No. 25A312

IN THE
Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES,

Applicant,

—— v.——

LISA D. COOK, ET AL.,

Respondents.

ON APPLICATION FOR A STAY OF THE INJUNCTION ISSUED BY THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION, AMERICAN CIVIL LIBERTIES UNION OF D.C., AND THE RUTHERFORD INSTITUTE AS *AMICI CURIAE* IN SUPPORT OF NEITHER PARTY

Cecillia D. Wang
Evelyn Danforth-Scott
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
425 California Street, Suite 700
San Francisco, CA 94104

Ethan Herenstein
Sophia Lin Lakin
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad Street, 18th Floor
New York, NY 10004

Aditi Shah
Counsel of Record
Scott Michelman
AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF THE DISTRICT OF COLUMBIA
529 14th Street NW, Suite 722
Washington, DC 20045
205-457-0800
ashah@acludc.org

John W. Whitehead
William E. Winters
THE RUTHERFORD INSTITUTE
109 Deerwood Road
Charlottesville, VA 22911

Counsel for Amici Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes

Other Authorities

INTEREST OF *AMICI CURIAE*[1]

The American Civil Liberties Union ("ACLU") is a nationwide, nonprofit, nonpartisan organization with more than 1.7 million members. The ACLU was founded in 1920 and is dedicated to the principles of liberty, separation of powers, and the rule of law enshrined in the Constitution. The American Civil Liberties Union of the District of Columbia ("ACLU-DC") is the ACLU's Washington, D.C. affiliate.

The Rutherford Institute is a nonprofit civil liberties organization which was founded in 1982 by its President, John W. Whitehead, and provides legal assistance at no charge to individuals whose constitutional rights have been violated and educates the public about issues affecting their freedoms.

Amici take no position on the outcome of this case; instead, they submit this brief to address the correct standard for an ultra vires claim where there is no statutory limitation on judicial review—an issue that is raised but under-addressed in the lower court decisions and in the parties' submissions to date. In furtherance of their missions, *amici* regularly litigate cases seeking to enjoin unlawful actions by federal officials, including cases involving claims that federal officials acted ultra vires (in excess of) their statutory authority. As a result, the proper standard for ultra vires claims is of significant importance to *amici* and their members.

---

[1] Pursuant to Supreme Court Rule 37.6, counsel for *amici* certify that no party's counsel authored this brief in whole or in part; no party or party's counsel contributed money that was intended to fund the preparation or submission of the brief; and no person other than *amici*, their members, or their counsel contributed money intended to fund the preparation or submission of the brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

Governor Cook challenges President Trump's decision to remove her from the Federal Reserve Board on two grounds: that it violated due process and that it was ultra vires (in excess of) his statutory authority because it was not "for cause" as required by the Federal Reserve Act, 12 U.S.C. § 242. The government offers two responses to Governor Cook's ultra vires claim: first, that President Trump's decision to remove Governor Cook is unreviewable in court because "[t]he determination of cause is committed to the unreviewable discretion of the President," Appl. 20; and second, that "[e]ven if judicial review of the President's stated cause were available, it would be highly deferential," Appl. 25.

Amici take no position in this brief on the reviewability of or the merits of Governor Cook's ultra vires claim. Instead, assuming review is available, *amici* write to refute the government's argument that "[t]o prevail on her ultra vires claim, Cook would need to show that the President 'has taken action entirely in excess of [his] delegated powers and contrary to a specific prohibition in a statute.'" *Id.* (second alteration in original) (quoting *Nuclear Regul. Comm'n v. Texas*, 605 U.S. 665, 681 (2025)). The government describes this standard as a "Hail Mary pass," *id.* 22 (quoting *Nuclear Regul. Comm'n*, 605 U.S. at 681), and one that requires "extreme error," *id.* 25 (citation omitted).[2]

---

[2] There is no dispute in this case that the "Hail Mary" standard proffered by the government is inapposite to claims that a federal official's action is ultra vires his or her *constitutional* authority. *See, e.g.*, *Free Enter. Fund v. Public Co. Acct. Oversight Bd.*, 561 U.S. 477, 491 n.2 (2010) (collecting cases reflecting equitable authority of courts to enjoin unconstitutional action); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 587–88 (1952) (holding unconstitutional exercise of Presidential power

The government's position—that the "Hail Mary" standard applies by default even where there is no statutory limitation on judicial review—is contrary to this Court's precedents and ignores the mine-run rule for challenges to ultra vires executive action: Where there is no statutory limitation on judicial review, this Court adjudicates ultra vires claims under the ordinary, century-old standard of *American School of Magnetic Healing v. McAnnulty*, 187 U.S. 94 (1902). Under that standard, courts exercise their powers in equity to determine whether the challenged conduct is authorized by law. This is the default standard courts apply to determine whether officials acted ultra vires their statutory authority.

In contrast, the heightened standard for ultra vires claims that the government proffers here stems from this Court's decision in *Leedom v. Kyne*, 358 U.S. 184 (1958), which addressed courts' powers in equity where a plaintiff challenges a government official's action outside the strictures of a judicial review scheme provided by Congress. In *Leedom*, the plaintiff labor union sought to vacate an action by the National Labor Relations Board ("NLRB") that was contrary to the express requirements of § 9(b)(1) of the National Labor Relations Act ("NLRA"), *see id.* at 185–86, but was not a type of action within the scope of judicial review authorized under that statute, *id.* at 187. The NLRB did not dispute that its action was contrary to the statute, but argued that judicial review was not available under the NLRA. *Id.* at

---

without reference to any heightened standard). Although the President in other cases has argued that his constitutional authority vitiates statutory limits on his conduct, he does not make that claim here. Appl. 2 n.1 ("This application does not contest the constitutionality of the Federal Reserve Board's for-cause removal provision. Instead, it explains that the President's removal of Cook complies with that provision.").

187–88; *see also Nuclear Regulatory Comm'n*, 605 U.S. at 681 (describing *Leedom*). The Court rejected the government's non-reviewability argument. *See Leedom,* 358 U.S. at 190. However, the Court's explanation of the type of suit it was authorizing—"one to strike down an order of the Board made in excess of its delegated powers and contrary to a specific prohibition in the Act," *id.* at 188—has come to stand for a key limitation on ultra vires review in circumstances like those in *Leedom*. Specifically, as this Court explained just last Term, where a challenger to executive action proceeds outside the confines of a reticulated judicial review scheme set up by Congress, the plaintiff is required to demonstrate not only that the action was contrary to the law, but that it was "'in excess of its delegated powers and contrary to a *specific prohibition*' in a statute." *Nuclear Regul. Comm'n*, 605 U.S. at 681 (citation omitted). This limitation exists to prevent "an easy end-run around the limitations of . . . judicial-review statutes." *Id.*

The *Leedom* standard of review for ultra vires claims is an exception to the default *McAnnulty* standard. Only where there is a statutory limitation on judicial review—that is, only where review in equity may amount to an end-run around statutory limitations to review—does the plaintiff need to show that the action was an exercise of power in violation of a "specific prohibition" in the statute. Where there is no statutory limitation on judicial review, courts exercise their equitable power to consider a claim that an official acted ultra vires and apply the default *McAnnulty* standard to assess the merits of that claim: If the challenging party demonstrates that the action was unauthorized by the statute, it will prevail.

This Court confirmed as much in *Harmon v. Brucker*, 355 U.S. 579 (1958) (per curiam), which it decided earlier in the same year it decided *Leedom*. There, the Court asked simply "whether the [Executive Branch official] did exceed his powers," and noted, "[g]enerally, judicial relief is available to one who has been injured by an act of a government official which is in excess of his express or implied powers." *Id.* at 581–82 (citing *McAnnulty*, 187 U.S. at 108). The Court's post-*Leedom* precedents follow this distinction between *McAnnulty*'s ordinary rule and *Leedom*'s special one and when each one applies. The line the Court has drawn makes practical sense: When an ultra vires claim is raised and Congress has not limited judicial review, there is no risk that ultra vires review will "become an easy end-run around the limitations of . . . judicial-review statutes," so the challenger should not need to complete a "Hail Mary pass." *Nuclear Regul. Comm'n*, 605 U.S. at 681.

The government's brief elides the distinction between the *McAnnulty* and *Leedom* standards by attempting to make the latter the default rule rather than the special case. And not for the first time. *See, e.g.*, Appl. for Stay at 28–30, *Trump v. Glob. Health Council*, No. 25A227 (S. Ct. Aug. 26, 2025) (withdrawn) (arguing that the heightened *Leedom* standard applies to respondents' ultra vires claim without regard to whether there is a statutory limitation on judicial review); Br. for Appellants at 36–37, *Fed. Educ. Ass'n v. Trump*, No. 25-5303 (D.C. Cir. Oct. 20, 2025) (same). The government's sweeping position carries broad implications that extend beyond this case. Subjecting all challenges brought in equity against unlawful executive action to the heightened *Leedom* standard would contravene a century of

precedents and unduly undermine courts' equitable powers to provide remedies for those harmed by executive action in excess of limits set by Congress.

Accordingly, if the Court reaches the merits of Governor Cook's ultra vires claim, it should reaffirm that the heightened *Leedom* standard requiring a showing that the government official acted contrary to a specific statutory prohibition is an exception to the default *McAnnulty* standard, which asks simply whether the official acted in excess of his or her statutory authority. If the Federal Reserve Act reflects no congressional intent to limit judicial review of the President's removal of Governor Cook, this Court should decide this stay application by applying the ordinary *McAnnulty* standard to decide whether the President is likely to prevail on his claim that the removal is authorized by the Federal Reserve Act.

ARGUMENT

I. WHERE A STATUTE DOES NOT LIMIT JUDICIAL REVIEW, THE ORDINARY *MCANNULTY* STANDARD APPLIES TO ULTRA VIRES CLAIMS.

Federal courts have long exercised inherent equitable power to enjoin government officials who exceed their statutory authority. This equitable power, tracing back to the English common law, requires no statutory cause of action and enables courts to enforce statutory limits Congress places on Executive Branch authority without the heightened showing that *Leedom* requires. Instead, courts apply the default, century-old standard under *McAnnulty*, which asks simply whether the challenged action was authorized by law, not whether it violated a specific statutory prohibition.

A. Federal Courts Have Inherent Equitable Power To Enjoin Government Officials from Acting Ultra Vires.

The government's argument that to prevail on her ultra vires claim, Governor Cook must satisfy not the ordinary standard but rather a heightened standard—*i.e.*, demonstrating that the President acted contrary to a specific statutory prohibition—ignores two fundamental principles about federal courts' powers in equity and the Executive's powers vis-à-vis Congress. First, as this Court has "long held," federal courts have inherent equitable power to enjoin state and federal officials from violating federal law. *E.g.*, *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 326–27 (2015). Such equitable authority "reflects a long history of judicial review of illegal executive action, tracing back to England" and "is a judge-made remedy." *Id.* at 327. No statutory cause of action is needed to invoke a court's equity jurisdiction. *See* S. Bray & P. Miller, *Getting into Equity*, 97 Notre Dame L. Rev. 1763, 1798–99 (2022) (the concept of a "'cause of action' is not an organizing principle for equity, and to insist on an equitable cause of action is to work a fundamental change in how a plaintiff gets into equity").

Second, when Executive Branch officials violate federal law, they act ultra vires—literally, "beyond the powers," *Ultra Vires*, *Black's Law Dictionary* (12th ed. 2024), delegated to the official by Congress or vested in the official by the Constitution itself. As to the President, this Court has long recognized that his "power, if any" to take a given action "must stem either from an act of Congress or from the Constitution itself." *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952). Where an Executive Branch official's "powers are limited by statute," as the President's are

here, "his actions beyond those limitations . . . are ultra vires his authority and therefore may be made the object of specific relief." *Larson v. Domestic & Foreign Com. Corp.*, 337 U.S. 682, 689 (1949). *See also Trump v. United States*, 603 U.S. 593, 608 (2024) ("If the President claims authority to act but in fact exercises mere 'individual will' and 'authority without law,' the courts may say so.") (quoting *Youngstown*, 343 U.S. at 655) (Jackson, J., concurring)).

Since at least the mid-nineteenth century, this Court has recognized that even in the absence of a statutory cause of action, federal courts can, pursuant to their inherent equitable power, enjoin public officials from acting ultra vires. *See, e.g.*, *Carroll v. Safford*, 44 U.S. 441, 463 (1845) (holding that "in a proper case, relief may be given in a court of equity" to, *inter alia*, "prevent an injurious act by a public officer, for which the law might give no adequate redress"); *Osborn v. Bank of U.S.*, 22 U.S. 738, 838–39 (1824) (federal court sitting in equity may enjoin a state officer from enforcing a state law that conflicts with the Constitution); *Davis v. Gray*, 83 U.S. 203, 220 (1872) (same); *Ex parte Young*, 209 U.S. 123, 150–51 (1908) (same). These cases are part of the "long history . . . tracing back to England," *Armstrong*, 575 U.S. at 327, demonstrating that no statutory cause of action is needed for courts to enjoin public officials from acting ultra vires or otherwise violating federal law.

Two early cases illustrate this Court's exercise of its inherent equitable power to enjoin federal officials' ultra vires acts in the absence of any statutory cause of action. In *Noble v. Union River Logging Railroad Company*, 147 U.S. 165 (1893), where it was "contended that the act of the head of a [federal] department . . . was

ultra vires," this Court held that injunctive relief was available "[i]f he has no power at all to do the act complained of." *Id.* at 171–72. Perhaps the most-cited example is *McAnnulty*, where this Court assessed whether the Postmaster General's refusal to provide mail service to a business he deemed fraudulent was "justified by the statutes," and "if not, whether the complainants have any remedy in the courts." 187 U.S. at 103. On the merits, the Court held that the Postmaster General's decision was "not authorized by those statutes." *Id.* at 109. In accordance with the principle that "in case an official violates the law to the injury of an individual the courts generally have jurisdiction to grant relief," the Court instructed the lower courts to grant plaintiffs' motion for a temporary injunction to prohibit further withholding of their mail. *Id.* at 108–10.

B. In Considering Challenges to Government Officials' Ultra Vires Actions Where There Is No Statutory Limitation on Judicial Review, the Only Question Is Whether the Action Was Authorized by Law.

Where there is no statutory limitation on judicial review, this Court has exercised its powers in equity and applied the ordinary, default standard to adjudicate claims that a government official acted ultra vires: whether the official's action was authorized by law.

More than a century ago, this Court set out this ordinary standard in *McAnnulty*. There, the Postmaster General invoked statutory authority to stop mail service and prohibit payment of postal money orders to a business that he deemed to be fraudulent. 187 U.S. at 100 & n.† (quoting U.S. Comp. St. 1901, § 3929, 2687) (subsequently amended 1890). This Court disagreed with the Postmaster General's

conclusion that the plaintiff's business activities violated mail-fraud statutes and held that the Postmaster General did not have statutory authority to withhold the plaintiffs' mail. *Id.* at 107. The Court noted that "[t]he acts of all [government] officers must be justified by some law, and in case an official violates the law to the injury of an individual the courts generally have jurisdiction to grant relief." *Id.* at 108. Because the Postmaster General's order was "based on a mistaken view of the law," the Court instructed the lower courts to grant plaintiffs' motion for a temporary injunction prohibiting further withholding of the mail from the plaintiffs. *Id.* at 110. The Court did not require the plaintiffs to show that the official's action was "'contrary to a *specific prohibition*' in a statute," *Nuclear Regul. Comm'n*, 605 U.S. at 681 (citation omitted), before enjoining his action.

"The reasoning of *McAnnulty* has been employed repeatedly." *Chamber of Com. of U.S. v. Reich*, 74 F.3d 1322, 1327 (D.C. Cir. 1996). In *Philadelphia Co. v. Stimson*, 223 U.S. 605 (1912), this Court held that the principle that an officer "cannot claim immunity from [the] injunction process" applies equally to a "[f]ederal officer acting in excess of his authority or under an authority not validly conferred" as it does to state officers. *Id.* at 620. The standard the Court applied to determine whether the officer was acting within the scope of his authority was whether the Secretary of War "exceed[ed] the power which had been conferred." *Id.* at 638. In *Stark v. Wickard*, 321 U.S. 288 (1944), this Court held that "[t]he responsibility of determining the limits of statutory grants of authority . . . is a judicial function entrusted to the courts by Congress by the statutes establishing courts and marking their

jurisdiction," and that on remand, "[t]he trial court is free to consider whether the statutory authority given the Secretary is a valid answer to the petitioners' contention." *Id.* at 310–11.

In each of these cases challenging a government official's action as beyond the official's statutory powers, this Court conducted a straightforward inquiry to determine whether the official's action was ultra vires: It asked whether the official's action was authorized by Congress, not (per the government's proposed standard) whether the official acted "entirely in excess of [the official's] delegated powers and contrary to a *specific prohibition* in a statute." Appl. 25 (emphasis added) (quoting *Nuclear Regul. Comm'n*, 605 U.S. at 681). Nor did the Court describe the standard applied in those cases as "highly deferential" or requiring "extreme error." *Id.* (citation omitted). Instead, the simple inquiry is whether the act was "justified by some law." *McAnnulty*, 187 U.S. at 108. In cases where the act was not justified by law, courts exercise their inherent equitable power to enjoin unlawful executive action.

Challenges to presidential ultra vires actions are no exception to this general rule. This Court applied the ordinary *McAnnulty* standard in considering whether the President acted within his statutory authority in *Dames & Moore v. Regan*, 453 U.S. 654 (1981). In that case, the Court considered, *inter alia*, whether the President had authority under the International Emergency Economic Powers Act to nullify attachments and liens on Iranian assets in the United States and direct the transfer of those assets to Iran. *Id.* at 670. The petitioners alleged that these actions were

"beyond" the President's and the Secretary of the Treasury's "statutory and constitutional powers." *Id.* at 667. In assessing petitioners' claim that the President acted ultra vires his statutory authority, the Court concluded based on the text and history of the statute that the President's actions were authorized. *Id.* at 671–74. In circumstances where Congress did not limit judicial review, the Court assessed the Executive Branch's statutory authority using the same, straightforward standard applied in *McAnnulty* and its progeny: asking simply whether the official's acts—in *Dames & Moore*, the President's—were authorized by law.

II. THE HEIGHTENED *LEEDOM* STANDARD APPLIES ONLY IF THE STATUTE LIMITS JUDICIAL REVIEW.

The government's proposed standard of review for ultra vires claims, which is based on the Court's decision in *Leedom*, is a narrow exception that applies only when Congress has limited judicial review. When Congress has confined judicial review to a particular statutory scheme, courts require challengers seeking equitable relief outside that scheme to meet a heightened burden: showing action in excess of delegated powers *and* contrary to a specific prohibition. As this Court noted in *Nuclear Regulatory Commission*, this approach prevents end-runs around Congress's chosen review procedures. 605 U.S. at 681. But where no judicial review scheme exists, *Leedom*'s heightened standard is inapposite.

In *Leedom*, a labor union challenged a decision by the NLRB to include both professional and nonprofessional employees in a bargaining unit without holding a vote by the professional employees. 358 U.S. at 185. The union filed suit, claiming that the NLRB's action directly conflicted with a requirement in the NLRA. *Id.* at

186. The government did not dispute that the NLRB's action violated the statute's requirement, but argued that the NLRA's judicial review provisions foreclosed the lawsuit. *Id.* at 187–88.

Leedom decided two related but separate issues: First, it held that even though the plaintiff was proceeding outside the judicial review structure of the NLRA, the district court could still exercise its equitable powers to review the plaintiff's claim that the NLRB had exceeded its authority. *Id.* at 188. Second, *Leedom* established a heightened standard for plaintiffs to prevail on such claims: To avoid "an easy end-run" around those statutory judicial-review limitations, *Nuclear Regul. Comm'n*, 605 U.S. at 681, plaintiffs proceeding under *Leedom* can prevail on the merits of their equitable claim only if the defendant official acted "*in excess* of [his] delegated powers and contrary to a *specific prohibition* in the Act" that was "*clear and mandatory*." *Leedom*, 358 U.S. at 188 (emphasis added). That standard was directly tied to the circumstances of that case, in which the plaintiff sought judicial review "apart from the review provisions of the [statute]." *Id.*

Leedom did not displace the default *McAnnulty* standard in the ordinary case (*i.e.*, where Congress has not limited review). Indeed, in *Harmon v. Brucker*, 355 U.S. 579 (1958) (per curiam), decided in the same year it decided *Leedom*, this Court reaffirmed that "[g]enerally, judicial relief is available to one who has been injured by an act of a government official which is in excess of his express or implied powers." *Id.* at 581–82. The *Harmon* plaintiffs claimed that the Secretary of the Army acted ultra vires by issuing other-than-honorable discharge certificates based on the

servicemembers' conduct prior to induction. *Id.* at 580. The Court reasoned that if the Secretary "did exceed his powers" under the statute, "his actions would not constitute exercises of his administrative discretion, and, in such circumstances as those before us, judicial relief from this illegality would be available." *Id.* at 582. The Court applied the longstanding default standard and simply asked whether the statute authorized the Secretary to issue other-than-honorable discharge certificates based on preinduction conduct. *See id.* at 582–83.

Since *Leedom*, this Court has continued to require plaintiffs bringing equitable ultra vires claims to show that the challenged action was "contrary to a specific," "clear and mandatory" statutory prohibition, 358 U.S. at 188, *only* where there was a statutory limitation on judicial review. In *Boire v. Greyhound Corporation*, 376 U.S. 473 (1964), a union challenged an NLRB decision defining a bargaining unit and ordering an election among its employees, and the parties agreed that the type of decision at issue was, "in the normal course of events . . . not directly reviewable in the courts." *Id.* at 475–76. The Court accordingly assessed whether the case fell within "the painstakingly delineated procedural boundaries of [*Leedom v.*] *Kyne*," *id.* at 481, and, because it did not, reversed the lower court's decision in the union's favor, *see id.* at 481–82.

The most recent example is *Nuclear Regulatory Commission*. There, the petitioners challenged the Nuclear Regulatory Commission's decision to grant a license to an entity to store spent nuclear fuel in a Texas facility. 605 U.S. at 668–69. But the Hobbs Act limited judicial review of such decisions only to applicants for

licenses or those who intervened in the licensing proceeding; because petitioners were neither, they could not obtain review under the Act. *Id.* at 680. Petitioners asserted in the alternative "claims of ultra vires agency action." *Id.* This Court applied the *Leedom* standard to petitioners' ultra vires claim because the Hobbs Act specifically circumscribed review of the decisions at issue and petitioners were trying to proceed outside of the statutorily defined process. *See id.* at 681. The Court made clear that "[t]he [*Leedom v.*] *Kyne* exception is a narrow one" because otherwise "ultra vires review could become an easy end-run around the limitations of the Hobbs Act and other judicial-review statutes.'" *Id.* That reasoning would have no purchase where there is no "judicial-review statute[]" and therefore no possible end-run. *Id.*

At the same time, just as the Court has applied the *Leedom* standard in its limited circumstances involving a statutory judicial review scheme, the Court has continued to apply the default *McAnnulty* standard of review where there is no statutory limitation on judicial review. *See, e.g.*, *Train v. City of New York*, 420 U.S. 35, 47 (1975) (holding that President's order to impound funds was unauthorized by the statute); *Fed. Energy Admin. v. Algonquin SNG, Inc.*, 426 U.S. 548, 551–52 (1976) ("What we must decide is whether [the statute] also authorizes the President to control [petroleum and petroleum product] imports by imposing on them a system of monetary exactions in the form of license fees."); *Dames & Moore*, 453 U.S. at 671–74 (holding that the President's actions were authorized by the statute).

The throughline of the Court's precedents is clear: A plaintiff challenging a government official's ultra vires action is not automatically required to show that the

action was contrary to a clear and mandatory statutory prohibition. Indeed, the default rule is the opposite: The *Leedom* standard of review applies *if and only if* there is a statutory limitation on judicial review.

III. APPLYING THE HEIGHTENED *LEEDOM* STANDARD TO ALL ULTRA VIRES CLAIMS WOULD UNDERMINE SEPARATION-OF-POWERS PRINCIPLES AND COURTS' ABILITY TO ENJOIN VIOLATIONS OF FEDERAL LAW.

Requiring all challenges to ultra vires actions to meet the high *Leedom* bar would frustrate courts' long-recognized power to enjoin statutory violations by federal officials, *see Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 327 (2015), at an unacceptable cost to the separation of powers. Since the time of *Marbury v. Madison*, 5 U.S. 137 (1803), Article III courts have reviewed challenges to violations of federal law to ensure "the boundaries between each branch" are "fixed 'according to common sense and the inherent necessities of the governmental co-ordination.'" *Immigr. & Naturalization Serv. v. Chadha*, 462 U.S. 919, 962 (1983) (Powell, J., concurring) (quoting *J.W. Hampton, Jr. & Co. v. United States,* 276 U.S. 394, 406 (1928)). In recognition of the judiciary's role in enforcing statutory constraints on Executive Branch authority, Congress drafts legislation against the "strong" background presumption that judicial review will be available. *Bowen v. Michigan Acad. of Fam. Physicians*, 476 U.S. 667, 670 (1986). Because "executive determinations generally are subject to judicial review," courts "presume that review is available," even "when a statute is silent." *Patel v. Garland*, 596 U.S. 328, 346 (2022) (internal quotation marks and citation omitted). Indeed, "the very essence of civil liberty . . . consists in the right of every individual to claim the protection of the laws, whenever he receives

an injury," *Marbury*, 5 U.S. at 163, and the judiciary's "duty . . . to decide questions of right" applies "not only between individuals, but between the government and individuals," *United States v. Nourse*, 34 U.S. 8, 28 (1835); *see also* Louis L. Jaffe, *The Right to Judicial Review I*, 71 Harv. L. Rev. 401, 432 (1958) ("[J]udicial review is the rule. It rests on the congressional grant of general jurisdiction to the article III courts. . . . [T]he intention to exclude it must be made specifically manifest.").

Subjecting all challenges to ultra vires actions to the exacting *Leedom* standard of review would unduly limit courts' ability to enjoin illegal executive action. In *Train*, for example, the Court held that President Nixon's order to impound funds allocated by Congress to states under the Federal Water Pollution Control Act Amendments of 1972 was unauthorized by the statute. 420 U.S. at 47. The Court applied the ordinary *McAnnulty* standard in assessing whether the President's order and the Administrator's regulation implementing the President's order were authorized by the statute. *Id.* at 45–47. The Court ruled that the impoundments were unlawful because Congress had directed the expenditure of the funds, *see id.*, *not* because it had specifically prohibited impoundment. Had it applied the heightened *Leedom* standard instead, the Court likely would not have held that the President's order and Administrator's action were unlawful because they were not contrary to a "specific prohibition" in the statute that was "clear and mandatory." *Leedom*, 358 U.S. at 188.

Similarly, the statute in *Harmon* did not contain a "specific prohibition" that was "clear and mandatory," *Leedom*, 358 U.S. at 188, barring the Secretary of the

Army from issuing other-than-honorable discharge certificates based on pre-induction conduct. *See Harmon*, 355 U.S. at 582–83 (inferring this limitation from a combination of multiple provisions read together). And yet this Court held that the Secretary's consideration of pre-induction activities was ultra vires. *See id.* at 582–83. Had the Court assessed whether the Secretary acted ultra vires under the *Leedom* standard rather than the ordinary *McAnnulty* standard as it did, the Court likely would have come out the other way.

Indeed, *McAnnulty* itself likely would have come out differently had the Court required the Postmaster General's action to be contrary to a specific statutory prohibition. The statute at issue in that case expressly authorized the Postmaster General to withhold mail "upon evidence satisfactory to him." *McAnnulty*, 187 U.S. at 100 n.†. If the Court had applied the "painstakingly delineated procedural boundaries of [*Leedom v.*] *Kyne*," it likely would have upheld the Postmaster General's decision on the ground that it did not violate a "specific prohibition" in the statute. *Nuclear Regul. Comm'n*, 605 U.S. at 681 (citations omitted). That result would defy common sense and improperly hamper federal courts' ability to review executive action for compliance with federal law.

IV. THE COURT SHOULD APPLY THE ORDINARY *MCANNULTY* STANDARD TO GOVERNOR COOK'S ULTRA VIRES CLAIM IF THE FEDERAL RESERVE ACT DOES NOT LIMIT JUDICIAL REVIEW.

The President's position in this case would have the Court "squeeze" Governor Cook's "typical statutory-authority argument . . . into the *Leedom v. Kyne* box," *Nuclear Regul. Comm'n*, 605 U.S. at 682, regardless of whether her claim belongs in that box. As the cases above make clear, *Leedom* applies only when Congress has

limited judicial review—not whenever a plaintiff invokes equity to challenge a government official's violation of a federal statute.

In order for the *Leedom* standard of review to apply to Governor Cook's equitable ultra vires claim, the Court would need to hold that the Federal Reserve Act limits judicial review of Governor Cook's removal. The archetypal example of a statute limiting judicial review such that the *Leedom* standard of review applies is the type of statute present in *Leedom* and in *Nuclear Regulatory Commission*, where Congress provided a reticulated statutory judicial review scheme (there, the NLRA and the Hobbs Act, respectively).

Amici take no position in this brief on whether the Federal Reserve Act contains any limitation on judicial review. Assuming it does not, however, the ordinary, default standard of review under *McAnnulty* should apply to Governor Cook's claim. Under *McAnnulty*, the question would be whether the President's decision to remove Governor Cook is consistent with the Federal Reserve Act, not whether his action was "entirely in excess of [his] delegated powers and contrary to a specific prohibition in a statute." Appl. 25 (alteration in original) (citation omitted). In other words, it is not the case, as the President argues, that "[e]ven if judicial review of the President's stated cause were available, it would be highly deferential" because the *Leedom* standard would apply. *Id.*

CONCLUSION

This Court should reject the government's argument that the heightened *Leedom* standard applies to ultra vires claims even in the absence of a statutory limitation on judicial review.

Respectfully submitted,

Cecillia D. Wang
Evelyn Danforth-Scott
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
425 California Street, Suite 700
San Francisco, CA 94104

Ethan Herenstein
Sophia Lin Lakin
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad Street, 18th Floor
New York, NY 10004

Aditi Shah
Counsel of Record
Scott Michelman
AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF THE DISTRICT OF COLUMBIA
529 14th Street NW, Suite 722
Washington, DC 20045
205-457-0800
ashah@acludc.org

John W. Whitehead
William E. Winters
THE RUTHERFORD INSTITUTE
109 Deerwood Road
Charlottesville, VA 22911

Counsel for Amici Curiae

Dated: October 29, 2025