

In the Supreme Court of the United States

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

v.

SHIRA PERLMUTTER

REPLY IN SUPPORT OF APPLICATION FOR STAY

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No. 25A

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This Court should stay the D.C. Circuit’s extraordinary interlocutory injunction countermanding respondent’s removal as Register of Copyrights. As the government has explained, the Register and Librarian of Congress are part of the Executive Branch under both the Constitution and the Federal Vacancies Reform Act of 1998 (FVRA), 5 U.S.C. 3345 *et seq.* The President thus had the power under the FVRA to designate an Acting Librarian who could remove respondent; and if not, he had the power under Article II to remove respondent directly. The court of appeals also lacked the equitable authority to prevent respondent’s removal, and the equities in any event require that the removal be allowed to take effect while this litigation proceeds.

Respondent all but abandons the D.C. Circuit’s rationale for granting her an interlocutory injunction: that the Librarian and Register are part of the Legislative Branch under the Constitution. She instead argues that, regardless of the Library of Congress’s constitutional status, the Library is a part of the Legislative Branch under the FVRA. Yet that position leaves respondent with virtually no defense to the government’s independent arguments that Article II empowers the President to remove respondent directly; that the court of appeals lacks the equitable power to prevent

her removal; and that the equities alone require staying the interim injunction below. Even as to the FVRA, respondent ignores that, in light of the Library’s constitutional status, the Library unambiguously falls within the express definitions of the key statutory terms, “Executive agency” and “independent establishment.” And respondent’s attempts to divert this Court’s attention from those definitions are also unpersuasive on their own terms.

Respondent also argues that a stay would change the status quo, but that is incorrect. It was the court of appeals that upended the status quo by reinstating respondent four months after her removal—and after the district court denied her a temporary restraining order, a preliminary injunction, and an injunction pending appeal. Though respondent now suggests that she had remained in her post all along, that assertion conflicts with her acknowledgment in the lower courts that her removal had left her unable to act as Register and that she needed judicial relief to resume her work. Any such lawless self-help would also underscore why she has no equitable entitlement to the extraordinary injunction she obtained from the D.C. Circuit. This Court should grant the application.

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

From start to finish, the D.C. Circuit’s analysis rested on the premise that the Librarian and Register are “part of the Legislative Branch” under the Constitution. Appl. App. 4a; see Appl. 9. Undoubtedly recognizing the indefensibility of that position, respondent makes no serious effort to defend it. Instead, she argues (Opp. 1) that this case turns on the “statutory” status of the Library and the Register rather than their status “for constitutional purposes.” That is incorrect. While the Library’s statutory status is what ultimately matters under the FVRA, its constitutional status

is highly relevant to the statute's meaning. And the *constitutional* status of the Librarian and the Register controls whether Article II empowers the President to remove the Register directly, whether the court of appeals could reinstate respondent, and whether the equities require staying the injunction below.

Respondent does not address most of the government's objections to the D.C. Circuit's constitutional analysis. She does not explain (1) how the Librarian could be a department head capable of making appointments if he were a legislative officer; (2) how the Register could be appointed by the Librarian, rather than elected by one of the two Houses of Congress, if the Register were a legislative officer; (3) how the Librarian or Register could execute copyright law if they were congressional agents; or (4) how to reconcile the Library's supposed position in the Legislative Branch with the President's power to appoint the Librarian with the Senate's advice and consent and to remove the Librarian at will. See Appl. 11-14.

Buried in her discussion of the equities (Opp. 22-23), respondent contends that the Register does not exercise executive power, but that contention contradicts this Court's cases. While she insists that the Register's powers to make rules implementing copyright laws and to adjudicate copyright registration applications are legislative or ministerial, Opp. 23, that is plainly incorrect. The issuance of "binding rules fleshing out * * * federal statutes" and the conduct of "administrative adjudications" "are exercises of * * * the 'executive Power.'" *Seila Law LLC v. CFPB*, 591 U.S. 197, 216 n.2, 218-219 (2020) (some quotation marks omitted). She also claims that the Register does not exercise executive power when performing "international duties," such as "participating in meetings" with foreign officials about copyright matters, Opp. 23, but the "field of negotiation" lies at the core of the President's "exclusive power" as the Nation's "sole representative with foreign nations," *United States v.*

Curtiss-Wright Export Corp., 299 U.S. 304, 319-320 (1936). And she entirely ignores the Register’s other executive powers, such as the power to enforce copyright-deposit requirements and to issue legal interpretations that bind copyright-royalty adjudications. See Appl. 10-11; see also 17 U.S.C. 802(f)(1)(D) (Register’s power to review Copyright Royalty Board’s final decisions for legal error).

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

1. Because the FVRA authorized the President to designate Todd Blanche as Acting Librarian, Blanche’s removal of respondent as Register was lawful. See Appl. 14-17. Respondent searches (Opp. 12) far and wide for “proof of Congress’s intent” on that statutory question, discussing other statutes that are not directly at issue here, see Opp. 10-11; the legislative history of one of those other statutes, see Opp. 12; and a D.C. Circuit case interpreting one of those other statutes, see Opp. 9-10. Conspicuously, though, she never applies the express statutory definitions that are directly controlling here.

Dismissing those definitions was the best respondent could do, as their applicable text offers no foothold for her argument. Respondent agrees (Opp. 8-9) that the FVRA authorizes the President to designate an acting officer in an “Executive agency,” 5 U.S.C. 3345(a); that the term “Executive agency” includes an “independent establishment,” 5 U.S.C. 105; and that the term “independent establishment” includes an “establishment in the executive branch” (subject to qualifications not at issue here), 5 U.S.C. 104. Respondent also does not dispute that the relevant provisions do not define the term “executive branch.” The term therefore bears its ordinary meaning: the branch that executes the laws. The Library executes federal copyright laws, so it is part of the Executive Branch for statutory purposes, just as it is for

constitutional ones. The textual question in this case is as simple as that. And respondent provides no explanation of how the Library somehow falls outside the unambiguous meaning of an “establishment in the executive branch” now that she no longer disputes that the Library is and must be part of the Executive Branch for constitutional purposes. Indeed, it is especially sensible and appropriate that the FVRA, of all statutes, would track constitutional lines, given that it relates to the President’s appointment power and is limited to those officers (like the Librarian) appointed pursuant to the default method under the Appointments Clause.

If Congress meant to treat the Library as part of the Legislative Branch for statutory purposes despite the Library’s constitutional status and the Title 5 definition of an “Executive agency,” it could easily have adopted a statutory provision to that effect. Congress has enacted similar provisions for other establishments; for instance, it has provided that the Tax Court “is not an agency, and shall be independent of, the executive branch,” 26 U.S.C. 7441, and has established the Sentencing Commission “in the judicial branch,” 28 U.S.C. 991(a). But Congress has never enacted a provision stating that the Library is part of the Legislative Branch as a general matter. Instead, it has enacted narrower provisions treating the Library as part of the Legislative Branch for purposes of “this section,” 2 U.S.C. 181(b)(1), or “this subchapter,” 5 U.S.C. 13101(11). Those provisions imply that, outside those contexts, the Library continues to be treated as part of the Executive Branch.

Instead of analyzing the definitions of “Executive agency” and “independent establishment,” respondent complains (Opp. 11) that the government’s reading would render redundant other statutes that refer separately to both the Library of Congress and “Executive agenc[ies].” That argument is flawed. First, inferences from other statutes cannot supersede the clear text of the directly applicable definitions. See *Ali*

v. *FBP*, 552 U.S. 214, 226 (2008). Second, as this Court has repeatedly explained in recent cases, “[r]edundancy is not a silver bullet” and is “hardly unusual” in statutory drafting. *Rimini Street, Inc. v. Oracle USA, Inc.*, 586 U.S. 334, 346 (2019); see *Stanley v. City of Stanford*, 606 U.S. 46, 56 (2025); *Feliciano v. Department of Transportation*, 605 U.S. 38, 51-52 (2025); *Pugin v. Garland*, 599 U.S. 600, 609 (2023); *Oklahoma v. Castro-Huerta*, 597 U.S. 629, 649 (2022); *Barton v. Barr*, 590 U.S. 222, 239 (2020). Third, the government has explained why Congress might have listed the Library separately: The cited statutes all define the word “agency”; courts have concluded that the Library is not an “agency” within the meaning of the Administrative Procedure Act, 5 U.S.C. 551(1); and Congress may have wanted to clarify that the Library *is* an “agency” under the cited provisions. See Appl. 17. Finally, even if Congress assumed in some statutes that the Library may be part of the Legislative Branch, “assumptions are not laws.” *Castro-Huerta*, 597 U.S. at 648.

Respondent also observes (Opp. 10) that the Ethics in Government Act of 1978, 5 U.S.C. 13101 *et seq.*, establishes different ethics rules for “Executive agenc[ies]” and the “legislative branch.” 5 U.S.C. 13101(4), (11). She worries (Opp. 10) that treating the Library as an “Executive agency” when that Act defines the Library as part of the “legislative branch” would render that Act “incoherent.” This concern is misplaced. “It is a commonplace of statutory construction that the specific governs the general.” *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) (brackets omitted). Thus, although the Library satisfies the general definition of “Executive agency,” 5 U.S.C. 105, it is not an executive agency in the specific context of the Ethics in Government Act because that statute instead treats it as part of the legislative branch, 5 U.S.C. 13101(11)(F). That Act also treats the Government Accountability Office (GAO) as part of the “legislative branch,” 5 U.S.C. 13101(11)(D), even though

that agency is expressly included in the definition of “independent establishment,” 5 U.S.C. 104(2), which is why it (unlike the Library) is expressly excluded from the FVRA, 5 U.S.C. 3345(a). That example proves that an entity can satisfy the general definitions of “Executive agency” and “independent establishment,” yet simultaneously be treated as part of the legislative branch for purposes of a specific statute.

Respondent next observes (Opp. 11) that statutory provisions establishing the Library are codified in Title 2 of the U.S. Code (“The Congress”). Unlike some other titles of the U.S. Code, however, Title 2 has never been enacted into positive law. See <https://uscode.house.gov/codification/legislation.shtml>. In other words, Congress did not directly enact those provisions into Title 2; instead, they were “arrange[d]” there “by a codifier without the approval of Congress.” *United States v. Welden*, 377 U.S. 95, 98 n.4 (1964). Such choices by the codifier “should be given no weight” in statutory interpretation. *Ibid.* Courts must follow “the original statutes themselves,” not “the ‘arrangement’ selected by the codifier.” *Ibid.* This Court thus had no difficulty holding, in *Buckley v. Valeo*, 424 U.S. 1 (1976) (per curiam), that the Federal Election Commission exercised executive power, even though the provisions establishing that agency were at the time codified in Title 2. See *id.* at 137-143. And the Fourth Circuit has found “the mere codification of the Library” in Title 2 to be “irrelevant.” *Eltra Corp. v. Ringer*, 579 F.2d 294, 301 (1978).

Finally, respondent relies heavily (Opp. 9) on the D.C. Circuit’s decision in *Davis v. Billington*, 681 F.3d 377 (2012)—a case that the court of appeals relegated to a “see also” citation, see Appl. App. 14a. In *Davis*, the D.C. Circuit declined to create a new cause of action under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), for Library of Congress employees complaining about allegedly unconstitutional employment action. See 681 F.3d at 380-388. The

court discussed the Library’s status in the course of considering whether the Civil Service Reform Act of 1978 (CSRA), 5 U.S.C. 1101 *et seq.*, provided an alternative remedy. The Library’s precise status under the CSRA was ultimately irrelevant to the court’s conclusion, so the court’s description of that status was pure dictum. That dictum, moreover, focused on the CSRA: “[The] term ‘Executive agency’ * * * does not contain the Library of Congress *within the meaning of the statute*, see 5 U.S.C. 7103(a)(3).” 681 F.3d at 386 (emphasis added). That CSRA provision, in particular, refers separately to “an Executive agency” and “the Library of Congress,” 5 U.S.C. 7103(a)(3). *Davis*’s dictum thus reflects the unremarkable proposition that, if a statute refers separately to the Library and executive agencies—which the provisions at issue here do not—the Library is not an executive agency “within the meaning of th[at] statute.” 681 F.3d at 386. Notably, *Davis* does not analyze the provisions that *are* at issue here, much less conclude that the Library falls outside them.

2. 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.

Contrary to respondent’s contention (Opp. 15), the government has not forfeited that argument. The D.C. Circuit has previously rejected, in an interim-relief posture, the argument that Article II authorizes the President to directly remove an inferior officer when the department head’s post is vacant. See *Aviel v. Gor*, No. 25-5105, 2025 WL 1600446, at *1 (June 5, 2025); but see *id.* at *3-*5 (Rao, J., dissenting). Because that interim decision binds other D.C. Circuit panels in the same posture, cf. *Trump v. Boyle*, 145 S. Ct. 2653, 2654 (2025), it would have been futile to renew the Article II argument in response to the motion for an interlocutory injunction. By contrast, the government *has* preserved that argument in this case where it would

not have been futile—in the district court temporary-restraining-order briefing, which occurred before *Aviel* was decided, see D. Ct. Doc. 7, at 15-17 (May 26, 2025); and in the district court merits-stage briefing, where interim rulings are not controlling, D. Ct. Doc. 51, at 22-26 (Sept. 22, 2025). In all events, “[o]nce a federal claim is properly presented, a party can make any argument in support of that claim; parties are not limited to the precise arguments they made below.” *Yee v. City of Escondido*, 503 U.S. 519, 534 (1992). Just as a party may challenge a taking as a physical taking in the lower courts and also as a regulatory taking in this Court, *ibid.*, the government may defend respondent’s removal under the FVRA in the D.C. Circuit and also under Article II in this Court.

Turning to the merits, respondent argues (Opp. 16) that the power to remove the Register belongs to the Librarian of Congress rather than the President. That is incorrect. Article II vests the entire executive power, including the “power to remove inferior executive officers,” in the President—not in department heads. *Myers v. United States*, 272 U.S. 52, 161 (1926). This Court has thus described restrictions on the removal of inferior officers as “limits on *the President’s* removal power.” *Free Enterprise Fund v. PCAOB*, 561 U.S. 477, 514 (2010) (emphasis added). To be sure, Congress “ordinarily” may require the President to exercise the power to remove such officers through department heads, rather than directly. *Id.* at 493. In such cases, department heads “act for” the President; they are “the President’s *alter ego*[s]” and “are exercising not their own but his discretion.” *Myers*, 272 U.S. at 132-133. But when there is no department head—no *alter ego* through whom the President may act—the President must be able to make the removal himself. Article II, after all, vests the removal power in him, not department heads.

Contrary to respondent’s suggestion (Opp. 17-18), the government’s argument

comports with the Appointments Clause, U.S. Const. Art. II, § 2, Cl. 2. The argument here is that the President may directly remove the Register, not that he may appoint a new Librarian for the purpose of removing the Register. Respondent worries (Opp. 17) that the President could circumvent Congress’s decision to vest an appointment in a department head by “serially firing whomever the [department head] has selected for the post.” But Article II grants the President the power to “supervise and guide” department heads, *Myers*, 272 U.S. at 135, as well as the “unrestricted” “power to remove” them “at will,” *Seila Law*, 591 U.S. at 204-205. The President could therefore simply direct department heads to appoint his preferred candidates, and he could remove a department head who refuses to do so—including the Librarian, whom respondent concedes is removable at will by the President.

Respondent also argues (Opp. 18) that the government’s Article II argument would “improperly dilute Congress’s role.” In respondent’s view, the President can achieve a Register’s removal only if he first “nominate[s] a [Librarian] whom the Senate deems qualified.” That argument gets the Constitution fundamentally backwards. The one constant principle in *all* this Court’s Article II cases is that Congress may not “draw to itself” the “right to participate” in removals, *Myers*, 272 U.S. at 161; that “congressional participation in the removal of executive officers is unconstitutional,” *Bowsher v. Synar*, 478 U.S. 714, 725 (1986); and that Article II forbids “an attempt by Congress to gain a role in the removal of executive officials,” *Morrison v. Olson*, 487 U.S. 654, 686 (1988). See *Seila Law*, 591 U.S. at 277 (opinion of Kagan, J.). Congress thus may not require the President to obtain the Senate’s cooperation to effectuate an inferior officer’s removal. The D.C. Circuit itself previously recognized that principle in *Swan v. Clinton*, 100 F.3d 973 (1996), where it explained that extending removal protections to “holdover members” of an independent 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.” *Id.* at 986.

Respondent’s theory leads to startling results. It would mean that neither the President nor anyone answerable to him could remove respondent, at will or even for cause, until the Senate confirms a new Librarian. Meanwhile, respondent could continue serving as Register, wielding the President’s executive power without answering to the President—or, seemingly, anyone else—for how she uses it. That outcome would break the “chain of political accountability” that Article II demands. *Kennedy v. Braidwood Management, Inc.*, 606 U.S. 748, 794 (2025).

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

Separately, the government is likely to succeed in showing that the court of appeals’ interim injunction reinstating respondent exceeded its equitable powers. Respondent errs in arguing (Opp. 18) that the government forfeited that argument. In addition to again disregarding the distinction between arguments and claims, see *Yee*, 503 U.S. at 534, respondent once more ignores that raising this argument below in this procedural posture would have been futile. The government has preserved the argument in its merits-stage briefing, see D. Ct. Doc. 51, at 26-28, but the en banc D.C. Circuit has rejected the argument that courts lack the authority to grant interim equitable relief restoring removed executive officers, see *Harris v. Bessent*, No. 25-5037, 2025 WL 1021435, at *2 (Apr. 7, 2025).

On the merits, respondent argues (Opp. 19) that courts of equity have the power to “preserve the status quo in the context of an attempted removal.” But the court of appeals’ interlocutory injunction—issued four months after respondent’s re-

removal—changed rather than preserved the status quo. See p. 16, *infra*. Moreover, this Court has squarely held that “a court of equity” has “no jurisdiction” “over the appointment and removal of public officers,” *In re Sawyer*, 124 U.S. 200, 210 (1888), and that “a court of equity will not, by injunction, restrain an executive officer from making a wrongful removal of a subordinate appointee,” *White v. Berry*, 171 U.S. 366, 377 (1898). The *dissent* in *Sawyer* disagreed, stating that in “rar[e] cases,” a court may grant “a temporary restraining order” to preserve the status quo and prevent “irremediable mischief” while the plaintiff awaits “the tardy remed[y] of *quo warranto*.” 124 U.S. at 223 (Waite, C.J. dissenting). But the Court’s opinion rejected that exception, instead flatly denying “the power of a court of equity to restrain by injunction the removal” of an officer. *Id.* at 212.

Contrary to respondent’s suggestion (Opp. 20), the government’s theory would not allow the President to “fire the Senate parliamentarian” or “temporarily replace a U.S. District Judge.” A court may not “restrain an executive officer from making a wrongful removal of a subordinate appointee.” *White*, 171 U.S. at 377 (emphasis added). That principle ensures that courts do not “invade the domain * * * of the executive and administrative departments,” protects “the discretion which * * * the Executive Department has in all such matters,” and avoids “the utmost confusion in the management of executive affairs.” *Id.* at 376, 378. That principle applies here because the Register is an Article II officer, but it would not apply in a hypothetical case where a President attempts to remove an Article I officer or an Article III judge.

D. The Equities Support Granting A Stay

1. In all events, this Court need not address the merits issues discussed above because a stay is warranted on the equities alone. To be sure, a stay applicant must show “a fair prospect that a majority of the Court will vote to reverse the judg-

ment below.” *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam). But this Court can reverse an injunction on the equities. See, e.g., *Winter v. NRDC, Inc.*, 555 U.S. 7, 31-32 (2008) (reversing an injunction based on “the balance of equities” and “public interest” while declining to “address the underlying merits”). Thus, when a court of appeals abuses its discretion in weighing the equities, this Court may issue a stay solely on that ground, without considering the underlying merits. See, e.g., *Trump v. IRAP*, 582 U.S. 571, 580 (2017) (per curiam) (granting a stay based on the “balance [of] the equities” without discussing the merits). Indeed, here, the district court relied solely on the equities in denying a preliminary injunction, as did Judge Walker in dissenting from the court of appeals’ extraordinary injunction pending appeal. See Appl. 6-7.

This Court has repeatedly recognized 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); see *Trump v. Slaughter*, No. 25A264, slip op. 1 (Sept. 22, 2025); *Boyle*, 145 S. Ct. at 2654. That rationale applies here, see Appl. 24a-27a (Walker, J., dissenting); *id.* at 40a (district court), and respondent’s counterarguments are unpersuasive.

First, respondent argues (Opp. 22) that *Wilcox* rests on “the premise” that “the President would likely succeed on the merits.” To the contrary, *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.” 145 S. Ct. at 1415 (emphasis added). *Wilcox*’s rationale therefore expressly applies “whether or not ‘Perlmutter’s removal was likely unlawful.’” Appl. App. 27a (Walker, J., dissenting); see *id.* at 41a (district

court) (*Wilcox* “addressed the harm that ‘a *wrongfully* removed officer faces”).

Second, respondent observes (Opp. 22) that *Wilcox* involved a principal officer, whereas she is an inferior officer. But *Wilcox* referred to “executive officers” generally, not just to principal officers. 145 S. Ct. at 1415. And more broadly, this Court’s cases have recognized the importance of ensuring that even inferior officers remain subject to “‘a clear and effective chain of command’ down from the President.” *United States v. Arthrex*, 594 U.S. 1, 11 (2021).

Third, respondent argues that “the Register does not exercise ‘considerable executive power’ of the kind that was at issue in *Wilcox*.” Opp. 22 (quoting *Wilcox*, 145 S. Ct. at 1415). That argument rests on the misclassification of the Register’s power as non-executive. See pp. 3-4, *supra*. It also understates the extent of that power, which the D.C. Circuit has described as “significant.” *Medical Imaging & Technology Alliance v. Library of Congress*, 103 F.4th 830, 833 (2024). For example, the Register oversees the Copyright Royalty Board, 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.). The Register also issues rules concerning copyright registration; interprets and applies copyright laws in adjudicating applications for copyright registration; issues legal rulings that bind the Copyright Royalty Board; and participates in meetings and negotiations with foreign governments about copyright issues, an increasingly important issue in international diplomacy. See Appl. 11. The court of appeals’ reinstatement of respondent has cast a cloud over all those exercises of power and has prompted private parties to argue that the Copyright Office’s actions are void because respondent cannot lawfully exercise the powers of her former office. See Appl. 8-9.

On the other side of the ledger, respondent asserts (Opp. 24) that she “will

suffer serious harm” because she will be deprived of the “opportunity” to “determine standards for copyright registration,” “direct rulemakings,” and make “critical staff decisions.” But those are not cognizable injuries, because respondent lacks a personal stake in the continued exercise of the powers of her office, which she holds “as trustee for” the Executive and the American people, not “as a prerogative of personal power.” *Raines v. Byrd*, 527 U.S. 811, 821 (1997). Thus, *Wilcox* rejected, as inadequate to justify an injunction restraining a removal, the harm “a wrongfully removed officer faces from being unable to perform her statutory duty.” 145 S. Ct. at 1415. In fact, even the dissent in *Wilcox* thought it irrelevant that the removed officers “would love to keep serving in their nifty jobs.” *Id.* at 1420 (Kagan, J., dissenting). “What matters instead,” the dissent thought, was “maintaining Congress’s idea of independent agencies.” *Ibid.* Yet that interest is wholly absent here: Everyone agrees that the Librarian is removable at will by the President and that the Register has no removal protections either.

Respondent also argues (Opp. 25) that a stay would harm Congress by enabling a Register answerable to the President to access “confidential research and advice for Members of Congress on potential legislation.” But the district court found “no evidence” in the “record” that “the confidentiality” of such information “is being affected by what’s happened with Ms. Perlmutter.” 5/29/25 D. Ct. Tr. 49. “[I]f there was,” the court added, “you would think that I would have Congress in front of me asking to vindicate its equities.” *Id.* at 49-50. Moreover, the Register’s answerability to the President is inherent in the scheme Congress established: The Register is appointed and removable by the Librarian, who in turn is appointed and removable by the President. The prospect that the new Register might answer to the President thus cannot justify allowing the removed Register to remain in office. In any event, Congress has

more than enough political tools with which to protect its prerogatives. It does not need respondent as its self-appointed champion.

2. Respondent separately objects (Opp. 1-2) that a stay “would upend the status quo.” But this Court decides stay applications by applying the stay factors, not by applying “a blanket rule of ‘preserving the status quo.’” *Labrador v. Poe*, 144 S. Ct. 921, 931 (2024) (Kavanaugh, J., concurring). Respondent also expressed little concern about changing the status quo when she persuaded the court of appeals to reinstate her on September 10, see Appl. App. 2a, four months after her removal on May 10, see *id.* at 32a.

Respondent denies (Opp. 19) the injunction had that effect, claiming that the government has “conceded to the district court that [she] has remained in her Library employment since her purported removal.” But the government said no such thing. It admitted only that, “[t]o date, Ms. Perlmutter has not received any communication from Library of Congress leadership that purports to terminate her employment as Register.” D. Ct. Doc. 51-1, ¶ 14 (Sept. 22, 2025). In seeking interim relief below, respondent asserted her “inability to function as Register now,” C.A. Mot. for Injunction 20, and argued that relief was necessary to enable her to “resume her work as Register,” D. Ct. Doc. 24-2, at 2 (June 10, 2025). Having obtained an injunction from the court of appeals on that basis, respondent is estopped from now offering a different account of the facts. See *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001). Moreover, insofar as respondent took the law into her own hands and continued serving as Register—even though the district court denied a temporary restraining order, preliminary injunction, and injunction pending appeal, and even before the court of appeals granted an interlocutory injunction—such self-help should hardly count in respondent’s favor. The maxim that “he who comes into equity must come with clean

hands” precludes equitable relief for parties who have acted improperly “as to the controversy in issue.” *Precision Co. v. Automotive Co.*, 324 U.S. 806, 814-815 (1945).

Respondent also observes (Opp. 19) that Acting Librarian Blanche and Acting Register Paul Perkins “have not assumed control over the Library of Congress’s or Copyright Office’s operations.” But that is only because, when Perkins “arrived at the Library of Congress and requested access to the U.S. Copyright Office” soon after his appointment, “officials at the Library” refused to recognize Blanche as Acting Librarian or Perkins as Acting Register. D. Ct. Doc. 51-1, ¶¶ 7, 11. Instead, “Library of Congress staff contacted the U.S. Capitol Police.” Compl. ¶ 24. The Library staff’s actions—and the government’s decision to resolve the issue in litigation rather than to force a confrontation—cannot justify denying a stay. Quite apart from whether Blanche and Perkins can take over as Acting Librarian and Acting Register, the government suffers harm from respondent’s continued exercise of executive power as Register. And if this Court grants a stay, Library staff will presumably respect the Court’s decision and cease their refusal to accept direction from Blanche and Perkins.

Finally, contrary to respondent’s suggestion (Opp. 1-2), the government did not unduly delay seeking this Court’s intervention. Because the D.C. Circuit panel’s decision conflicted with that court’s earlier cases recognizing that the “Library is undoubtedly a component of the Executive Branch,” *Intercollegiate Broadcasting System, Inc. v. Copyright Royalty Board*, 684 F.3d 1332, 1341 (2012), the government acted reasonably in first seeking en banc rehearing, in the hope that the D.C. Circuit would correct its own error and moot the need for this Court’s intervention. The court denied rehearing on October 1, shortly before this Court’s first argument session of the Term commenced and on the first day of the lapse in appropriations, which mitigated the urgency because the Copyright Office has shut down during the lapse. See

Appl. App. 1a; <https://perma.cc/SM22-BS6Y>. The government then sought a stay from this Court on October 27—a reasonable timeline even without accounting for the shutdown. See, e.g., *Louisiana v. American Rivers*, 142 S. Ct. 1347, 1347-1348 (2022) (granting stay application filed “a month” after the court of appeals’ ruling, *id.* at 1349 (Kagan, J., dissenting)); *Ohio v. EPA*, 603 U.S. 279 (2024) (granting stay application filed nearly three weeks after the court of appeals’ ruling); *Trump v. CASA*, 606 U.S. 831 (2025) (granting stay application filed more than three weeks after one of the relevant court of appeals rulings).

* * * * *

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

Respectfully submitted.

D. JOHN SAUER
Solicitor General

NOVEMBER 2025