

**In the Supreme Court of the United States**

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

*v.*

SHIRA PERLMUTTER

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

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**PARTIES TO THE PROCEEDING**

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

**RELATED PROCEEDINGS**

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

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

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

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

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

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

This application involves another case of improper judicial interference with the President’s power to remove executive officers—here, the Register of Copyrights. The Register is an inferior officer appointed by the Librarian of Congress, who is, despite his title, a principal *executive* officer—“a ‘Head of Department’ within the Executive Branch” appointed by the President and confirmed by the Senate. *Medical Imaging & Technology Alliance v. Library of Congress*, 103 F.4th 830, 833 (D.C. Cir. 2024). The Register, acting under the Librarian’s supervision, wields executive power by exercising “significant regulatory authority over copyrights,” *ibid.*— impacting a wide array of crucial intellectual-property issues. The Register issues rules governing, and adjudicates applications for, copyright registration, which copyright owners

must obtain before they may sue for infringement. The Register also interprets copyright law and issues legal rulings that bind the Copyright Royalty Board, a “powerful” federal agency whose decisions affect “billions of dollars and the fates of entire industries.” *SoundExchange, Inc. v. Librarian of Congress*, 571 F.3d 1220, 1226 (D.C. Cir. 2009) (Kavanaugh, J., concurring). The Register, in addition, participates in meetings and negotiations with foreign governments concerning copyright issues—an increasingly sensitive issue in international diplomacy.

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

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

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

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

## STATEMENT

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

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

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

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

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

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

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

On May 10, the President directed Perlmutter’s removal as Register. See App., *infra*, 28a. Blanche executed the removal by appointing Paul Perkins, an Associate Deputy Attorney General, to serve as Acting Register. See *id.* at 7a; see also 2 Daniel Webster, *Speeches and Forensic Arguments* 469 (8th ed. 1844) (“If one man be [an officer], and another be appointed, the first goes out by the mere force of the appointment of the other, without any previous act of removal whatever. And this is the practice of the Government, and has been, from the first. In all the removals which have been made, they have generally been effected simply by making other appoint-

ments.”). The day before her removal, Perlmutter had released a pre-publication version of a report about the use of copyrighted materials to train generative artificial-intelligence models. App., *infra*, 6a. Perlmutter alleges that the President removed her because he disagreed with her report. *Id.* at 7a.

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

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

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

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

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

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

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

## ARGUMENT

Under Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, an applicant for a stay of a lower court’s injunction must show a reasonable probability that this Court would grant certiorari, a likelihood of success on the merits, and a

likelihood of irreparable harm. See *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam). In “close cases,” the Court also considers the balance of the equities and the public interest. See *ibid.*

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

have expressed concerns regarding the validity of registrations[.] \* \* \* [A] law professor \* \* \* said the ‘serious question’ about whether the registrations being issued right now are valid might make content creators consider delaying projects.”<sup>1</sup>

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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<sup>2</sup> <https://loc.gov/item/n83041676/george-watterston-1783-1854>

<sup>3</sup> <https://loc.gov/item/n86070561/john-silva-meehan-1790-1863>

delegation by Congress.

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

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

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

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

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

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

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

The Library is an “independent establishment,” 5 U.S.C. 104, and thus an “Executive agency” covered by the FVRA, 5 U.S.C. 105, 3345(a). To be an independent

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

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

Instead of simply applying the controlling statutory definitions, the court of appeals sought to infer the Library’s status from other statutory provisions. See App.,

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

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

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

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

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

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

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

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

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

the President’s *alter ego* in the matters of that department.” *Myers*, 272 U.S. at 133.

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

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

Moreover, the decision below effectively allows the Senate to veto the President’s removal of the Register. If the President may neither designate an Acting Librarian nor remove respondent directly, he may achieve her removal only by ap-

pointing a new Librarian with the Senate’s advice and consent. If the Senate does not consent to a new appointment, respondent could continue serving as Register indefinitely. Handing such authority to the Senate would violate the basic rule that Congress may not “draw to itself, or to either [House], the power to remove or the right to participate in the exercise of that power.” *Myers*, 272 U.S. at 161; see *Morrison v. Olson*, 487 U.S. 654, 686 (1988) (Article II forbids “an attempt by Congress to gain a role in the removal of executive officials”); *Bowsher*, 478 U.S. at 725 (“congressional participation in the removal of executive officers is unconstitutional”); cf. *Swan v. Clinton*, 100 F.3d 973, 986 (D.C. Cir. 1996) (extending removal protection to “hold-over members” of an executive agency would “raise constitutional problems” because it would enable the Senate to “keep holdover members in office by not acting on the President’s nominations for successors”).

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

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

The government also is likely to succeed on the independent ground that the court of appeals’ interlocutory injunction reinstating respondent exceeded its reme-

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

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

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

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

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

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

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

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

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

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

Regardless of whether removed officers could obtain mandamus or declaratory judgments at the end of the litigation, they have no right to interlocutory injunctions reinstating them while the litigation remains pending. In debates leading to the Decision of 1789, those members of the First Congress who thought that removal required Senate consent agreed that the President could suspend officers pending Senate action. See *Myers*, 272 U.S. at 124-125. In *Wiener*, this Court suggested that the President could make a “suspensory removal” of a tenure-protected Commissioner “until the Senate could act upon it by confirming the appointment of a new Commis-

sioner or otherwise dealing with the matter.” 357 U.S. at 356. Even the Tenure of Office Act, ch. 154, 14 Stat. 430—the most aggressive congressional incursion on the President’s removal power in the Nation’s history—allowed the President to “suspend [an] officer” until the Senate could meet and decide whether to consent to a removal. § 2, 14 Stat. 430. That history strongly supports allowing removals to take effect while their lawfulness is resolved.

#### **D. The Other Factors Support Granting A Stay**

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

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

By contrast, as the district court repeatedly determined, respondent does not face irreparable harm from her removal. See 5/28/25 Hr’g Tr. 51-52 (denying TRO); App., *infra*, 35a-46a (denying preliminary injunction); *id.* at 29a-30a (denying injunction pending appeal). Respondent’s removal deprives her of employment and salary,

but such harms ordinarily are not considered irreparable. See *Sampson v. Murray*, 415 U.S. 61, 92 n.68 (1974). Respondent’s removal also prevents her from exercising the powers of the Register, but a public official’s “loss of political power” is not a judicially cognizable harm, much less the type of irreparable harm that can justify issuing an injunction. *Raines v. Byrd*, 521 U.S. 811, 821 (1997). In all events, “the Government faces greater risk of harm from an order allowing a removed officer to continue exercising the executive power than a wrongfully removed officer faces from being unable to perform her statutory duty.” *Wilcox*, 145 S. Ct. at 1415.

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

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

Second, the court of appeals stated that the Executive Branch faces minimal harm because the Register “does not exercise *substantial* executive power.” App., *infra*, 21a (emphasis added). Article II, however, vests the entire executive power—not just “substantial” executive power—in the President alone. See *Seila Law*, 591 U.S. at 213. “Courts are not well-suited to weigh the relative importance of the regulatory and enforcement authority of disparate agencies.” *Collins*, 594 U.S. at 253. In any event, the court’s argument fails on its own terms. The Register makes regulations governing the copyright registration system, issues legal rulings that control copyright royalty adjudications, adjudicates applications for copyright registration, and conducts diplomacy on sensitive questions regarding respect for intellectual prop-

erty in international affairs. Those powers are “substantial” by any reasonable measure. See, *e.g.*, *Seila Law*, 591 U.S. at 220 (describing the power to promulgate binding rules and issue binding orders as “significant”); *Medical Imaging*, 103 F.4th at 833 (describing the Copyright Office’s “regulatory authority” as “significant”).

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

### CONCLUSION

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

Respectfully submitted.

D. JOHN SAUER  
*Solicitor General*

OCTOBER 2025

## APPENDIX

|                                                                                           |     |
|-------------------------------------------------------------------------------------------|-----|
| Court of appeals order denying rehearing (Oct. 1, 2025) .....                             | 1a  |
| Court of appeals order granting injunction pending appeal<br>(Sept. 10, 2025).....        | 2a  |
| Pan, J., concurring .....                                                                 | 3a  |
| Walker, J., dissenting.....                                                               | 24a |
| District court memorandum denying injunction pending<br>appeal (Aug. 20, 2025).....       | 28a |
| District court memorandum opinion denying preliminary<br>injunction (Sept. 9, 2025) ..... | 32a |

**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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**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:** Walker, Childs, and Pan, Circuit Judges

**ORDER**

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

**ORDERED** that the motion for reconsideration be denied.

**Per Curiam**

**FOR THE COURT:**  
Clifton B. Cislak, Clerk

BY: /s/  
Daniel J. Reidy  
Deputy Clerk

**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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**No. 25-5285****September Term, 2025****1:25-cv-01659-TJK****Filed On:** September 10, 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:** Walker\*, Childs, and Pan, Circuit Judges

**ORDER**

Upon consideration of the emergency motion for injunction pending appeal, the opposition thereto, the reply, and the letter regarding case status, it is

**ORDERED** that the motion for injunction be granted to the extent that appellees Todd Blanche, Paul Perkins, Sergio Gor, Trent Morse, and the Executive Office of the President, and their subordinates and agents, are hereby enjoined from interfering with appellant's service as Register of Copyrights and Director of the U.S. Copyright Office pending further order of the court. To that extent, appellant has satisfied the stringent requirements for an injunction pending appeal. See Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 20 (2008); D.C. Circuit Handbook of Practice and Internal Procedures 33 (2025); see also Severino v. Biden, 71 F.4th 1038, 1042 (D.C. Cir. 2023) (explaining that a "court generally may not 'enjoin the President in the performance of his official duties'" (quoting Franklin v. Massachusetts, 505 U.S. 788, 802-03 (1992) (plurality opinion))). A concurring statement of Circuit Judge Pan, joined by Circuit Judge Childs, and a dissenting statement of Circuit Judge Walker are attached.

**Per Curiam**

**FOR THE COURT:**

Clifton B. Cislak, Clerk

BY: /s/

Lynda M. Flippin  
Deputy Clerk

\* Circuit Judge Walker would deny the motion for injunction pending appeal.

PAN, *Circuit Judge*, joined by CHILDS, *Circuit Judge*, concurring:

The Register of Copyrights (the “Register”) is a unique position within the Legislative Branch, housed within the Library of Congress. The Register serves as the Director of the U.S. Copyright Office and is the primary advisor to Congress on copyright issues. 17 U.S.C. § 701(b)(1). The Librarian of Congress appoints and supervises the Register. *Id.* § 701(a). And only the Librarian of Congress has authority to remove the Register. That much is undisputed.

Shira Perlmutter has served as the Register since October 2020, when she was duly appointed by the Librarian of Congress. On May 9, 2025, Perlmutter released a prepublication version of a report analyzing the use of copyrighted materials to train generative artificial-intelligence models (the “AI Report”). Perlmutter prepared the report in fulfillment of her statutory duty to “[c]onduct studies” and “[a]dvise Congress on national and international issues relating to copyright.” 17 U.S.C. § 701(b)(1), (4). As Register, she supports Congress’s enumerated constitutional power to enact copyright laws that “promote the Progress of Science and useful Arts.” U.S. Const. art. I, § 8, cl. 8.

When Perlmutter’s AI Report was released, the President allegedly disagreed with its recommendations. And the next day — a Saturday — the White House Presidential Personnel Office notified Perlmutter by email that she had been terminated from her position “effective immediately.”

Perlmutter sued to block her removal, seeking declaratory and injunctive relief. The district court denied Perlmutter’s request for a preliminary injunction that would have allowed her to remain in her post until the litigation concluded. The district court based its ruling solely on its determination that Perlmutter had failed to show that she would suffer irreparable

harm from her immediate removal. It relied on precedents which hold that the President's desire to remove an official who exercises executive power generally outweighs the official's interest in performing her duties. But the district court abused its discretion by failing to consider "unusual actions relating to the discharge itself" and a "genuinely extraordinary situation" — factors that inform the irreparable-harm analysis and distinguish this case from other removal cases. *Sampson v. Murray*, 415 U.S. 61, 92 n.68 (1974).

The "unusual" and "extraordinary" features of this case include the following: (1) Perlmutter alleges an unprecedented violation of the separation of powers — she contends that the President removed the Register, an official in the Legislative Branch, based on his disagreement with advice that the Register provided to Congress in support of its constitutional power to formulate laws and policies concerning copyrights; (2) the President's removal of Perlmutter was likely unlawful; and (3) Perlmutter likely does not exercise substantial executive power, making this case markedly different from most precedents addressing the removal of government officials. Under the circumstances, the district court should have weighed all the preliminary-injunction factors. Those factors all favor granting Perlmutter's requested preliminary injunction.

## I.

Congress established the Library of Congress in 1800 as a part of the Legislative Branch. *See* 2 U.S.C. § 171(1); Compl., ECF No. 1 ¶ 10 n.1 (citing Library of Congress Information Bulletin (1984)). The Library "serves as the research arm of Congress and is recognized as the national library of the United States." *Frequently Asked Questions*, Libr. of Cong., <https://perma.cc/6Z77-ZRE4>. Congress provided the President

with authority to appoint the Librarian of Congress, who heads the Library, subject to the advice and consent of the Senate. *See* 2 U.S.C. § 136-1(a). The Librarian is appointed for a term of ten years. *Id.* § 136-1(b).

Housed within the Library of Congress is the U.S. Copyright Office. The Constitution vests Congress with the power to “secur[e] for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.” U.S. Const. art. I, § 8, cl. 8. Relying on that constitutional authority, Congress has protected copyrights in some form under federal law since 1790. *See* Act of May 31, 1790, ch. 15, 1 Stat. 124. And in 1897, Congress established the Copyright Office within the Library of Congress. *History of U.S. Copyright Office*, U.S. Copyright Off., <https://perma.cc/BJ9R-2KTS>.

The Register of Copyrights oversees the Copyright Office and administers the nation’s copyright system. The Register is appointed by the Librarian of Congress and acts under the Librarian’s general direction and supervision. *See* 17 U.S.C. § 701(a); *Med. Imaging & Tech. All. v. Libr. of Cong.*, 103 F.4th 830, 833 (D.C. Cir. 2024). She “is the principal advisor to Congress on national and international copyright matters, testifying upon request and providing ongoing leadership and impartial expertise on copyright law and policy.” *Overview*, U.S. Copyright Off., <https://perma.cc/6BQN-J5Z5>; *see also* 17 U.S.C. § 701(b) (listing statutory functions of the Register). The Office also “registers copyright claims, records information about copyright ownership, provides information to the public, and assists Congress and other parts of the government on a wide range of copyright issues.” *Overview*, U.S. Copyright Off., *supra*.

By statute, the Librarian of Congress bears sole responsibility for appointing the Register. The Librarian also has sole authority to remove the Register. *See Nat’l Treasury Emps. Union v. Reagan*, 663 F.2d 239, 247 (D.C. Cir. 1981) (“Absent relevant legislation” “the power to remove is held by the appointing authority, and only by the appointing authority.”).

In October 2020, the Librarian of Congress, Dr. Carla D. Hayden, appointed Shira Perlmutter to serve as the Register. On May 8, 2025, the President fired Hayden. Under the regulations promulgated pursuant to 2 U.S.C. § 136 and longstanding practice, the interim Principal Deputy Librarian, Robert R. Newlen, replaced Hayden as Acting Librarian of Congress. Newlen has been an employee of the Library of Congress for more than forty years.

On May 9, 2025, Perlmutter released the AI Report — a prepublication version of a report analyzing the fair use doctrine’s application to the use of copyrighted materials in the training of generative AI models. She prepared the report pursuant to the Register’s statutory responsibility to “[c]onduct studies” and “[a]dvise Congress on national and international issues relating to copyright,” 17 U.S.C. § 701(b)(1), (4). *See* U.S. Copyright Off., *Copyright and Artificial Intelligence Part 3: Generative AI Training* (May 2025), <https://perma.cc/3J9F-7SQN>. The AI Report concluded that some uses of copyrighted works in generative AI training were likely to qualify as “fair use,” but some uses were likely to require licensing. Compl. ¶ 19. The Copyright Office is reportedly in the process of finalizing a separate aspect of the report to Congress, which will address the topic of potential liability for infringing AI outputs.

Perlmutter alleges that the President disagreed with her on the substance of the AI Report, as evidenced by his subsequent statements. On the day after the AI Report was released, May 10, 2025, Trent Morse, Deputy Assistant to the President and Deputy Director of the White House Presidential Personnel Office, sent an email to Perlmutter on behalf of the President, stating that her “position as the Register of Copyrights and Director at the U.S. Copyright Office is terminated effective immediately.” Compl. ¶ 20.

The President subsequently invoked the Federal Vacancies Reform Act (“FVRA”), 5 U.S.C. § 3345(a), to purportedly appoint Deputy Attorney General Todd Blanche as Acting Librarian of Congress. Blanche then purportedly appointed Justice Department official Paul Perkins as Acting Register.

Perlmutter sued the President and other officials in the district court, arguing that her termination was unlawful. First, she argued that only the Librarian of Congress — and not the President — has the authority to fire her. Second, she argued that Blanche was unlawfully appointed as Acting Librarian and therefore lacks authority to ratify the President’s actions, *i.e.*, to effectuate her termination.

The district court denied Perlmutter’s requests for a temporary restraining order and a preliminary injunction. *Perlmutter v. Blanche*, No. 25-1659, 2025 WL 2159197, at \*1 (D.D.C. July 30, 2025). The district court did not consider whether Perlmutter was likely to succeed on the merits of her claims; rather, the court denied Perlmutter’s motion solely by evaluating irreparable harm. *See id.* at \*2–8. Specifically, the district court reasoned that Perlmutter’s asserted loss of her “statutory right to function” was not a “genuinely extraordinary situation such that her temporary removal is irreparable harm — or at least, harm that outweighs any corresponding risk of

harm to the Government.” *Id.* at \*7. The district court relied on the Supreme Court’s recent order in *Trump v. Wilcox*, which states that the harm to the government “from an order allowing a removed officer to continue exercising the executive power” is generally greater than the harm to a government official who is wrongfully removed. *Id.* at \*5 (quoting 145 S. Ct. 1415, 1415 (2025)).

Perlmutter filed an appeal and asked the district court for a stay of its order pending appeal. The district court denied her request. *Perlmutter v. Blanche*, No. 25-1659, 2025 WL 2409755, at \*1 (D.D.C. Aug. 20, 2025).

Perlmutter then filed the instant motion for an injunction pending appeal, asking this court to “act swiftly to enjoin Defendants from interfering with Perlmutter’s service as Register during the pendency of this appeal.” Mot. at 3.

Notwithstanding 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. In support of her motion for a preliminary injunction in the district court, Perlmutter asserted that, to her knowledge, “no official at the Library of Congress has recognized Mr. Blanche as the acting Librarian of Congress,” and that she “[remains] Register of Copyrights and therefore [is] required by law to fulfill [her] above-described statutory obligations.” ECF No. 24-3 at 4–5.

## II.

An injunction pending appeal is an “exceptional remedy,” and the party seeking one on appeal from the denial of a preliminary injunction faces the “difficult task” of showing that the district court likely abused its discretion in denying

preliminary relief. *John Doe Co. v. CFPB*, 849 F.3d 1129, 1131 (D.C. Cir. 2017) (per curiam). To obtain either a preliminary injunction or an injunction pending appeal, the movant must demonstrate (1) a likelihood of success on the merits, (2) a likelihood of irreparable harm absent injunctive relief, (3) that the balance of equities favors an injunction, and (4) that an injunction is in the public interest. See *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). “The first two factors of the traditional standard are the most critical,” *Nken v. Holder*, 556 U.S. 418, 434 (2009), and the showing of likelihood of success must be “substantial,” *Citizens for Resp. & Ethics in Wash. v. FEC*, 904 F.3d 1014, 1018 (D.C. Cir. 2018). Where the federal government is the opposing party — as is the case here — the balance of equities and public interest factors merge. *Nken*, 556 U.S. at 435.

*Winter* “can be read to require movants to establish each preliminary injunction factor independently.” *Clevinger v. Advoc. Holdings, Inc.*, 134 F.4th 1230, 1235 (D.C. Cir. 2025). But in general, a “movant’s failure to show any irreparable harm is grounds for refusing to issue a preliminary injunction, even if the other three factors merit such relief.” *Id.* at 1236 (cleaned up). In the context of the Executive’s removal of a government employee, courts may consider “unusual actions relating to the discharge itself” and “genuinely extraordinary situation[s]” to support a finding of irreparable harm. *Sampson*, 415 U.S. at 92 n.68. At bottom, an injunction is an exercise of judicial discretion that turns on the circumstances of the case. *Winter*, 555 U.S. at 24.

In determining whether an injunction pending appeal is warranted, we must evaluate whether the district court abused its discretion, and that analysis necessarily overlaps with the issues that will be raised in Perlmutter’s appeal of the preliminary-injunction order. See *John Doe*, 849 F.3d at 1131.

We review the district court’s “legal conclusions as to each of the four [preliminary-injunction] factors *de novo*, and its weighing of them for abuse of discretion.” *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 6 (D.C. Cir. 2016).

### III.

As previously noted, the district court’s order denying injunctive relief rested solely on its determination that Perlmutter had failed to show that she would suffer irreparable harm if removed during the pendency of further proceedings. The district court therefore performed no weighing of the other preliminary-injunction factors. Although courts may generally rely solely on a movant’s failure to show irreparable harm to deny injunctive relief, the district court nonetheless erred in this instance. The district court’s order leaned heavily on the Supreme Court’s statement in *Wilcox* that “the Government faces greater risk of harm from an order allowing a removed officer to continue exercising the executive power than a wrongfully removed officer faces from being unable to perform her statutory duty” — but *Wilcox* addressed circumstances that were different in important respects. *Perlmutter*, 2025 WL 2159197, at \*5 (quoting 145 S. Ct. at 1415). The district court also failed to appropriately follow the Supreme Court’s guidance in *Sampson* that “unusual actions relating to the discharge itself” and “genuinely extraordinary situation[s]” can support a finding of irreparable harm. 415 U.S. at 92 n.68. In our view, the district court abused its discretion by neglecting to adequately consider the specific circumstances of this case.

Perlmutter is employed by the Legislative Branch as Register, a role that requires her to provide advice to Congress about copyright issues. She alleges that the President sought to remove her from her job because he disapproved of the

advice that she gave to Congress in the AI Report. The Executive's alleged blatant interference with the work of a Legislative Branch official, as she performs statutorily authorized duties to advise Congress, strikes us as a violation of the separation of powers that is significantly different in kind and in degree from the cases that have come before. This case is also distinguishable from *Wilcox* because of the diminished amount of executive power that is at stake: The Register likely does not exercise substantial executive power because the position is housed within the Legislative Branch; its primary responsibility is advising Congress on matters of copyright law; and the President has no statutory removal authority over the Register at all. And finally, it is significant that Perlmutter's removal was likely unlawful because the President has no direct authority to fire her, and his installment of an Acting Librarian of Congress was likely ineffective.

On *de novo* review of the district court's finding of no irreparable harm, we reach the opposite conclusion: Based on "unusual actions relating to the discharge itself" and "genuinely extraordinary" circumstances, *Sampson*, 415 U.S. at 92 n.68, Perlmutter has demonstrated irreparable harm. The other preliminary-injunction factors — Perlmutter's likelihood of success on the merits, the balance of equities, and the public interest — also favor issuing an injunction pending appeal.

#### **A. Likelihood of Success on the Merits**

Perlmutter's purported removal was likely unlawful. The Librarian of Congress — not the President — is authorized by statute to appoint the Register. 17 U.S.C. § 701(a). And because the governing statute is silent regarding the question of removal, the Librarian — not the President — has the power to remove Perlmutter. *See Nat'l Treasury Emps. Union*, 663 F.2d at 247 ("Absent relevant legislation" "the power to

remove is held by the appointing authority, and only by the appointing authority.”); *see also Aviel v. Gor*, No. 25-5105, 2025 WL 1600446, at \*1 (D.C. Cir. June 5, 2025) (Katsas, J., concurring) (citing *Free Enter. Fund v. PCAOB*, 561 U.S. 477, 493, 509 (2010)). The government does not argue otherwise in its opposition. Thus, the dispute on the merits focuses on the appointment of the Acting Librarian of Congress.<sup>1</sup>

Blanche’s purported appointment to serve as Acting Librarian of Congress was likely unlawful because any Librarian appointee must be confirmed by the Senate, 2 U.S.C. § 136-1(a), but here, Senate approval is lacking. As a result, Blanche’s purported appointment of Perkins to serve as Acting Register also was likely unlawful. *See* 17 U.S.C. § 701(a).

The FVRA is likely an unavailing workaround for the government. That statute gives the President authority to appoint another Senate-confirmed official as the acting principal officer of an “Executive agency,” subject to certain limitations. *See* 5 U.S.C. § 3345. The FVRA states that it is “the exclusive means for temporarily authorizing an acting [principal] official.” *Id.* § 3347(a). And an action taken by any

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<sup>1</sup> The government also argues that the President’s Article II duty to “take Care that the Laws be faithfully executed,” U.S. Const. art. II, § 3, grants him unrestricted authority to designate an Acting Librarian. We disagree. “The Appointments Clause prohibits the appointment of principal officers without the advice and consent of the Senate. Such consent ‘is a critical structural safeguard’ against presidential overreach — a feature of our constitutional system, not a bug.” *Aviel*, 2025 WL 1600446, at \*2 (Katsas, J., concurring) (quoting *NLRB v. SW Gen., Inc.*, 580 U.S. 288, 293 (2017)). It “is unlikely that the Take Care Clause gives the President unfettered discretion to designate acting principal officers with neither Senate confirmation nor a Senate recess nor even statutory authorization through the FVRA.” *Id.*

person who was not properly appointed “shall have no force or effect.” *Id.* § 3348(d)(1). For purposes of the FVRA, the phrase “Executive agency” means (1) “an Executive department,” (2) “a Government corporation,” or (3) “an independent establishment.” *Id.* § 105.

The plain language of the statute indicates that the Library of Congress is not an “Executive agency” for purposes of the FVRA. First, Title 5 specifically enumerates the “Executive departments” and does not include the Library. *See* 5 U.S.C. § 101. Second, the Library is not a corporation owned by the government, so it does not fit the statutory definition of “Government corporation.” *See id.* § 103. Third, the Library is likely not an “independent establishment” because it is not “an establishment in the executive branch.” *Id.* § 104. In determining whether an entity qualifies as an “independent establishment,” we have previously looked to statutes where Congress has treated the term “independent establishment” as distinct from the entity in question. *See Haddon v. Walters*, 43 F.3d 1488, 1490 (D.C. Cir. 1995) (determining that the “Executive residence” is not an “independent establishment” by considering Congress’s separate use of both terms in the U.S. Code). Such is the case here, where the U.S. Code refers to the “Library of Congress” and “independent establishment” as distinct entities. 5 U.S.C. § 4101 (defining “independent establishment” and the “Library of Congress” as separate agencies).

We also note that throughout Title 5, in which the FVRA is codified, Congress commonly refers to the “Library of Congress” as separate and distinct from an “Executive agency.” *See* 5 U.S.C. §§ 3102(a)(1) (listing “the Library of Congress” separately from the term “Executive agency”), 3401(1) (same), 4501(1) (same), 5102(a)(1) (same), 5521(1) (same), 5541(1) (same), 5584(g) (same), 5595(a)(1) (same), 5921(2) (same),

5948(g)(2) (same), 6121(1) (same), 7103(a)(3) (same), 13101 (defining the “Library Congress” as a component of the “legislative branch,” distinct from the “executive branch” and “Executive agency”), 4101(1) (listing the “Library of Congress” separately from “Executive department”); *see also* 2 U.S.C. § 181(b)(1) (defining “offices and agencies of the legislative branch” as including the Library of Congress); *Davis v. Billington*, 681 F.3d 377, 386 (D.C. Cir. 2012) (analyzing the Civil Service Reform Act and concluding that the statute’s use of the term “‘Executive agency’ . . . plainly does not contain the Library of Congress within the meaning of the statute” (citing 5 U.S.C. § 7103(a)(3))); *Haddon*, 43 F.3d at 1490 (similar). That lends further support to our conclusion.

### **B. Irreparable Harm**

We next turn to whether Perlmutter has shown that she is likely to suffer irreparable harm if removed during the pendency of her lawsuit. We hold that she has.

The mere loss of government employment is normally not enough to show irreparable harm during the pendency of litigation about the employee’s removal because the plaintiff usually can be made whole through the issuance of back pay. *See Sampson*, 415 U.S. at 91 (Congress contemplated that the Back Pay Act would be “the usual, if not the exclusive, remedy for wrongful discharge.”). In *Sampson*, the Supreme Court held that a probationary employee, who was terminated from her job with the General Services Administration, failed to make a showing of irreparable injury based on her claims of lost income and reputational damage. *Id.* at 89. The Court observed that the administrative scheme governing civil servants would be disrupted by temporary relief; that “the Government has traditionally been granted the widest latitude in the dispatch of its own internal affairs”; and that courts of

equity generally are “unwilling” to enforce contracts for personal service. *Id.* at 83 (cleaned up). Under the circumstances, the Court determined that a discharged government employee must make a showing of irreparable injury “sufficient in kind and degree to override these factors,” which cut “against the general availability of preliminary injunctions in Government personnel cases.” *Id.* at 84. Notably, however, the Court recognized that “cases may arise in which the circumstances surrounding an employee’s discharge, together with the resultant effect on the employee, may so far depart from the normal situation that irreparable injury might be found.” *Id.* at 92 n.68. Indeed, “genuinely extraordinary situation[s],” such as those involving “any unusual actions relating to the discharge itself,” might support a finding of irreparable harm in cases that are not “routine.” *Id.*

Perlmutter’s appointment as Register of Copyrights is very different from the government employment at issue in *Sampson*. The plaintiff in *Sampson* was a probationary employee in her first year on the job. 415 U.S. at 63–64. By contrast, Perlmutter is a government official engaged in “lead[ing] and direct[ing] the important work of the Copyright Office at a critical juncture.” Mot. at 19. In the unique role of Register of Copyrights, Perlmutter has the opportunity to influence Congress on copyright matters of national importance, such as the development of generative AI. She administers the Copyright Act, which requires the examination of copyright applications, the issuance of copyright registrations, the maintenance of copyright deposits, and the recordation of transfers of copyright ownership. 17 U.S.C. §§ 205, 410–11, 705. She has rulemaking authority that is subject to review by the Librarian of Congress. *See id.* § 702. And she may set copyright fees, under the supervision of Congress. *See id.* § 708(b)(5) (The Register must “prepare a proposed fee schedule and submit the schedule with the accompanying

economic analysis to the Congress.”). Her statutory right to function as the Register of Copyrights is thus far weightier than the mere loss of income implicated in *Sampson*. See *Wilcox*, 145 S. Ct. at 1415 (recognizing that a “wrongfully removed officer” faces “risk of harm” from “being unable to perform her statutory duty”). The uniqueness of her role and the opportunities it gives her “transcend[] the loss of income or embarrassment involved in the typical employment action.” Mot. at 19.

To be sure, Perlmutter’s inability to perform her statutory functions likely does not, in itself, constitute *irreparable* harm, even if the harm is very significant. See *Dellinger v. Bessent*, No. 25-5052, 2025 WL 887518, at \*4 (D.C. Cir. Mar. 10, 2025) (per curiam) (recognizing that the alleged deprivation of “the statutory right to function” is not necessarily irreparable). But here, there is more.

Certain “unusual actions relating to the discharge itself” and “genuinely extraordinary” circumstances also support a finding of irreparable harm. *Sampson*, 415 U.S. at 92 n.68. Unlike the plaintiff in *Sampson*, who claimed that her employer had violated civil-service regulations, Perlmutter alleges that the President of the United States unlawfully removed her in a manner that violates the separation of powers. Perlmutter has a statutory mandate to serve as the principal advisor to Congress on issues of copyright, 17 U.S.C. §§ 701, 702, and she plays a critical supporting role in Congress’s constitutional mission to establish a system of copyright laws, U.S. Const. art. I, § 8, cl. 8. The President purported to remove Perlmutter because he allegedly disagreed with her conclusions in the AI Report, which was prepared to assist Congress in the exercise of its constitutional authority to make law and policy related to copyrights. The President then purported to install Executive Branch officials — Blanche and Perkins — as Acting Librarian

of Congress and Acting Register of Copyrights. If those facts are proven true, that would be a grave intrusion by the President into the constitutional powers of a coordinate branch of government. Moreover, as already explained, Perlmutter's removal was likely illegal because only a lawfully appointed and Senate-confirmed Librarian can remove the Register. The 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, presents a "genuinely extraordinary situation," *Sampson*, 415 U.S. at 92 n.68, that threatens irreparable harm to the constitutional structure of our government. The President's purported removal of the Legislative Branch's chief advisor on copyright matters, based on the advice that she provided to Congress, is akin to the President trying to fire a federal judge's law clerk.

The district court failed to recognize the "extraordinary situation" presented by this case and erred in mechanically applying the Supreme Court's reasoning in *Wilcox*. *Wilcox* involved the constitutionality of for-cause removal protections for members of the National Labor Relations Board and the Merit Systems Protection Board, agencies that are housed within the Executive Branch. *See* 145 S. Ct. at 1415. That case and others like it implicate the President's Article II authority as the head of the Executive Branch, and his statutory power to exercise at least some control over the involved officials, such as by appointing them (with the advice and consent of the Senate) and removing them (for cause). *See id.*; *see also Trump v. Boyle*, 145 S. Ct. 2653, 2654 (2025); *Dellinger*, 2025 WL 887518, at \*3. In *Wilcox*, where the Supreme Court held that the government was likely to succeed on the merits of its claim that the President was entitled to exercise at-will removal authority, it was more difficult for the ousted officials to demonstrate irreparable injury. There, under the Court's

analysis, the “actions relating to the discharge[s]” suggested that the officials had no entitlement to keep their jobs, and so their removals were not “extraordinary.” *Sampson*, 415 U.S. at 92 n.68; *see also Wilcox*, 145 S. Ct. at 1415 (The “Government faces greater risk of harm from an order allowing a removed officer to continue exercising the executive power” at an agency that likely exercises “considerable executive power,” than does a “wrongfully removed officer.”); *Boyle*, 145 S. Ct. at 2654 (same).

The case most similar to the one before us is *Aviel v. Gor*, where we ruled in favor of the removed official. *See* 2025 WL 1600446, at \*1 (Katsas, J., concurring). There, we declined to stay the district court’s preliminary injunction enjoining various government officials from removing Aviel from her position as Chief Executive Officer of the Inter-American Foundation, a government grant-making corporation. *See id.* at \*1–2. In explaining the court’s ruling, Judge Katsas (joined by Judge Pillard) noted that the government, which had moved for the stay, did not demonstrate a likelihood of success on the merits of its claim that Aviel had been lawfully removed. *Id.* at \*1. He explained that, similar to this case, the President likely had no statutory authority to appoint or remove Aviel, and his appointment of a Board member who purported to ratify her removal also was likely unlawful under governing statutes. *Id.* at \*1–2. Regarding irreparable harm, the district court had determined that Aviel would be irreparably harmed by the loss of her “right to function” and because “the very survival of her organization [was] at stake.” *Aviel v. Gor*, 780 F. Supp. 3d 1, 14 (D.D.C. 2025). By declining to stay the preliminary injunction, we implicitly agreed with the district court that Aviel would be irreparably harmed absent the preliminary injunction. *See Aviel*, 2025 WL 1600446, at \*1–2 (Katsas, J., concurring); *see also Nken*, 556 U.S. at 426 (requiring courts to examine whether a stay will substantially

injure the other party); *Clevinger*, 134 F.4th at 1236 (“Even under the sliding-scale approach, a movant’s failure to show any irreparable harm is grounds for refusing to issue a preliminary injunction, even if the other three factors merit such relief.” (cleaned up)). *Aviel* supports our conclusion that Perlmutter has made the requisite showing of irreparable harm where she, like Aviel, has alleged a loss of her “right to function” plus “genuinely extraordinary” circumstances.

In sum, “unusual actions relating to the discharge itself” support a finding of irreparable harm to Perlmutter absent an injunction. Perlmutter can likely establish that she was unlawfully removed from her post as Register of Copyrights, and that her removal was motivated by the President’s disapproval of her work in service of Congress — work that was related to legislative, not executive, functions. Moreover, she was purportedly replaced by an Executive Branch official. That alleged violation of the separation of powers is irreparably harmful to both Perlmutter and to our system of government. In a system of checked and balanced power, the Executive has no authority to punish a Legislative Branch official for the advice that she provides to Congress. Moreover, if Perlmutter is temporarily barred from “[c]onduct[ing] studies” and “[a]dvis[ing] Congress on national and international issues relating to copyright,” 17 U.S.C. § 701(b)(1), (4), no amount of back pay will compensate her or Congress for her interim inability to support Congress’s consideration of copyright law and policy during a critical time. This presents a “genuinely extraordinary situation,” such that she has made the requisite showing of irreparable harm.

### **C. Balance of Equities and the Public Interest**

Because the “first two factors of the traditional standard are the most critical,” *Nken*, 556 U.S. at 434, Perlmutter

advances to this final, combined factor, in a strong position. In our view, the balance of equities and the public interest also weigh in favor of Perlmutter remaining in her job.

In cases involving the removal of government officials, the Supreme Court has balanced the parties' competing assertions of harm and ruled in the government's favor where the government was likely to show that the agencies in question "exercise *considerable executive power*," and that the removed executive official sought to "*continue exercising the executive power*." *Wilcox*, 145 S. Ct. at 1415 (emphases added); *see also Boyle*, 145 S. Ct. at 2654 ("[T]he Consumer Product Safety Commission *exercises executive power* in a similar manner as the National Labor Relations Board." (emphasis added)). Reinstating an already-ousted official under such circumstances would be "obviously disruptive" and would likely inflict irreparable injury on the government because it would interfere with the President's constitutional power to supervise the Executive Branch. *Sampson*, 415 U.S. at 83; *see also Dellinger*, 2025 WL 887518, at \*3. By contrast, 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. Because Perlmutter leads an agency that is housed in the Legislative Branch and her primary role is to advise Congress, Perlmutter's situation differs significantly from the Executive Branch officials whose removals have been repeatedly upheld. And because she continues to serve as Register at the present time, ruling in her favor would not disrupt the work of the U.S. Copyright Office. To the contrary, it is her removal that would be disruptive.

Notably, the Register likely does not exercise considerable or substantial executive power.<sup>2</sup> The Register serves Congress, executive agencies, and the Judiciary by providing advice, information, and assistance on national and international issues relating to copyright. 17 U.S.C. § 701(b)(1)–(3). She conducts “studies and programs regarding copyright,” and performs “other functions as Congress may direct.” *Id.* § 701(b)(4), (5). In so doing, the Register primarily works for Congress, similar to the Congressional Research Service, the powers of which “are exercised primarily for legislative purposes.” *Intercollegiate Broad. Sys.*, 684 F.3d at 1341; *see also Bowsher v. Synar*, 478 U.S. 714, 746 n.11 (1986) (Stevens, J., concurring) (explaining that the Library’s Congressional Research Service is a “congressional agent” for purposes of the nondelegation doctrine). To the extent that any of the Register’s duties might be characterized as “executive” in nature, they likely do not involve the exercise of “substantial” executive power. Indeed, Congress chose to house the Copyright Office in the Legislative Branch, to subject the Register to close supervision by both the Librarian of Congress

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<sup>2</sup> That is not true of all offices within the Library of Congress, which “perform[] a range of different functions.” *Intercollegiate Broad. Sys., Inc. v. Copyright Royalty Bd.*, 684 F.3d 1332, 1341 (D.C. Cir. 2012). For example, the Copyright Royalty Board — which is not part of the Copyright Office — has the power “to promulgate copyright regulations, to apply the statute to affected parties, and to set rates and terms case by case,” which are functions “generally associated in modern times with executive agencies rather than legislators.” *Id.* at 1342. That category of Library offices is “undoubtedly a ‘component of the Executive Branch.’” *Id.* (quoting *Free Enter. Fund*, 561 U.S. at 511). Although the Register has some oversight responsibilities regarding Copyright Royalty Judges, any control leaves those judges with “vast discretion,” is “likely to be quite faint,” and is “short of the kind that would render the [Copyright Royalty Judges] inferior officers.” *Id.* at 1339.

and Congress itself, and to assign prominent Congress-facing duties to the Register. Those factors set the Register apart from traditional Executive Branch officials and suggest that the Register likely does not wield “substantial” executive power.

The public interest also favors granting Perlmutter’s requested relief. There is no public interest in implementing Perlmutter’s likely illegal removal. *See League of Women Voters of U.S.*, 838 F.3d at 13 (“There is a substantial public interest in having” the government “abide by the federal laws.” (cleaned up)). Moreover, 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. The public has a profound interest in the Register’s continued work.

Our dissenting colleague does 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. Instead, our colleague would deny the requested relief based solely on his assessment of the balance of equities. In his view, the equities in this case are identical to those that were considered in *Wilcox* and *Boyle*. But, as we have explained, this case is different.

On one side of the scale, Perlmutter asserts her interest in performing her statutory functions at a critical time, as well as the structural harm to our government from an unprecedented violation of the separation of powers. The constitutional violation alleged here is different in kind and in degree from that discussed in *Wilcox* and *Boyle* because Perlmutter is a Legislative Branch official whom the President purportedly

fired in retaliation for advice that she gave Congress; and the President has no statutory authority to appoint or remove the Register of Copyrights. On the other side of the scale, the President asserts an interest in removing Perlmutter that is far weaker than in *Wilcox* and *Boyle* because Perlmutter is closely supervised by the Librarian and by Congress and therefore does not exercise “considerable” or “substantial” executive power. *See supra* at 13–14, 18–20, 19 n.2. Because our dissenting colleague does not engage with the particular facts of the case before us, his analysis is flawed.

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In sum, all of the preliminary-injunction factors weigh in favor of granting an injunction pending appeal. Perlmutter has shown a likelihood of success on the merits of her claim that the President’s attempt to remove her from her post was unlawful because she may be discharged only by a Senate-confirmed Librarian of Congress. She also has made the requisite showing of irreparable harm based on the President’s alleged violation of the separation of powers, which deprives the Legislative Branch and Perlmutter of the opportunity for Perlmutter to provide valuable advice to Congress during a critical time. And Perlmutter has shown that the balance of equities and the public interest weigh in her favor because she primarily serves Congress and likely does not wield substantial executive power, which greatly diminish the President’s interest in her removal. For the foregoing reasons, we grant Perlmutter’s requested injunction pending appeal.

WALKER, *Circuit Judge*, dissenting:

The Register of Copyrights exercises “executive” power.<sup>1</sup> And “the Government faces greater risk of harm from an order allowing a removed officer to continue exercising the executive power than a wrongfully removed officer faces from being unable to perform her statutory duty.”<sup>2</sup> So the district court did not permit the Register of Copyrights to remain in her post while she challenges the legality of her removal, and neither should we.

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The Register of Copyrights exercises executive power in a host of ways. From within the Library of Congress, she “administers the Copyright Act, which requires the examination of copyright applications, the issuance of copyright registrations, the maintenance of copyright deposits, and the recordation of transfers of copyright ownership.”<sup>3</sup> In addition, she “has rulemaking authority that is subject to review by the Librarian of Congress.”<sup>4</sup> And she “has some oversight responsibilities regarding Copyright Royalty Judges,” who have “the power ‘to promulgate copyright regulations, to apply the statute to affected parties, and to set rates and terms case by case,’ which are functions ‘generally associated in modern

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<sup>1</sup> *Medical Imaging & Technology Alliance v. Library of Congress*, 103 F.4th 830, 840 n.4 (D.C. Cir. 2024).

<sup>2</sup> *Trump v. Wilcox*, 145 S. Ct. 1415, 1415 (2025); *see also Trump v. Boyle*, 145 S. Ct. 2653, 2654 (2025) (same); *cf. Slaughter v. Trump*, No. 25-5261, slip op. 7 (D.C. Cir. Sept. 2, 2025) (“the Supreme Court’s stay orders in *Wilcox* and *Boyle* teach that the balance of equities in removal cases not governed by on-point Supreme Court precedent generally favors the government”); *but see id.* (“the equitable calculus in this case differs”).

<sup>3</sup> Concurring Op. 13 (citing 17 U.S.C. §§ 205, 410-11, 705).

<sup>4</sup> *Id.* (citing 17 U.S.C. § 702).

times with executive agencies rather than legislators.”<sup>5</sup> These are among the reasons we have “recently recognized the important executive power exercised by the Library, suggesting that whatever the Library’s historical association with Congress, it is squarely a component of the Executive Branch *in its role as a copyright regulator*.”<sup>6</sup>

Recently, repeatedly, and unequivocally, the Supreme Court has stayed lower-court injunctions that barred the President from removing officers exercising executive power. *Trump v. Wilcox* reasoned that “the Government faces greater risk of harm from an order allowing a removed officer to continue exercising the executive power than a wrongfully removed officer faces from being unable to perform her statutory duty.”<sup>7</sup> And *Trump v. Boyle* applied the same reasoning with the same language to reach the same result.<sup>8</sup>

Applying those precedents, the district court denied a request for a preliminary injunction to reinstate Register of Copyrights Shira Perlmutter after President Donald Trump fired her. Perlmutter then asked this court for an injunction pending appeal.

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<sup>5</sup> *Id.* at 19 n.2 (quoting *Intercollegiate Broadcasting System, Inc. v. Copyright Royalty Board*, 684 F.3d 1332, 1342 (D.C. Cir. 2012)).

<sup>6</sup> *Medical Imaging & Technology Alliance*, 103 F.4th at 840 n.4 (citing *Intercollegiate Broadcasting System, Inc.*, 684 F.3d at 1341-42) (emphasis added).

<sup>7</sup> *See* 145 S. Ct. at 1415.

<sup>8</sup> *See* 145 S. Ct. at 2654 (same) (quoting *Wilcox*, 145 S. Ct. at 1415); *see also id.* (“The application is squarely controlled by *Trump v. Wilcox*. Although our interim orders are not conclusive as to the merits, they inform how a court should exercise its equitable discretion in like cases.” (cleaned up)).

My colleagues grant the injunction, holding that the district court likely “abused its discretion”<sup>9</sup> by “mechanically applying the Supreme Court’s reasoning in *Wilcox*.”<sup>10</sup> Instead, they say the district court should have considered the “specific circumstances of this case.”<sup>11</sup> In their view, those circumstances are (1) the relationship between Congress and the Register of Copyrights; (2) the amount of executive power at stake; and (3) the suit’s merits.<sup>12</sup>

I respectfully dissent.

First, whether or not the Register of Copyrights is best labeled “a Legislative Branch official,”<sup>13</sup> the Register of Copyrights is housed within the Library of Congress, which “is squarely a component of the Executive Branch in its role as a copyright regulator.”<sup>14</sup>

Second, whether or not the Register of Copyrights exercises less executive power than do some other executive officers,<sup>15</sup> *Wilcox* and *Boyle* cover *any* officer “exercising the executive power.”<sup>16</sup>

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<sup>9</sup> Concurring Op. 2, 8.

<sup>10</sup> *Id.* at 15.

<sup>11</sup> *Id.* at 8.

<sup>12</sup> *Id.* at 8-9.

<sup>13</sup> *Id.* at 9.

<sup>14</sup> *Medical Imaging & Technology Alliance*, 103 F.4th at 840 n.4.

<sup>15</sup> See Concurring Op. 9 (arguing that it is a “diminished amount of executive power that is at stake” — which appears to mean some “executive power” but less than “substantial executive power”).

<sup>16</sup> *Wilcox*, 145 S. Ct. at 1415; *Boyle*, 145 S. Ct. at 2654.

And third, whether or not “Perlmutter’s removal was likely unlawful,”<sup>17</sup> *Wilcox* and *Boyle* referred to “a wrongfully removed officer” when they said that “the Government faces greater risk of harm from an order allowing a removed officer to continue exercising the executive power than a wrongfully removed officer faces from being unable to perform her statutory duty.”<sup>18</sup>

\* \* \*

I do not doubt that my colleagues are attempting in good faith to interpret and apply *Wilcox* and *Boyle*.<sup>19</sup> But today they repeat the mistake that *Wilcox* and *Boyle* twice corrected.<sup>20</sup> We must apply those precedents even if “Perlmutter alleges that the President of the United States unlawfully removed her in a manner that violates the separation of powers.”<sup>21</sup>

Gwynne Wilcox alleged the same thing.<sup>22</sup> So did Cathy Harris.<sup>23</sup> And so did Mary Boyle.<sup>24</sup>

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<sup>17</sup> Concurring Op. 9.

<sup>18</sup> *Wilcox*, 145 S. Ct. at 1415; *Boyle*, 145 S. Ct. at 2654.

<sup>19</sup> See Harry T. Edwards, *The Effects of Collegiality on Judicial Decision Making*, 151 U. PENN. L. REV. 1639 (2003).

<sup>20</sup> Cf. R. Reagan, 1980 Presidential Debate (“There you go again.”).

<sup>21</sup> Concurring Op. 14; cf. Trevor N. McFadden & Vetan Kapoor, *The Precedential Effects of The Supreme Court’s Emergency Stays*, 44 Harv. J.L. & Pub. Pol’y 827 (2021).

<sup>22</sup> Cf. *Wilcox*, 145 S. Ct. at 1415 (staying Wilcox’s injunction).

<sup>23</sup> Cf. *Wilcox*, 145 S. Ct. at 1415 (staying Harris’s injunction).

<sup>24</sup> Cf. *Boyle*, 145 S. Ct. at 2654 (staying Boyle’s injunction); see also Order, *Trump v. Slaughter*, No. 25A264, S. Ct. (Sept. 8, 2025).

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

SHIRA PERLMUTTER,

*Plaintiff,*

v.

TODD BLANCHE et al.,

*Defendants.*

Civil Action No. 25-1659 (TJK)

**MEMORANDUM**

On May 10, 2025, President Trump purportedly fired Shira Perlmutter from her position as Register of Copyrights and Director of the U.S. Copyright Office at the Library of Congress. ECF No. 24-3 ¶¶ 1, 8–9. Perlmutter, believing her termination to be unlawful, sued a few weeks later and then moved for a temporary restraining order seeking to prevent her removal, which the Court denied. ECF Nos. 1, 2, 15. She then moved for a preliminary injunction. ECF No. 24. The Court denied that motion for substantially the same reasons it denied her request for a temporary restraining order, finding that she had failed to establish that she would be irreparably harmed absent the requested injunction. ECF Nos. 39, 40. Perlmutter has now appealed that denial and moves for an injunction pending appeal. ECF Nos. 41, 43. But because she has again failed to show that she will be irreparably harmed absent her requested relief, the Court will deny her motion.

Federal Rule of Civil Procedure 62(d) provides that “[w]hile an appeal is pending from an interlocutory order . . . that . . . refuses . . . an injunction, the court may suspend, modify, restore, or grant an injunction on terms for bond or other terms that secure the opposing party’s rights.” An “injunction pending appeal is an extraordinary remedy.” *Memphis Publ’g Co. v. FBI*, 195 F. Supp. 3d 1, 3 (D.D.C. 2012). “The standards for evaluating a motion for an injunction pending

appeal are ‘substantially the same as those for issuing a preliminary injunction.’” *Amgen Inc. v. Azar*, No. 17-cv-1006, 2018 WL 1990521, at \*1 (D.D.C. Feb. 22, 2018) (quoting *Al-Anazi v. Bush*, 370 F. Supp. 2d 188, 199 n.11 (D.D.C. 2005)). Plaintiffs “must establish that [they are] likely to succeed on the merits, that [they are] likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [their] favor, and that an injunction is in the public interest.” *Id.* (quoting *Winter v. Nat. Res. Def. Council, Inc.* 555 U.S. 7, 20 (2008)).

Rule 62(d) also contemplates situations in which a district court that has denied an injunction still grants an injunction pending appeal. *MediNatura, Inc. v. FDA*, No. 20-cv-2066, 2021 WL 1025835, at \*6 (D.D.C. Mar. 16, 2021). Thus, in “at least some circumstances,” an injunction pending appeal “may be appropriate” even if the court that just denied injunctive relief “believe[s] its analysis” in denying relief “is correct” in that the movant cannot show a likelihood of success on the merits. *Id.* (quotation omitted); *see also Wash. Metro. Area Transit Comm’n v. Holiday Tours, Inc.*, 559 F.2d 841, 844–45 (D.C. Cir. 1977). So “in rare cases, the threat of irreparable harm may be so grave and the balance of equities may favor” the movant “so decisively that an injunction pending appeal . . . may be proper,” even without a likelihood of success on the merits, so long as the movant at least establishes a “serious legal question” on the merits and shows that “the other three factors tip sharply” in its favor. *MediNatura*, 2021 WL 1025835, at \*6 (quotation omitted); *see also Cigar Ass’n of Am. v. FDA*, 317 F. Supp. 3d 555, 560–61 & n.4 (D.D.C. 2018).

The Court will deny Perlmutter’s motion because she has not shown that she faces irreparable harm, “grave” or otherwise, absent an injunction pending appeal. She presents the same three irreparable-harm arguments the Court has already considered and rejected twice. According to Perlmutter, she will be irreparably harmed absent an injunction because (1) her removal, even if only temporary, “deprive[s] her of her ‘statutory right to function’ in the role that the Librarian of Congress lawfully appointed her to perform,” ECF No. 43 at 2; (2) she cannot “discharge her

statutory duties” while temporarily removed, *id.* at 3; and (3) “the President’s efforts to oust [her] directly threaten the Library’s and Copyright Office’s ability to perform their assigned functions as intended by Congress,” *id.*

Perlmutter has given the Court no reason to reconsider its prior conclusions that she has not established that she will suffer irreparable harm absent preliminary injunctive relief. Such relief in government-personnel cases is permitted only in a “genuinely extraordinary situation.” *Sampson v. Murray*, 415 U.S. 61, 92 n.68 (1974). That requires Perlmutter to show that “the circumstances surrounding [her] discharge, together with the resultant effect on [her], . . . so far depart from the normal situation that irreparable injury might be found.” *Id.* But as the Court has already explained in detail, the temporary loss of a “statutory right to function”—assuming such a right exists, *see* ECF No. 40 at 12 n.8—does not meet this standard, *id.* at 4–12. The same is true for Perlmutter’s temporary inability to discharge her statutory duties. *Id.* at 12–13. And Perlmutter cannot rely on alleged harms to the Library or Copyright Office because she must show that *she*—not third parties—will be irreparably harmed. *Id.* at 13–14. Finally, even if she could rely on harms to third parties, Perlmutter’s asserted harms to the Library and Copyright Office flowing from her temporary removal are speculative at best. *Id.* at 14–15. So she has not shown that this case presents such a “genuinely extraordinary situation” that irreparable harm may be found. *Sampson*, 415 U.S. at 92 n.68. And because she has not shown that she will suffer irreparable harm absent an injunction pending appeal, the Court will deny her motion.

For all the above reasons, the Court will deny Perlmutter’s Emergency Motion for Injunction Pending Appeal. A separate order will issue.

/s/ Timothy J. Kelly  
TIMOTHY J. KELLY  
United States District Judge

Date: August 20, 2025

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

SHIRA PERLMUTTER,

*Plaintiff,*

v.

TODD BLANCHE et al.,

*Defendants.*

Civil Action No. 25-1659 (TJK)

**MEMORANDUM OPINION**

On May 10, 2025, Shira Perlmutter was purportedly fired by President Trump from her position as Register of Copyrights and Director of the U.S. Copyright Office at the Library of Congress. Arguing that this attempt to terminate her was unlawful, she sued a few weeks later and then moved for a preliminary injunction, seeking to prevent her removal. The Court will deny her motion because she has not shown that she will be irreparably harmed without this relief.

**I. Background**

**A. Factual Background**

On May 8, 2025, President Trump removed Carla D. Hayden as Librarian of Congress. ECF No. 24-3 ¶ 5. Two days later, acting through another official, he similarly purported to remove Perlmutter as head of the Copyright Office via an email that terminated her “effective immediately.” *Id.* ¶ 9. And the next day, Deputy Attorney General Todd Blanche—whom President Trump had “directed to perform the duties of the office of the Librarian of Congress” following the former Librarian’s removal, ECF No. 24-5 at 3—“designate[d] Paul Perkins” to replace Perlmutter “as the Acting Register of Copyrights and Acting Director of the U.S. Copyright Office,” *id.* at 2. For her part, Perlmutter maintains that she “remain[s] Register of Copyrights” and that

she has “not received any communication from Library of Congress leadership that purports to terminate [her] employment as Register of Copyrights.” *Id.* ¶¶ 12–13.

## **B. Procedural History**

Perlmutter claims that “the purported appointments of” Blanche and Perkins “have caused considerable confusion among Library staff, copyright stakeholders, and the public” and will “impede the Copyright Office’s ability to perform its work.” ECF No. 24-3 ¶¶ 11, 15. So on May 22, 2025, she sued, bringing two counts challenging her purported removal and the President’s appointment of Blanche as the Acting Librarian of Congress. ECF No. 1 ¶¶ 26–36. She also moved for a temporary restraining order. ECF No. 2. On May 28, the Court denied her motion, concluding that she had not shown that she would suffer irreparable harm without that relief. ECF No. 15 at 36–52. Then, on June 10, Perlmutter moved for a preliminary injunction, ECF No. 24, and the Court held a hearing on the motion on July 23.

## **II. Legal Standard**

“A preliminary injunction is an extraordinary remedy never awarded as of right.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). “A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Id.* at 20. “[P]laintiffs bear the burden of persuasion on all four preliminary injunction factors.” *Open Top Sightseeing USA v. Mr. Sightseeing, LLC*, 48 F. Supp. 3d 87, 90 (D.D.C. 2014). Thus, “failure to show a likelihood of irreparable harm” is, “standing alone, sufficient to defeat the motion.” *Brennan Ctr. for Just. at NYU Sch. of L. v. Dep’t of Com.*, 498 F. Supp. 3d 87, 96 (D.D.C. 2020) (quoting *Navajo Nation v. Azar*, 292 F. Supp. 3d 508, 512 (D.D.C. 2018)).

The D.C. Circuit “has set a high standard for irreparable injury.” *Chaplaincy of Full Gospel*

*Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006). “[T]he injury must be both certain and great; it must be actual and not theoretical.” *Wis. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985) (per curiam). “The party seeking injunctive relief must show that the injury complained of is of such *imminence* that there is a clear and present need for equitable relief to prevent irreparable harm.” *Id.* (cleaned up). In other words, “[t]he movant must provide proof that the harm has occurred in the past and is likely to occur again, or proof indicating that the harm is certain to occur in the near future.” *Id.* Furthermore, “the movant must show that the alleged harm will *directly result* from the action which the movant seeks to enjoin.” *Id.* (emphasis added). Finally, the injury must be truly “irreparable”—i.e., “beyond remediation.” *Chaplaincy of Full Gospel Churches*, 454 F.3d at 297.

### III. Analysis

The Court’s analysis begins and ends with irreparable harm. Perlmutter argues that her removal from office—even if only temporary—is irreparable harm that can only be prevented by a preliminary injunction. The Court is unconvinced, so it will deny her motion.

The Supreme Court has instructed that the loss of a job and the harms that go along with it generally “will not support a finding of irreparable injury, however severely they may affect a particular individual.” *Sampson v. Murray*, 415 U.S. 61, 92 n.68 (1974). “That is particularly true in cases involving government employment.” *English v. Trump*, 279 F. Supp. 3d 307, 334 (D.D.C. 2018). Indeed, the *Sampson* Court emphasized “that the Government has traditionally been granted the widest latitude in the ‘dispatch of its own internal affairs.’” 415 U.S. at 83 (quoting *Cafeteria & Restaurant Workers Union, Local 473, A.F.L.—C.I.O. v. McElroy*, 367 U.S. 886, 896 (1961)). And it noted that, even outside the government context, courts of equity are “traditional[ly] unwilling[.]” “to enforce contracts for personal service either at the behest of the employer or of the employee.” *Id.* The Court also relied on “the historical denial of all equitable

relief by the federal courts” when a plaintiff sought, “by injunction, [to] restrain an executive officer from making a wrongful removal of a subordinate appointee.” *Id.* at 71, 83 (quoting *White v. Berry*, 171 U.S. 366, 377 (1898)). For these reasons, preliminary equitable intervention in government-personnel cases is disfavored, and the plaintiff must at least demonstrate that her case involves a “genuinely extraordinary situation” to obtain interim relief. *Id.* at 92 n.68. Such a showing must establish that “the circumstances surrounding [her] discharge, together with the resultant effect on [her], . . . so far depart from the normal situation that irreparable injury might be found.” *Id.* Only then will she have shown “irreparable injury sufficient in kind and degree to override these factors cutting against the general availability of preliminary injunctions in Government personnel cases.” *Id.* at 84.<sup>1</sup>

Perlmutter argues that this case presents a “genuinely extraordinary situation” for three reasons: (1) she has been deprived of her “‘statutory right to function’ as Register of Copyrights,” ECF No. 24-2 at 34; (2) she “remains Register of Copyrights and is therefore required to fulfill her statutory duties,” *id.* at 37; and (3) “[i]rreparable harm to the Library of Congress and Copyright Office will frustrate [her] ability to resume her duties,” *id.* at 39. As explained below, each of these arguments fails.

**A. Perlmutter’s Temporary Loss of Her “Statutory Right to Function” While the Court Resolves the Merits of Her Case Is Not an Irreparable Harm**

Perlmutter first argues that this case warrants preliminary injunctive relief because her

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<sup>1</sup> At times, Perlmutter appears to suggest that the importance of her position should play a role in the Court’s analysis of whether this situation is “genuinely extraordinary.” *E.g.*, ECF No. 24-2 at 32. Perhaps this is a response to the *Sampson* plaintiff’s status as a “probationary employee.” 415 U.S. at 62. The reasoning in *Sampson*, though, did not appear to turn on the seniority of the employee. Thus, the Court assigns little weight to this factor. To be sure, such a consideration is not irrelevant. But it does little to show that “the circumstances surrounding [her] discharge, together with the resultant effect on [her], . . . so far depart from the normal situation that irreparable injury might be found.” *Sampson*, 415 U.S. at 92 n.68.

removal deprives her of her “statutory right to function” as the Register of Copyrights. ECF No. 24-2 at 32, 34 (quotation omitted). Not so. In the first case purporting to recognize such a right, the court found that the plaintiffs had shown irreparable harm because, without a preliminary injunction, the court could not reinstate them to their positions later on—because the positions would no longer exist. *See Berry v. Reagan*, No. 83-3182, 1983 WL 538 (D.D.C. Nov. 14, 1983). Nothing similarly irremediable is at stake here.

In *Berry*, President Carter had appointed the plaintiffs, with the advice and consent of the Senate, to the Commission on Civil Rights. *Id.* at \*1. That body did not have a fixed term for members; by statute, it expired 60 days after the date established for submission of its final report, September 30, 1983. *Id.* at \*1 n.1. The Commission apparently did not meet this deadline, leaving it racing to finish the report before it dissolved on November 29. *Id.* at \*5. But President Reagan fired the plaintiffs before the Commission submitted its report, so they sued. *Id.* at \*1. After concluding that the plaintiffs were likely to succeed on the merits, the court found that they had established irreparable injury to “their statutory right to function as Commissioners.” *Id.* at \*5. According to that court, “[t]he irreparable nature of this injury is evident by the obviously disruptive effect the *denial* of preliminary relief will likely have on the Commission’s final activities.” *Id.* Because the plaintiffs’ removal deprived the Commission of a quorum, it lost its “ability to fulfill its mandate” to issue a final report before it expired. *Id.* These circumstances, the court held, satisfied the *Sampson* test. *Id.*

Even putting aside that *Berry* is not binding on this Court, it does not provide Perlmutter a winning argument that she will likely suffer irreparable harm here for several reasons. First, as noted above, the harm to the plaintiff Commissioners was irreparable because, without a preliminary injunction, the Commission itself would have expired and the Court could not have reinstated

them to their positions. Here, to the extent that Perlmutter argues that she suffers harm solely from not functioning as the Register of Copyrights, she provides no reason to think that any such harm cannot be remediated in the ordinary course by returning her to her position if she prevails on the merits. She argues that later reinstatement is insufficient because she is being sidelined *now* and can never reclaim this lost time. ECF No. 24-2 at 34–35. And to demonstrate, she notes that the Copyright Office is in the middle of producing a multi-volume report on copyright and artificial intelligence for Congress and other stakeholders and that her ability to “complete” that report “will be forfeited during the months-long pendency of this lawsuit.” *Id.* at 35. The *Berry* court, however, did not rely on this type of reasoning. And more fundamentally, this “lost time” argument proves too much because it would establish irreparable harm in *every* wrongful-termination case.

Perlmutter also gestures at a related argument when she asserts that her removal and Perkins’s appointment will have an irreparable effect on her because they will prevent her from “return[ing] to her position as it currently exists.” ECF No. 24-2 at 39. But she does not show that Defendants’ actions, if not enjoined, will likely irreparably alter her position. So those fears are vague and speculative, not “certain and great.” *Chaplaincy of Full Gospel Churches*, 454 F.3d at 297 (quotation omitted).

Second, although the court in *Berry* appears to have assumed that alleged injury to the Commission was identical to alleged injury to the plaintiff Commissioners—an assumption with which the Court disagrees for reasons explained later—the situation in *Berry* was very different than the one here. In *Berry*, denying the requested injunction would have shut down the Commission before it fulfilled its mandate. So the Commission itself could not have continued to function—and indeed, could never function again—absent preliminary relief. Here, on the other hand, while Perlmutter claims that Defendants’ actions “impede[.]” *her* from carrying out the

responsibilities of the Copyright Office, ECF No. 24-3 ¶ 14, she does not explain why the Copyright Office cannot continue to operate under Perkins’s temporary leadership. *Cf. English*, 279 F. Supp. 3d at 355 (finding that a removed officer had not shown irreparable harm where the agency would “not be shuttered” because it could “continue[] to operate” under the leadership of the officer’s purported replacement). For example, though Perlmutter claims that *she* will be temporarily unable to complete the report on copyright and artificial intelligence absent an injunction, she does not explain why the *Copyright Office* could not do so without her at the helm. *See* ECF No. 24-3 ¶ 14(g). So even if the Court could consider some harms to the agency in considering irreparable harm to Perlmutter, she has not shown that the type of harm the *Berry* court addressed is present here.

Still, moving past *Berry* itself, Perlmutter identifies six more recent decisions from this district in which judges have concluded, at least in part based on *Berry*, that even the “temporary” “deprivation of a senior government official’s ‘statutory right to function’ . . . is both significant and irreparable.” ECF No. 24-2 at 34; *id.* at 32–33 (collecting cases). These cases get her no further.

One of them—*Aviel v. Gor (Aviel I)*, No. 25-cv-778, 2025 WL 1009035 (D.D.C. Apr. 4, 2025)—is inapposite for substantially the same reasons as *Berry*. In that case, the district court found irreparable harm because “the very survival of [the removed officer’s] organization [was] at stake.” *Id.* at \*10. So without an injunction, there would be no agency for the officer to return to after the case was resolved. But to repeat, Perlmutter has not shown that the existence of the Copyright Office is at stake, or that her position will likely be irreparably changed without an injunction. In another—*LeBlanc v. United States Privacy & Civil Liberties Oversight Board*—the agency, like the Commission in *Berry*, would have been deprived of a quorum, preventing it from

carrying out many of its responsibilities. No. 25-cv-542, 2025 WL 1454010, at \*31 (D.D.C. May 21, 2025). Yet again, Perlmutter has not shown that the Copyright Office will grind to a halt without her.<sup>2</sup> True, in the other four cases Perlmutter cites, judges found irreparable harm even though the plaintiff did not make a showing similar to *Berry*, *Aviel I*, or *LeBlanc*. But respectfully, for that reason, the Court does not find their reasoning persuasive. See *Brehm*, 2025 U.S. Dist. LEXIS 71326, at \*7–10 (declining to follow some cases cited by Perlmutter since “the viability of a ‘statutory right to function’ claim is uncertain” and, “[t]o the extent courts have accepted such a claim, it has been on different facts”).

On top of all that, what is striking about these four cases—and also about *LeBlanc*—is what happened next: either the D.C. Circuit or the Supreme Court stayed the injunctions entered by the district courts. In three, either the Circuit or the Supreme Court stayed a preliminary injunction directly.<sup>3</sup> In the other two, the decision cited by Perlmutter was an unappealable temporary restraining order, but a subsequent permanent injunction entered by the same court was stayed.<sup>4</sup> And while Perlmutter disputes the meaning of these developments in the appellate courts,

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<sup>2</sup> Similarly, in *LeBlanc*, the court noted that the removed officer was “appointed by the President, with the advice and consent of the Senate, to a nonpartisan, multimember board of experts.” 2025 WL 1454010, at \*30. Here, by contrast, Perlmutter was appointed by the Librarian, not the President with the advice and consent of the Senate. 17 U.S.C. § 701(a). At least one court in this district has held that such a distinction minimizes the officer’s injury. *Brehm v. Marocco*, No. 25-cv-660, 2025 U.S. Dist. LEXIS 71326, at \*8 (D.D.C. Mar. 11, 2025) (finding no irreparable harm from an officer’s removal in part because the officer “was not appointed by the U.S. President or confirmed by the Senate”).

<sup>3</sup> *LeBlanc v. U.S. Priv. & C.L. Oversight Bd.*, No. 25-cv-542, 2025 WL 1454010 (D.D.C. May 21, 2025), *stayed*, No. 25-5197, 2025 WL 1840591 (D.C. Cir. July 1, 2025) (per curiam); *Grundmann v. Trump*, 770 F. Supp. 3d 166 (D.D.C. 2025), *stayed*, No. 25-5165, 2025 WL 1840641 (D.C. Cir. July 3, 2025) (per curiam); *Wilcox v. Trump*, 775 F. Supp. 3d 215 (D.D.C. 2025), *stayed sub nom. Trump v. Wilcox*, 145 S. Ct. 1415 (2025).

<sup>4</sup> *Harris v. Bessent*, 775 F. Supp. 3d 164 (D.D.C. 2025), *stayed sub nom. Wilcox*, 145 S. Ct. 1415; *Dellinger v. Bessent (Dellinger I)*, 768 F. Supp. 3d 33 (D.D.C. 2025), *stayed by Dellinger*

this Court would have to blind itself to them to assign the weight to these cases that she urges. In the end, none of the injunctions stuck. And no precedent of the Supreme Court or the D.C. Circuit has recognized that an official’s temporary loss of a “statutory right to function” is an irreparable harm in a situation like Perlmutter’s.

The reasoning behind the orders staying the injunctions, even if not conclusive here, is instructive as to whether Perlmutter is suffering the kind of harm warranting preliminary injunctive relief, especially in light of the balance of the equities. For example, in considering the allegedly unlawful removal of members of the National Labor Relations Board and the Merit Systems Protection Board, the Supreme Court held “that the Government faces greater risk of harm from an order allowing a removed officer to continue exercising the executive power than a wrongfully removed officer faces from being unable to perform her statutory duty.” *Trump v. Wilcox*, 145 S. Ct. 1415, 1415 (2025). In other words, the Court concluded that an officer’s temporarily “being unable to perform her statutory duty” was not an irreparable harm—or at least, not a harm that outweighed the corresponding risk of harm to the Executive such that an injunction was warranted. *Id.* This makes sense in light of *Sampson*’s holding that a plaintiff “at the very least must make a showing of irreparable injury sufficient in kind and degree to override the[] factors cutting against the general availability of preliminary injunctions in Government personnel cases.” 415 U.S. at 84. And the D.C. Circuit has taken this approach as well. In a recent case about the alleged unlawful removal of the Special Counsel, it held that “circumstances cut” against an injunction when, “[a]t worst,” the officer “would remain out of office for a short period of time” yet “the potential injury to the government of both having its designated [officer] sidelined and unable to

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*v. Bessent (Dellinger II)*, No. 25-5052, 2025 WL 887518 (D.C. Cir. Mar. 10, 2025) (per curiam), *vacated and remanded*, No. 25-5052, 2025 WL 935211 (D.C. Cir. Mar. 27, 2025) (per curiam).

act while also having to try and unravel [the removed officer]’s actions is substantial.” *Dellinger II*, 2025 WL 887518, at \*4.

So even assuming Perlmutter is right that her removal was unlawful, this reasoning suggests that an injunction is not warranted here. “At worst, [she] would remain out of office for a short period of time” while the Court resolves the merits. *Dellinger II*, 2025 WL 887518, at \*4. And as the Supreme Court suggested, even if Perlmutter has been “wrongfully removed,” temporarily “being unable to perform her statutory duty,” without more, is not a harm that justifies a preliminary injunction, given the similar balance of the equities here. *Wilcox*, 145 S. Ct. at 1415; *cf. Sampson*, 415 U.S. at 84.

Perlmutter disputes the application of these appellate decisions and argues that they are limited to circumstances where the Government is likely to succeed on the merits.<sup>5</sup> Not so. In *Wilcox*, for example, the Supreme Court addressed the harm that “a *wrongfully* removed officer faces from being unable to perform her statutory duty.” 145 S. Ct. at 1415 (emphasis added). Although the Court also suggested that the Government was likely to prevail on one aspect of the merits, nothing about its brief consideration of irreparable harm and the balance of the equities

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<sup>5</sup> Perlmutter also argues that *Wilcox* is “non-precedential.” ECF No. 34 at 26; *see also Aviel I*, 2025 WL 1009035, at \*10 (describing *Dellinger II* as “non-precedential”). In their opposition, Defendants do not suggest otherwise. Still, since briefing on Perlmutter’s motion and the hearing concluded, the Supreme Court has clarified that its stay decisions, though “not conclusive as to the merits . . . inform how a court should exercise its equitable discretion in like cases.” *Trump v. Boyle*, No. 25A11, 2025 WL 2056889, slip op. at 1 (U.S. July 23, 2025). As noted above, the Court’s decision here is informed by the reasoning in *Wilcox*. And *Boyle* itself only adds to the pile of similar authority. In *Boyle*, the Court granted a stay pending appeal of a district court’s permanent injunction preventing the removal of members of the Consumer Product Safety Commission. *Id.* The Court explained that “[t]he application is squarely controlled by” *Wilcox* and concluded that a stay was warranted because, as there, “the Government faces greater risk of harm from an order allowing a removed officer to continue exercising the executive power than a wrongfully removed officer faces from being unable to perform her statutory duty.” *Id.* (quoting *Wilcox*, 145 S. Ct. at 1415).

appeared to turn on its assessment of the merits. *See id.* But even if it did, *Dellinger II*'s discussion did not. There, in a more developed analysis, the Circuit explicitly “assume[d]” that the officer’s “removal [was] statutorily ultra vires” and that such “removal constitute[d] a cognizable injury.” 2025 WL 887518, at \*4. But it still determined that “that does not mean such injury is irreparable and weighs in [the officer’s] favor.” *Id.* Instead, when the injury is “remain[ing] out of office for a short period of time,” “circumstances cut” against an injunction, even if the officer’s removal “deprive[s] [her] of the statutory right to function in office.” *Id.* (quotation omitted).<sup>6</sup> So too here.

Perlmutter also argues that the D.C. Circuit’s handling of *Aviel* “confirm[s]” that *Wilcox* does not apply here because *she*—rather than Defendants—is likely to succeed on the merits. ECF No. 24-2 at 35. More than that, she appears to read the Circuit to suggest that, as long as she shows such a likelihood, she is entitled to a preliminary injunction. *Id.* at 36. She points out that Judge Katsas, in a concurring statement joined by Judge Pillard, noted that the Supreme Court’s “merits ruling” in *Wilcox* “rested on the proposition that the removals at issue . . . were likely lawful” and that the Court did not disturb a prior D.C. Circuit decision suggesting that “reinstatement” is “an appropriate remedy” when an officer is unlawfully removed. *Aviel v. Gor (Aviel II)*, No. 25-5105, 2025 WL 1600446, at \*2 n.2 (D.C. Cir. June 5, 2025) (Katsas, J., concurring). Based on these snippets, Perlmutter seems to argue that, for purposes of preliminary relief, “reinstatement is an appropriate remedy if the removals at issued were likely unlawful,” full stop—somehow skipping over (or implicitly satisfying) her burden to show irreparable harm. ECF No. 35 at 4.

Perlmutter reads far too much into *Aviel II*. First, Judge Katsas’s point about the availability of reinstatement as a remedy in officer-removal cases generally says nothing about Perlmutter’s

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<sup>6</sup> Perlmutter suggests that *Dellinger II* is limited to cases in which an appeal has been expedited. ECF No. 24-2 at 36. But nothing in the opinion implies such a limitation.

entitlement to that specific remedy now, other than that it remains available if she satisfies the requirements for a preliminary injunction. Second, nothing about Judge Katsas’s statement—which did not even address irreparable harm<sup>7</sup>—or *Aviel II* purports to upend those requirements or the longstanding precedent in this jurisdiction that “[a] movant’s failure to show any irreparable harm is . . . grounds for refusing to issue a preliminary injunction, even if the other three factors entering the calculus merit such relief.” *Chaplaincy of Full Gospel Churches*, 454 F.3d at 297. Thus, even assuming Perlmutter’s removal was unlawful, she must still separately show such harm to obtain a preliminary injunction. In fact, not long before *Aviel II*, the Circuit reaffirmed this commonsense conclusion in *Dellinger II*, when it assumed that the Special Counsel’s removal was unlawful but still found that he did not show sufficient harm on a statutory-right-to-function theory to warrant a preliminary injunction reinstating him. 2025 WL 887518, at \*4.

For these reasons, the Court concludes that Perlmutter’s asserted loss of her “statutory right to function” is not a genuinely extraordinary situation such that her temporary removal is irreparable harm—or at least, harm that outweighs any corresponding risk of harm to the Government such that the balance of the equities tips in her favor.

**B. Perlmutter’s Temporary Inability to Perform Her Statutory Duties Is Not an Irreparable Harm**

Next, Perlmutter argues that this case presents a genuinely extraordinary situation because she “remains Register of Copyrights and is therefore required to fulfill her statutory duties.” ECF No. 24-2 at 37. There is little if any difference between this theory of harm and her first. Perlmutter

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<sup>7</sup> Indeed, the only judge to discuss irreparable harm was Judge Rao, who explicitly rejected Perlmutter’s statutory-right-to-function theory of harm because, in her view, an officer “possesses no private right in the powers of her office or the policy direction of the agency.” *Aviel II* at \*6 (Rao, J., dissenting) (citing *Raines v. Byrd*, 521 U.S. 811, 821 (1997)).

distinguishes the two by arguing that the first addresses her right to function and the second addresses her obligation to do so. But at bottom, both are ways of claiming that she is suffering irreparable harm because she cannot perform the job of Register of Copyrights and Director of the Copyright Office. And as the Court has already explained, Perlmutter's asserted inability to do that job temporarily while this lawsuit proceeds is not enough to show irreparable harm.

**C. To Meet Her Burden of Showing Irreparable Harm, Perlmutter Cannot Rely on Harms to the Library of Congress or the Copyright Office**

Finally, Perlmutter claims that her removal is genuinely extraordinary because Defendants' actions inflict "institutional harm to the Library of Congress and U.S. Copyright Office." ECF No. 24-2 at 39. But injuries to third parties are not a basis to find irreparable harm. *Cardinal Health, Inc. v. Holder*, 846 F. Supp. 2d 203, 213 (D.D.C. 2012); *Winter*, 555 U.S. at 20 (noting that a party seeking preliminary injunctive relief must show "that *he* is likely to suffer irreparable harm in the absence of preliminary relief" (emphasis added)). Indeed, in *Sampson*, the Court emphasized that "irreparable injury" can be found only by considering "the circumstances surrounding an employee's discharge, together with the resultant effect *on the employee*." 415 U.S. at 92 n.68 (emphasis added). So institutional harms to the Library or the Copyright Office, divorced from how those harms impact Perlmutter personally, cannot help her meet her burden.

Perlmutter argues that institutional harms are relevant because, in cases like *Wilcox*, the Supreme Court considered harms to the office of the President, not just harms to President Trump individually. ECF No. 34 at 22. But in those cases, the defendant officials were sued in their official capacities. So when they moved to stay the injunctions issued by the lower courts, they had the burden to show that they would be irreparably harmed *in their official capacities* absent a stay. In such circumstances, it makes sense to consider harm to their offices. Here, on the other, Perlmutter does not appear to dispute that she is suing in her personal capacity. ECF No. 15 at

48–49. Thus, unlike a defendant sued in his official capacity, Perlmutter cannot rely on purported institutional harms to the Library or Copyright Office to show irreparable harm to her.

Undeterred, Perlmutter points to cases in which courts have considered harms to agencies in addressing whether a removed officer has suffered irreparable harm. *See* ECF No. 24-2 at 39–40. But those cases do not stand for the general proposition that a removed officer can appropriate harm to an agency in asserting her own irreparable harm. Instead, many merely recognize, as discussed above, that an officer’s removal may threaten irreparable harm to her when it is likely the agency or office will no longer exist when the case is resolved. *See, e.g., Aviel I*, 2025 WL 1009035, at \*10–11; *see also English*, 279 F. Supp. 3d at 334–35 (discussing this theory of irreparable harm). In those cases, courts concluded that such circumstances have an irreparable “resultant effect” on the removed officer because, without an injunction, there will be no position for the officer to return to should she win on the merits. *Sampson*, U.S. at 92 n.68; *Aviel I*, 2025 WL 1009035, at \*10–11. But as discussed, nothing in the record suggests that the existence of the Copyright Office is threatened or that Perlmutter’s position will irreparably change in some way if it is temporarily held by Perkins.<sup>8</sup>

Finally, even putting aside that these purported institutional harms are not Perlmutter’s to invoke, they fail on their own terms. She claims that the Copyright Office will not be able to “perform its statutory role as a neutral advisor to Congress if an Executive Branch official controls the Library of Congress’s operations.” ECF No. 24-2 at 40. But this concern is based on speculation at this point, and no representative of Congress has sought to intervene in this case to protect these interests that Perlmutter says are in peril. Besides, for support, she mostly cites to provisions

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<sup>8</sup> To the extent that some courts may have permitted plaintiffs to establish irreparable harm by pointing to harms suffered solely by their agencies, the Court is not bound by those decisions and, for the reason explained above, respectfully disagrees with them.

of the U.S. Code governing the Congressional Research Service. *See* ECF No. 24-2 at 40 (citing 2 U.S.C. § 166). But that Service is “a separate department in the Library of Congress” untethered to the Copyright Office. § 166(a). Furthermore, the D.C. Circuit has held that, as a matter of constitutional interpretation, the Library, at least in its role related to copyright matters, is part of the *Executive*, not the Legislative, Branch. *Intercollegiate Broad. Sys., Inc. v. Copyright Royalty Bd.*, 684 F.3d 1332, 1342 (D.C. Cir. 2012). And the Librarian—who appoints the Register of Copyrights—is appointed by the President with the advice and consent of the Senate, and she is removable by the President at will. *Id.* at 1341. So Executive influence over the Copyright Office appears to be a feature, not a bug, of this atypical arrangement. *See Kennedy v. Braidwood Mgmt., Inc.*, 145 S. Ct. 2427, 2443 (2025) (“The prerogative of at-will removal of a subordinate, then, often carries with it the power to supervise and direct that subordinate.”).

#### **IV. Conclusion**

For all the above reasons, the Court will deny Perlmutter’s Motion for a Preliminary Injunction, ECF No. 24. A separate order will issue.

/s/ Timothy J. Kelly  
TIMOTHY J. KELLY  
United States District Judge

Date: July 30, 2025