

No. 26A203

IN THE SUPREME COURT OF THE UNITED STATES

NATIONAL PARK SERVICE, ET AL., Applicants

v.

NATIONAL TRUST FOR HISTORIC PRESERVATION
IN THE UNITED STATES, Respondent.

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

AND REQUEST FOR AN IMMEDIATE ADMINISTRATIVE STAY

**BRIEF OF COREY J. BIAZZO, ESQ. AS AMICUS CURIAE
IN SUPPORT OF RESPONDENT AND DENIAL OF
THE APPLICATION**

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INTEREST OF AMICUS CURIAE

Corey J. Biazzo is an appellate advocate, civil litigator, founder of Biazzo Law, PLLC, and United States Navy veteran. He has a professional and civic interest in the separation of powers, federal fiscal accountability, government oversight, and the evenhanded application of constitutional limits across administrations.¹

Amicus has previously submitted briefs addressing structural constitutional limits, federalism, separation of powers, emergency-relief methodology, and the need for clear congressional authorization when the Executive Branch asserts consequential power not plainly conferred by statute.

Amicus submits this brief in his individual capacity to address one narrow point that warrants independent attention at this emergency stage and may be of considerable help to the Court: Applicants' stay application depends on a new characterization of the East Wing project as an integrated military, intelligence, and continuity-of-government complex. That characterization may strengthen Applicants' policy argument, but it weakens their statutory-authority argument. General White House residence-maintenance language, park-conservation statutes, gift-fund authority, and the Economy Act should not be read to silently authorize what Applicants now describe as a hardened national-security complex.

SUMMARY OF ARGUMENT

Applicants ask this Court to accept two different versions of the same project.

¹ No counsel for any party authored this brief in whole or in part. No party or counsel for any party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than Amicus made such a monetary contribution. 4.

For irreparable harm, Applicants describe the East Wing project as a “highly integrated military complex,” a hardened national-security facility, a command-and-control site, a secure location for intelligence activity, and a continuity-of-government safe room capable of protecting the President and senior officials from drones, bombs, missiles, rockets, and even nuclear attack.

For statutory authority, however, Applicants rely on general provisions governing White House residence maintenance, National Park Service conservation, NPS gift funds, and interagency transfers.

Those two theories do not fit together.

If the project is an ordinary “alteration” or “improvement” to the Executive Residence, or an ordinary National Park Service project within President’s Park, then the district court’s safety-and-security exception is sufficient to preserve Applicants’ legitimate security interests while this case proceeds. That injunction permits below-ground security construction, bunkers, bomb shelters, military and medical infrastructure, protective coverings, and work strictly necessary to protect the White House, the President, staff, and the construction site.

If, however, the project is what Applicants now say it is—an integrated military, intelligence, and continuity-of-government complex—then the asserted project cannot be smuggled through general residence, park, gift, and interagency-transfer statutes. Congress legislates specifically when national-security and military construction are at issue. Title 10’s military-construction framework is not invoked here as a freestanding bar or because every White House security project must proceed under Title 10. The point is more basic: Congress knows how to authorize urgent national-

security construction, require notice, impose funding limits, and preserve congressional oversight. That context makes it implausible that Congress silently placed comparable authority in 3 U.S.C. § 105(d), 54 U.S.C. § 100101, 54 U.S.C. § 101101, or 31 U.S.C. § 1535.

The stay request also threatens irreversible merits relief. Applicants' own submission says that the new structure, once built, would be virtually impossible to deconstruct or alter. That admission matters. A stay should preserve this Court's ability to review the law; it should not allow Applicants to create a physical fait accompli that no later judgment can meaningfully undo.

The application should be denied. At minimum, any relief should preserve the injunction against above-ground construction or any work that irreversibly locks in the height, massing, footprint, exterior form, or above-ground design of the proposed ballroom, while leaving intact the existing safety-and-security exception.

ARGUMENT

I. APPLICANTS CANNOT INVOKE A MILITARY-COMPLEX THEORY FOR IRREPARABLE HARM WHILE RELYING ON GENERAL RESIDENCE, PARK, GIFT, AND ECONOMY ACT PROVISIONS FOR AUTHORITY.

Applicants' emergency application rests on a new description of the project. The project is no longer presented merely as a ballroom, event space, renovation, residence improvement, or National Park Service development. It is presented as a hardened national-security complex.

Applicants describe the project as an “integrated military complex.” They state that it includes hardened concrete, steel, rebar, missile-resistant columns, drone-proof roofing, bullet-, ballistic-, and blast-proof glass, bomb shelters, state-of-the-art medical facilities, top-secret military structures and equipment, military-grade ventilation, sniper nests, a drone port, and command, control, and communication capabilities necessary for the President to perform constitutional duties during conventional or nuclear attack. Applicants characterize the project as a “safe room” for the Presidency and continuity of government.

That characterization is central to Applicants’ emergency request. Applicants rely on that national-security framing to argue that the injunction creates irreparable harm and that courts should defer to Executive Branch security judgments.

But that same characterization undermines Applicants’ merits theory.

Applicants do not identify a specific congressional authorization for a new military, intelligence, or continuity-of-government complex at the White House. They rely instead on general statutes: 3 U.S.C. § 105(d), the National Park Service Organic Act, NPS gift authority, and the Economy Act.

That mismatch should defeat emergency relief.

Section 105(d) concerns funds authorized to be appropriated for the “care, maintenance, repair, alteration, refurnishing, improvement, air-conditioning, heating, and lighting” of the Executive Residence at the White House, along with certain official expenses. Whatever the outer boundary of “alteration” or “improvement,” those words do not naturally carry the power to demolish an entire

wing of the White House and replace it with what Applicants now call an integrated military complex.

The same is true of the National Park Service Organic Act. The Organic Act directs the Park Service to conserve scenery, natural and historic objects, and wildlife, and to provide for enjoyment of those resources in a manner that leaves them unimpaired for future generations. 54 U.S.C. § 100101. That statute may support park management and ordinary park construction. It does not clearly authorize the National Park Service to serve as the financing and statutory gateway for a hardened White House military complex containing top-secret equipment and continuity-of-government infrastructure.

NPS gift authority and the Economy Act do not solve the problem. Gift authority cannot expand the substantive purposes for which an agency may act. Nor does the Economy Act allow agencies to accomplish indirectly what they lack authority to do directly. An interagency transfer mechanism is not a source of substantive construction authority.

Applicants' argument therefore depends on a statutory contradiction. For emergency harm, Applicants emphasize the military, intelligence, and continuity-of-government character of the project. For merits, they retreat to general residence, park, gift, and transfer provisions.

The Court should not permit that move.

A project cannot become military enough to justify emergency relief, but ordinary enough to avoid the statutory pathways Congress created for national-security construction.

That does not mean courts should second-guess legitimate protective measures. The district court’s injunction expressly preserves work strictly necessary for safety and security. But it does mean that national security cannot transform general maintenance and park statutes into hidden authority for a massive and irreversible construction project on federal property controlled by Congress.

II. CONGRESS LEGISLATES SPECIFICALLY WHEN NATIONAL-SECURITY CONSTRUCTION REQUIRES EMERGENCY OR MILITARY-CONSTRUCTION AUTHORITY.

Congress knows how to authorize national-security construction. It does so specifically.

Title 10’s military-construction framework illustrates the point. Section 2801 defines “military construction” to include construction, development, conversion, or extension with respect to a military installation, and defines a “facility” to include a building, structure, or other improvement to real property. 10 U.S.C. § 2801. Section 2802 authorizes military construction projects “as are authorized by law” and imposes notice requirements for certain projects carried out under authority other than a Military Construction Authorization Act. 10 U.S.C. § 2802. Section 2808 provides emergency construction authority in the event of a declaration of war or a declared national emergency requiring use of the armed forces, subject to statutory limits, available funds, and congressional notification. 10 U.S.C. § 2808. Section 2811 separately addresses repair of facilities and expressly prohibits using that repair authority for new facilities or additions to existing facilities. 10 U.S.C. § 2811(c).

Amicus does not argue that Title 10 directly governs every White House project or that Applicants were necessarily required to proceed under a particular Title 10 provision. This case need not be resolved that way.

The point is contextual and structural.

When Congress authorizes national-security construction, it uses specific language, assigns responsibility to accountable officials, imposes funding limits, requires congressional notice, and distinguishes repair from new construction or additions. That statutory backdrop matters when Applicants ask this Court to infer sweeping construction authority from much more general provisions.

This Court has repeatedly declined to infer sweeping executive or agency authority from vague or ancillary statutory language. Congress does not usually “hide elephants in mouseholes.” *Whitman v. American Trucking Ass’ns*, 531 U.S. 457, 468 (2001). Nor does Congress delegate decisions of vast political or economic significance without clear authorization. *See West Virginia v. EPA*, 597 U.S. 697, 721–24 (2022); *Utility Air Regulatory Group v. EPA*, 573 U.S. 302, 324 (2014); *Biden v. Nebraska*, 600 U.S. 477, 506–07 (2023). That interpretive caution applies with special force where Applicants invoke national-security features to obtain emergency relief while relying on general residence, park, gift, and interagency-transfer statutes for authority.

The White House is federal property in the District of Columbia. Congress has constitutional authority over federal property and the seat of government. U.S. Const. art. IV, § 3, cl. 2; *id.* art. I, § 8, cl. 17. Congress also controls appropriations. U.S. Const. art. I, § 9, cl. 7. And Congress has enacted a specific statutory command that a building

or structure shall not be erected on federal public grounds in the District of Columbia without express authority of Congress. 40 U.S.C. § 8106.

Nor can funding mechanics supply the missing substantive authorization. This Court has long recognized that appropriations are presumed to fund lawful purposes and that appropriations measures do not repeal or modify substantive law. *Tennessee Valley Authority v. Hill*, 437 U.S. 153, 190 (1978).

Against that background, general words cannot bear the weight Applicants place on them.

Applicants’ reading would mean that Congress silently empowered the Executive Branch to demolish and replace a substantial portion of the White House, accept hundreds of millions of dollars in private donations for the project, transfer those funds through agency mechanisms, and complete what Applicants now describe as a military and continuity-of-government complex—all without specific congressional authorization.

That is not a modest reading of the statutes. It is a transfer of constitutionally significant authority.

Presidential power must stem either from an act of Congress or from the Constitution itself. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952). When the President acts incompatibly with Congress’s expressed or implied will, presidential power is “at its lowest ebb.” *Id.* at 637–38 (Jackson, J., concurring). Applicants do not claim inherent Article II power to build the project. They therefore must identify statutory authority.

They have not done so.

At minimum, the Government’s national-security characterization requires a clear statement from Congress. No such clear statement appears in § 105(d), the Organic Act, the NPS gift statute, or the Economy Act.

III. A STAY WOULD NOT PRESERVE THE STATUS QUO; IT WOULD RISK IRREVERSIBLE MERITS RELIEF BEFORE THIS COURT CAN REVIEW THE CASE.

The emergency posture matters.

A stay is not a matter of right. It is an exercise of judicial discretion. *Nken v. Holder*, 556 U.S. 418, 433–35 (2009). The applicant must make a strong showing of likely success on the merits and likely irreparable injury. *Id.* at 434–35. When relief is sought pending the filing and disposition of a certiorari petition, the applicant must show “a reasonable probability” that four Justices will grant certiorari, a fair prospect that a majority of the Court will reverse, and a likelihood that irreparable harm will result from denial of a stay. *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam). In close cases, the Court balances the equities and weighs the relative harms. *Id.*

Those standards must be applied with special care where the requested stay would not merely maintain the status quo, but allow irreversible physical construction.

Applicants’ own submission underscores the problem. They say the project is being constructed with hardened materials, including nuclear-grade concrete, and that the resulting structure would be virtually impossible to deconstruct or alter. If that is true, a stay would not simply allow Applicants to preserve their position while

this Court considers the case. It would allow Applicants to create a permanent physical condition that could effectively decide the litigation before full review.

That is precisely the kind of irreversibility this Court has treated as relevant in emergency posture: when an injury “likely cannot be undone” once the challenged act occurs, the Court must account for that reality before granting or denying extraordinary relief. *Hollingsworth*, 558 U.S. at 195–96.

That is not ordinary interim relief.

It is merits relief by construction schedule.

The purpose of emergency relief is not to enable one party to outrun judicial review. It is to preserve legal and practical options while courts decide the merits. Here, the district court and court of appeals preserved the Government’s legitimate safety interests through a tailored injunction. That injunction allows below-ground security construction, protective coverings, bomb shelters, military and medical infrastructure, and work strictly necessary to protect the President, staff, the White House, and the construction site.

Applicants may disagree with the district court’s tailoring. But the existence of that safety-and-security exception matters. This is not a case in which the Government has been ordered to leave the White House exposed or unsecured. The injunction preserves safety work while preventing above-ground ballroom construction from locking in an unauthorized project.

Applicants’ contrary position would reward executive self-help. The Government began demolition and construction before final judicial review. It now asks this Court to permit continuation because stopping the project would be difficult, costly, or

security-sensitive. But that logic would create a dangerous rule: the faster the Executive acts, the harder it becomes for courts to preserve their remedial authority.

The Constitution does not permit a “build first, litigate later” exception to congressional control over federal property.

Nor does *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7 (2008), compel a stay. *Winter* supports deference to professional military judgments when courts balance equities involving military operations. *Id.* at 24–26. But *Winter* did not hold that national-security deference supplies missing statutory authority. This case concerns whether Applicants have legal authority to proceed at all: whether the Executive Branch may permanently alter the White House using private funds and agency mechanisms without the clear congressional authorization the Constitution and governing statutes require.

The Court can deny the application without impairing legitimate security work. The existing injunction already preserves such work. If the Court grants any relief, it should be narrow. It should preserve the injunction against above-ground construction and any work that irreversibly locks in the height, massing, footprint, exterior design, or above-ground structure of the proposed ballroom, while allowing measures strictly necessary to secure below-ground facilities, protect the President and staff, stabilize the site, and preserve the integrity of the White House grounds pending review.

That approach would respect national security while preserving Congress’s constitutional role and this Court’s ability to decide the legal question before irreversible construction moots effective relief.

CONCLUSION

Applicants' emergency application depends on a contradiction. They describe the project as an integrated military, intelligence, and continuity-of-government complex to establish irreparable harm, but rely on general residence, park, gift, and interagency-transfer statutes to establish authority.

The Court should not accept that mismatch.

If the project is an ordinary residence improvement or park project, the existing safety-and-security exception is sufficient. If it is a hardened national-security complex, then general statutes do not clearly authorize it. Congress legislates specifically in this area, and the Constitution assigns Congress control over federal property, appropriations, and the seat of government.

The application for a stay should be denied.

At minimum, any relief should preserve the injunction against above-ground construction and any work that would irreversibly lock in the proposed ballroom's height, massing, footprint, exterior design, or above-ground structure, while leaving intact the existing exception for truly necessary safety-and-security work.

Respectfully submitted,

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