1.375 billion—not for a wall, but rather for "construction of primary pedestrian fencing, including levee pedestrian fencing, in the Rio Grande Valley Sector" of the border. H.J. Res. 31 § 280(a)(1), 116th Cong. (2019). Congress went out of its way to differentiate this fencing from a border wall, including by limiting the designs to ones already deployed, which did not use solid material like concrete. *Id.* § 230(b).

The congressional record conclusively establishes that Congress rejected the President's proposal. When Congress appropriates a specific amount for a project, "that is all Congress intended" for that project "to get in [a fiscal year] from whatever source." *Nevada* v. *Dep't of Energy*, 400 F.3d 9, 16 (D.C. Cir. 2005); see also *MacCollom*, 426 U.S. at 321 ("Where Congress has addressed the subject as it has here, and authorized expenditures where a condition is met, the clear implication is that where the condition is not met, the expenditure is not authorized."). If that disapproval were not sufficiently clear, a majority of both Houses of Congress on March 14, 2019, passed a joint resolution to terminate the President's emergency declaration. See H.J. Res. 46, 116th Cong. (2019). Congress's disapproval alone forecloses the transfer of funds.

The reprogramming of funds violates Section 8005 for another reason. Beyond requiring that Congress not have disapproved the expenditure, Section 8005 also requires that the expenditure be "unforeseen." If the circumstances at the Southern Border are "unforeseen," then "[w]ords no longer have meaning." *King* v. *Burwell*, 135 S. Ct. 2480, 2497 (2015) (Scalia, J., dissenting); see also *Roper* v. *Simmons*, 543 U.S. 551, 609 (2005) (Scalia, J., dissenting) (same). The decades-long problem of drug trafficking at the border is not exigent. Whatever the dimensions of the situation, whatever its importance, no one would mistake it for unanticipated.

The absence of an emergency was clear at the time the President issued his Emergency Proclamation in early 2019, and it is beyond dispute now. The President issued the Proclamation more than two years after he took office and six weeks after first publicly suggesting that he could pretextually "do" a national emergency to secure funding that Congress in the exercise of its appropriations powers had refused to grant. During that period, Congress considered at length a border wall that would extend across the entire Southern Border, repeatedly voted not to fund it, and instead passed legislation appropriating funds for limited repair and construction of fencing in particular locations along the border. That Congress had time to take action and specifically declined to do so precludes any characterization of the circumstances as "unforeseen." Moreover, even in the early, plodding phases of construction, the effects of the supposed emergency did not materialize. See Nick Miroff & Adrian Blanco, *Trump Ramps Up Border Wall Construction Ahead of 2020 Vote*, Wash. Post (Feb. 6, 2020), https://tinyurl.com/y2agkyfg. The border wall was always a routine infrastructure project and, like any infrastructure project, it is governed by the ordinary appropriations process.

C. Congress's Exclusive Power Over Appropriations Is Critical to our Constitutional Structure.

Vesting Congress with the exclusive power to appropriate public funds effectuated the Framers' intent that political compromises between competing and otherwise antagonistic groups be hashed out in the legislative process. These structural elements of the Constitution, courts have stated many times, are not simply matters of etiquette or architecture. Rather, they "secure liberty" by "diffus[ing] power" and ensuring that only those representatives closest to the people can decide how to spend their money. *Bowsher* v. *Synar*, 478 U.S. 714, 721 (1986)); see also, *e.g.*, *Free Enter. Fund* v. *Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 501 (2010) (the "Framers recognized that, in the long term, structural protections against abuse of power were critical to preserving liberty" (quotation marks omitted)); *Clinton*, 524 U.S. at 450 (Kennedy, J., concurring) ("Liberty is always at stake when one or more of the branches seek to transgress the separation of powers."); *Metro. Wash. Airports Auth.* v. *Citizens for the Abatement of Aircraft Noise, Inc.*, 501 U.S. 252, 272 (1991) ("The ultimate purpose of this separation of powers is to protect the liberty and security of the governed."); *Free Enter. Fund* v. *Pub. Co. Accounting Oversight Bd.*, 537 F.3d 667, 714 (D.C. Cir. 2008) (Kavanaugh, J., dissenting) ("[T]he separation of powers protects not simply the office and the officeholders, but also individual rights.").

As a result, the Appropriations Clause plays a critical role in fashioning majoritarian compromises. Under a framework in which Congress has the exclusive power to appropriate public funds, the President may announce any policy priorities, give any speeches, and submit to Congress any budget he wishes, but in order to spend the taxpayer's money, he must persuade Congress to appropriate it for the particular purpose sought. If the

Executive could spend freely without appropriations—or, as the defendants assert the right to do here, could re-appropriate funds for purposes different from the ones Congress chose—Congress would be reduced to an advisory role, no longer able to function as the crucible of political debate, negotiation, and compromise in our constitutional system.

Congress also carries out its oversight responsibilities and compels accountability on the part of the Executive Branch—the branch that spends over 99 percent of all federal dollars expended by the federal government—by forcing the Executive repeatedly to justify authorized programs, its operations of those programs, and the amounts needed to operate those programs effectively and efficiently. The Executive commands both the military and federal law enforcement. Without the appropriations power, Congress would have little ability to influence the Executive's policy or ensure that it faithfully and honestly executes the laws.

II. Only The Judiciary Can Meaningfully Check Executive Branch Violations Of The Appropriations Power

The Legislative Branch's power of the purse is effective as a limitation on the "unbounded power" of the Executive only if that legislative power is enforceable through the courts. Policing the efforts of one branch to aggrandize its powers at the expense of other branches is one of the judiciary's critical functions. See, *e.g.*, *NLRB* v. *Noel Canning*, 134 S. Ct. 2550 (2014); *Mistretta* v. *United States*, 488 U.S. 361 (1989); *Commodity Futures Trading Comm'n* v. *Schor*, 478 U.S. 833 (1986); *Bowsher*, 478 U.S. 714; *N. Pipeline Constr. Co.* v. *Marathon Pipe Line Co.*, 458 U.S. 50 (1982); *Myers* v. *United States*, 272 U.S. 52 (1926); *Marbury* v. *Madison*, 5 U.S. 137 (1803).

Unless the courts remain available to stop violations of the Appropriations Clause, disputes over the law-

fulness of Executive Branch violations would linger for years in the political process, where only blunt and imperfect tools are available to bring about compliance. To be sure, courts cannot be the arbiter of every constitutional disagreement between the political branches. But for violations like this one, that concern Congress's exclusive powers and undermine one of its most important checks on the Executive Branch, judicial review is necessary to safeguard the separation of powers. To allow the Executive Branch's bare incantation of words like "unforeseen" or "emergency" to shift the power to appropriate funds for a border wall from Congress to the President would make judicial review a hollow exercise. As Justice Field wrote more than a century ago, in words particularly apropos today, "we cannot shut our eyes to matters of public notoriety and general cognizance. When we take our seats on the bench we are not struck with blindness, and forbidden to know as judges what we see as men." *Ho Ah Kow* v. *Nunan*, 12 F. Cas. 252, 255 (C.C.D. Cal. 1879).

Defendants' contrary theories would render the courts unable to remedy egregious violations of the separation of powers. For one thing, the defendants are wrong that the plaintiffs fall outside Section 8005's "zone of interests." The "zone of interests" test is a judicially fashioned "limitation on the cause of action for judicial review conferred by the Administrative Procedure Act (APA)." *Lexmark Int'l, Inc.* v. *Static Control Components, Inc.*, 572 U.S. 118, 129 (2014). But this Court has made clear that it "appl[ies] the test in keeping with Congress's 'evident intent' when enacting the APA 'to make agency action presumptively reviewable. * * * *We do not require any indication of congressional purpose to benefit the would-be plaintiff.*" *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians* v. *Patchak*, 567 U.S. 209, 225 (2012) (quotation marks omitted; emphasis added); *accord Lexmark*, 572 U.S. at 128–30 (a "lenient approach" to the

zone of interests test "is an appropriate means of preserving the flexibility of the APA's omnibus judicial-review provision, which permits suit for violations of numerous statutes of varying character that do not themselves include causes of action for judicial review"). As Justice Kavanaugh has explained, "the zone of interests test was understood to be part of a broader trend toward *expanding* the class of persons able to bring suits under the APA challenging agency actions." *White Stallion Energy Ctr., LLC* v. *EPA*, 748 F.3d 1222, 1268 (D.C. Cir. 2014) (Kavanaugh, J., dissenting), *rev'd sub nom. Michigan* v. *EPA*, 135 S. Ct. 2699 (2015).

The defendants' "zone of interests" analysis is wrong twice over. First, as the decision below concluded, the plaintiffs are not asserting a violation of Section 8005; they are asserting a violation of *the Constitution*. The plaintiffs are challenging the Executive Branch's assault on the Appropriations Clause and the separation of powers, and the defendants have raised Section 8005 to defend unilateral redirection of funds. It is therefore irrelevant whether the plaintiffs are within *Section 8005*'s zone of interests. Justice Jackson in *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U.S. 579 (1952), for example, did not assess whether the challengers were within the zone of interests protected by the various statutes that the President invoked in attempting to defend his unilateral action. *Id.* at 646-47. It was enough that the plaintiffs were injured by the President's seizure of the steel mills—an action in excess of his executive powers. We know of no modern case in which a Plaintiff has been denied access to a federal court for falling outside of the "zone of interests" when the alleged unlawful agency action is a constitutional violation. See, *e.g.*, *Bond* v. *United States*, 564 U.S. 211 (2011) (individual criminal defendants have standing to challenge the constitutionality of federal criminal statutes for violating Tenth Amendment); *Free Enter. Fund*, 561 U.S.

477 (regulated party brought successful Take Care Clause challenge to constitutionality of limitations on removal of PCAOB Board members); *Clinton*, 524 U.S. 417 (City brought successful suit to strike down line-item veto); *United States* v. *Munoz-Flores*, 495 U.S. 385 (1990) (individuals harmed by bills passed in violation of the Origination Clause may sue to invalidate laws as unconstitutional). And even if the defendants' conception of the "zone of interests" test prevailed, the plaintiffs here would meet it. A statutory provision that expressly limits the amount and scope of permissible military spending is not "so marginally related to or inconsistent with" the prevention of environmental, aesthetic, and recreational injuries being caused by that spending that prevention of those injuries does not even "arguably" fall within the provision's scope.

This Court should likewise reject the defendants' overreading of *Dalton* v. *Specter*, 511 U.S. 462, 472-74 (1994), which, if accepted, would hobble judicial enforcement of the separation of powers. *Dalton* stands for the limited, obvious principle that not "*every* action by the President, or by another executive official, in excess of his statutory authority is *ipso facto* in violation of the Constitution." 511 U.S. at 472 (emphasis added). In particular, *Dalton* held that the statute at issue granted the President unreviewable discretion, and it declined to allow the plaintiff to end-run around the unenforceable statute by claiming that a violation of the statute "*necessarily*" violated the separation of powers doctrine. *Id.* at 473, 476 (emphasis added).

Critically, the plaintiff in *Dalton*, unlike the plaintiffs here, did not allege that the President's action violated a specific constitutional mandate—for example, that Congress and Congress alone appropriates money. Indeed, *Dalton* expressly reaffirmed the vitality of constitutional claims that turn on issues of statutory interpretation. *Id.*

at 473 n.5 (distinguishing cases enjoining executive actions as unconstitutional under the nondelegation doctrine). A claim to halt the unconstitutional use of unappropriated funds is precisely such a claim.

More fundamentally, though the defendants throughout this litigation have phrased their justiciability and cause-of-action arguments as specific to these particular plaintiffs, petitioners in fact seek to shield *all* violations of the Appropriations Clause from review. In a parallel challenge to the President's misappropriation of funds brought by El Paso County and an organization devoted to border issues, the Executive Branch has consistently made the same argument as it does here—in essence, that only Congress, and never the courts, can police transfers of funds not authorized by Congress. Cert. Opp. at 15, *El Paso Cty.* v. *Trump*, No. 19-51144 (Plaintiffs "are mistaken in asserting that their asserted economic and budgetary interests are within the zone of interests protected by Section 8005, which concerns the intergovernmental budgetary process between DoD and Congress."). Yet, at the same time, the Executive Branch in ongoing litigation in the D.C. Circuit has strenuously argued that neither the House nor the whole of Congress "suffers any judicially cognizable injury from executive spending that allegedly exceeds statutory appropriations." Petition for Rehearing En Banc at 13, *U.S. House of Representatives* v. *Mnuchin*, No. 19-5176 (D.C. Cir. Nov. 9, 2020).

The collective sum of the defendants' litigation positions is that no one can sue. According to the defendants, so long as the Executive Branch invokes a funding-transfer statute, violations of the Appropriations Clause are not reviewable. But the Legislative Branch's power of the purse is effective as a limitation on overreaching by the Executive only if that legislative power is enforceable through the courts. Congress's power of the purse, like other aspects of the constitutionally enshrined separation

of powers, was "not simply an abstract generalization in the minds of the Framers'"; it was expressly "woven into the document that they drafted in Philadelphia in the summer of 1787." *Chadha*, 462 U.S. at 946 (quoting *Buckley* v. *Valeo*, 424 U.S. 1, 124 (1976)). And because the Framers' deliberate structural choice safeguards individual liberty, the judiciary has long played a critical role in preserving the structural compromises and choices embedded in the constitutional text. The decision below correctly concluded that the Executive Branch has usurped Congress's exclusive power to appropriate money.

CONCLUSION

The decision below should be affirmed.

Respectfully submitted.

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APPENDIX

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