

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.

**BRIEF OF *AMICI CURIAE* OF THE SOCIETY FOR THE RULE OF LAW,
FORMER REPUBLICAN WHITE HOUSE LAWYERS, AND LEADERS,
MEMBERS AND FRIENDS OF THE SOCIETY IN OPPOSITION TO
APPLICATION FOR A STAY OF INJUNCTION**

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TABLE OF CONTENTS

STATEMENT OF INTEREST.....	1
SUMMARY OF ARGUMENT.....	1
ARGUMENT	4
I. The Executive Branch Lacks Unilateral Authority to Destroy and Transform White House Buildings.....	4
A. The Constitution Vests Control over Property and the Public Fisc in Congress	4
B. The Plain Language of Relevant Statutes Forecloses the Executive’s Position.....	6
C. No President Has Ever Claimed the Sweeping Power the Executive Asserts	11
II. Safety, Security, or Other Policy Factors Do Not Justify Ignoring Statutory Limits.....	14
A. The Lower Courts Accommodated the Executive’s Safety and Security Concerns.....	14
B. Safety and Security Concerns Do Not Excuse Executive Lawlessness	17
III. The Executive’s Actions Have Stymied Orderly Judicial Review.....	20
A. The Executive’s Application Flouts the Structure of Article III and Historical Practice by Introducing New Evidence and Ignoring Rules of Deference	20
B. The Executive’s Assertion that Its Rushed Construction Is Irreparable Weighs Strongly Against a Stay	23
CONCLUSION	25

TABLE OF CITED AUTHORITIES

CASES

<i>AARP v. Trump</i> , 605 U.S. 91 (2025).....	23
<i>Anderson v. City of Bessemer City</i> , 470 U.S. 564 (1985).....	21, 22
<i>Bost v. Illinois State Bd. of Elections</i> , 607 U.S. 71, 78 (2026).....	7
<i>Bostock v. Clayton Cnty., Georgia</i> , 590 U.S. 644 (2020).....	2
<i>BP P.L.C. v. Mayor & City Council of Baltimore</i> , 593 U.S. 230 (2021).....	18
<i>Consumer Fin. Prot. Bureau v. Cmty. Fin. Servs. Ass’n of Am., Ltd.</i> , 601 U.S. 416 (2024)	5
<i>Cutter v. Wilkinson</i> , 544 U.S. 709 (2005).....	21
<i>eBay Inc. v. MercExchange, L.L.C.</i> , 547 U.S. 388 (2006).....	19, 21
<i>Epic Sys. Corp. v. Lewis</i> , 584 U.S. 497 (2018).....	7
<i>Fed. Bureau of Investigation v. Fikre</i> , 601 U.S. 234 (2024).....	25
<i>Fed. Express Corp. v. United States Dep’t of Com.</i> , 39 F.4th 756 (D.C. Cir. 2022)	10
<i>Franklin v. Massachusetts</i> , 505 U.S. 788 (1992).....	8
<i>FTC v. Dean Foods Co.</i> , 384 U.S. 597 (1966).....	25
<i>Grupo Mexicano de Desarrollo S.A. v. All. Bond Fund, Inc.</i> , 527 U.S. 308 (1999).....	19, 22

<i>Hedges v. Dixon Cnty.</i> , 150 U.S. 182 (1893).....	18
<i>Henry Schein, Inc. v. Archer & White Sales, Inc.</i> , 586 U.S. 63 (2019).....	9
<i>INS v. Pangilinan</i> , 486 U.S. 875 (1988).....	18
<i>INS v. Chadha</i> , 462 U.S. 919 (1983).....	6
<i>Kansas v. Marsh</i> , 548 U.S. 163 (2006).....	23
<i>Kleppe v. New Mexico</i> , 426 U.S. 529 (1976).....	4
<i>Kloeckner v. Solis</i> , 568 U.S. 41 (2012).....	18
<i>Korematsu v. United States</i> , 323 U.S. 214 (1944).....	18
<i>Lackey v. Stinnie</i> , 604 U.S. 192 (2025).....	25
<i>Learning Res., Inc. v. Trump</i> , 607 U.S. 229 (2026).....	8, 13
<i>Loper Bright Enters. v. Raimondo</i> , 603 U.S. 369 (2024).....	21
<i>Lujan v. Defs. of Wildlife</i> , 504 U.S. 555 (1992).....	2
<i>Marbury v. Madison</i> , 5 U.S. (1 Cranch) 137 (1803)	20, 23
<i>Mistretta v. United States</i> , 488 U.S. 361 (1989).....	4

<i>NLRB v. Noel Canning</i> , 573 U.S. 513 (2014).....	3
<i>NFIB v. Dep’t of Lab., Occupational Safety & Health Admin.</i> , 595 U.S. 109 (2022).....	13, 20
<i>Nken v. Holder</i> , 556 U.S. 418 (2009).....	22
<i>Palmore v. United States</i> , 411 U.S. 389 (1973).....	4
<i>Ramirez v. Collier</i> , 595 U.S. 411 (2022).....	15
<i>Reeside v. Walker</i> , 52 U.S. (11 How.) 272 (1851).....	10
<i>Reno v. Bossier Par. Sch. Bd.</i> , 520 U.S. 471 (1997).....	17, 18
<i>Russell v. Southard</i> , 53 U.S. (12 How.) 139 (1851).....	21
<i>Starbucks Corp. v. McKinney</i> , 602 U.S. 339 (2024).....	21
<i>Trump v. Cook</i> , 146 S. Ct. 2234 (2026).....	14
<i>Trump v. Hawaii</i> , 585 U.S. 667 (2018).....	18
<i>Trump v. Illinois</i> , 146 S. Ct. 432 (2025).....	9
<i>Trump v. United States</i> , 603 U.S. 593 (2024).....	8
<i>Trump v. Vance</i> , 591 U.S. 786 (2020).....	9
<i>United States v. Oakland Cannabis Buyers’ Co-op.</i> , 532 U.S. 483 (2001).....	18

<i>United States v. U.S. Dist. Ct. for E. Dist. of Mich.</i> , 407 U.S. 297 (1972).....	16
<i>United States v. Zubaydah</i> , 595 U.S. 195 (2022).....	15
<i>Virginian R. Co. v. Railway Employees</i> , 300 U.S. 515 (1937).....	19
<i>Weinberger v. Romero-Barcelo</i> , 456 U.S. 305 (1982).....	25
<i>Whitman v. Am. Trucking Associations</i> , 531 U.S. 457 (2001).....	6
<i>Winter v. Nat. Res. Def. Council, Inc.</i> , 555 U.S. 7 (2008).....	19
<i>Witters v. Washington Dep’t of Servs. for the Blind</i> , 474 U.S. 481 (1986).....	21
<i>Youngstown Sheet & Tube Co. v. Sawyer</i> , 343 U.S. 579 (1952).....	4, 18
CONSTITUTIONAL PROVISIONS	
U.S. Const. Art. I, § 8, cl. 17	4
U.S. Const. Art. IV, § 3, cl. 2.....	4
U.S. Const. Art. VI, cl. 2	7
STATUTES AND RULES	
2 Stat. 244, § 2.....	21
3 U.S.C. § 105(d).....	10
5 U.S.C. § 701	8
40 U.S.C. § 8106	5, 7
54 U.S.C. § 312102	2
54 U.S.C. § 312105	2

54 U.S.C. § 100101	9
National Industrial Recovery Act, ch. 90, §§ 202, 220, 48 Stat. 195, 201, 210 (1933).....	12
Pub. L. No. 81-40, 63 Stat. 45 (1949).....	11
Sixth Supplemental National Defense Appropriation Act, Pub. L. No. 77-528, 56 Stat. 236 (1942)	12
Fed. R. Civ. P 52(a)	16, 21
OTHER AUTHORITIES	
Application of 28 U.S.C. § 458 to Presidential Appointments of Federal Judges, 19 Op. O.L.C. 350 (1995).....	8
Letter to the President of the Senate Transmitting Appropriation Estimate for White House Repairs, 1 Pub. Papers 133 (February 17, 1949)	11
Letter to the President of the Senate and to the Speaker of the House on Establishing a Commission on the Renovation of the White House, 1 Pub. Papers 185 (March 25, 1949)	11
The Federalist No. 58 (C. Rossiter ed. 1961) (J. Madison).....	5
Press Release, The White House, <i>The White House Announces White House Ballroom Construction to Begin</i> (July 31, 2025), https://perma.cc/6N2H-RLE9	14
<i>Overview: The White House and President’s Park</i> , National Park Service, https://perma.cc/7DJ4-SDPW	12
Records of Temporary Committees, Commissions and Boards: Records of the Commission on the Renovation of the Executive Mansion, Harry S. Truman Library and Museum, https://perma.cc/G53V-G8XP	11

STATEMENT OF INTEREST

Amicus The Society for the Rule of Law and Democracy, Inc., doing business as The Society for the Rule of Law is a national non-profit, non-partisan membership organization of conservative, libertarian, and right-of-center lawyers, and others, who are dedicated to defending the constitutional principles of the rule of law, limited government, separation of powers, federalism, and other checks and balances regardless of politics or party affiliation. Joining the Society as amici are former White House lawyers who served Republican Presidents, and a number of individual leaders, members, and friends of the Society—including many who served in Republican administrations—whose commitment to the rule of law transcends ideological or political affiliations.¹ Amici have no position on the wisdom of the proposed ballroom or the need for additional security construction at the White House, but instead write to express their concern that the present actions of the President bypass Congress, the Branch with constitutional authority over razing, building and funding such construction, and their interest in ensuring that the Executive Branch adheres to the rule of law and stays within its historic constitutional boundaries.

SUMMARY OF ARGUMENT

The Executive Branch's extraordinary request can be resolved by application of settled principles of constitutional law and equitable practice. These principles have

¹ The full list of amici is set forth in the Appendix to this brief. No counsel for any party authored this brief in whole or in part, and no entity, aside from amicus and its counsel, made any monetary contribution toward the preparation or submission of this brief. The brief does not necessarily reflect the views of all members of the Society for the Rule of Law.

served this country well for centuries, and their steady and consistent application—no matter who the litigant is or what rhetoric they employ—is vital to the rule of law.²

First, Government buildings—*especially* those of enduring historical and symbolic power—belong to the American people and not the President. The Constitution explicitly vests control over public property and spending in Congress, and the Executive Branch cannot invade an area of exclusive Congressional power without legislative authorization. Under the Constitution’s allocation of power, the proper way to interpret a statute is by applying its plain language, and not inventing atextual exceptions or presuming that the President is above the law. No President has ever claimed the unilateral authority asserted here, and the Court should look skeptically at this unprecedented assertion.

Second, the laws passed by Congress pursuant to its Constitutional authority must be respected, no matter how urgent or compelling purported safety, security, or other policy concerns may be. There is no national security exception to the rule of law. Yet the Executive’s application urges this Court to overlook any noncompliance with the law because it will supposedly face irreparable harm if held to statutory limits. Even if its concerns were credited, they must be addressed to Congress and not

² This brief does not separately address standing, but the Trust’s standing is beyond reasonable dispute. First, an aesthetic like that faced by the Trust “is undeniably a cognizable interest for purpose of standing.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 562–63 (1992). And Congress chartered the Trust specifically to work towards the “preservation of sites, buildings, and objects of national significance or interest.” 54 U.S.C. § 312102; *see also Bost v. Illinois State Bd. of Elections*, 607 U.S. 71, 78 (2026). Surely the White House qualifies. Although the Trust’s *purchasing* power stops short of acquiring park service lands, 54 U.S.C. § 312105(g), that does not imply its preservation mission ends at park borders.

this Court. Equity follows the law, and the Executive cannot misuse equity to accomplish a result that the law forbids.

Third, as *Marbury v. Madison* made clear, Article III designates this Court one of review, not of first view. Yet the Executive’s application ignores the deference owed to fact finding and discretionary judgments made by the courts below, attempting to introduce a trove of new evidence in this Court. This tactic flouts the Court’s constitutional role as a final appellate court and runs roughshod over longstanding practice.

Marbury v. Madison also confirms that the federal courts have the power and the duty to say what the law is, and to provide a remedy to those harmed by Government lawlessness. Yet throughout this Project, the Executive has attempted to bypass both Congressional involvement and Judicial review. First, the Executive rushed ahead with the project, hoping to outrace the judiciary. And now the Executive claims it has won the race, arguing the construction may in fact be irreversible—and that the Court must reward its strategic behavior by allowing it to continue down the path of no return. That claim is a compelling reason to permit the district court’s injunction to remain in place. That injunction is essential to preserve federal court jurisdiction and to maintain the status quo pending orderly judicial review.

The principles at stake here are timeless and fundamental. The Court should “take [the] opportunity to affirm the primacy of the Constitution’s enduring principles over the politics of the moment,” *NLRB v. Noel Canning*, 573 U.S. 513, 614–15 (2014) (Scalia, J., concurring)—no matter how strongly the President wishes for a ballroom. The Executive’s application should be denied.

ARGUMENT

I. The Executive Branch Lacks Unilateral Authority to Destroy and Transform White House Buildings

A. The Constitution Vests Control over Property and the Public Fisc in Congress

“This Court consistently has given voice to, and has reaffirmed, the central judgment of the Framers of the Constitution that, within our political scheme, the separation of governmental powers into three coordinate Branches is essential to the preservation of liberty.” *Mistretta v. United States*, 488 U.S. 361, 380 (1989). Accordingly, where one branch of government asserts powers the Constitution assigns to another, federal courts may intervene to re-establish the Constitutional scheme. *See, e.g., Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

Through several overlapping provisions, the Constitution vests Congress with the “exclusive authority to regulate the construction and demolition of White House structures.” App’x 265a.³ First, “under the Constitution’s Property Clause, Congress exercises plenary control over the [White House] building and its surrounding land.” App’x 261a; *see* U.S. Const. Art. IV, § 3, cl. 2 (“The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States[.]”). Thus, “determinations under the Property Clause are entrusted primarily to the judgment of Congress.” *Kleppe v. New Mexico*, 426 U.S. 529, 536 (1976). Second, “Congress may ... exercise all the police and regulatory powers [in the District of Columbia] which a state legislature or municipal

³ Citations to the Executive’s Application for a Stay of the Injunction will be to “App.” Citations to the appendix that the Executive submitted will be to “App’x.”

government would have.” *Palmore v. United States*, 411 U.S. 389, 397 (1973); *see* U.S. Const. Art. I, § 8, cl. 17 (vesting authority “to exercise exclusive Legislation in All Cases whatsoever” over the District of Columbia and for “the Erection of Forts ... and other needful Buildings” on acquired land). Added to that is Congress’s power over the purse, which “[s]ince the earliest days of our Republic, . . . has been its ‘most complete and effectual weapon’ to ensure that the other branches do not exceed or abuse their authority.” *Consumer Fin. Prot. Bureau v. Cmty. Fin. Servs. Ass’n of Am., Ltd.*, 601 U.S. 416, 447 (2024) (Alito, J., dissenting) (quoting *The Federalist* No. 58, p. 359 (C. Rossiter ed. 1961) (J. Madison)); *see also id.* at 425 (majority op.).⁴ Congress has asserted its constitutional powers through several statutory provisions, including 40 U.S.C. § 8106 which provides that “[a] building or structure shall not be erected on any reservation, park, or public grounds of the Federal Government in the District of Columbia without express authority of Congress.”

Faced with these authorities, the Executive “concede[s] that the Executive lacks *any* inherent constitutional authority to construct the ballroom.” App’x 310a-311a; *see also id.* at 263a (“Defendants disclaim any explicit or implicit constitutional authority for their actions.”). Yet the Executive nevertheless contends that holding it

⁴ The Executive’s disregard of Congress’s power of the purse poses its own separation of powers problem. Absent permission to proceed otherwise, construction funding for the White House must come from Congress. When Congress provides for alternative funding mechanisms, it does so explicitly. *Cf. CFPB*, 601 U.S. at 435. No such authority exists here. Congress “would be understandably reluctant to relinquish its oversight and control over the Executive by allowing the President to use private donations to remake the White House[.]” App’x 331a-332a. As the Court of Appeals discussed, “Congress has not authorized the use of private gifts ... for major renovations at the White House.” App’x 331a; *see also* App’x 310a-318a; 325a-328a.

to the Constitution’s very purposeful allocation of spending power and the plain language of statute would “raise separation-of-powers issues” because “[f]orcing the President to come hat-in-hand to Congress so the People’s House is safe gives the Legislature dangerous leverage.” App. at 31-32.

The argument is startling. Never mind that “[t]hroughout history, Congress has appropriated funds both for the White House’s maintenance and for necessary physical improvements and additions.” App’x 262a; *see also* App’x 270a (collecting examples). The genius of the Constitution is in its allocation of power among branches, providing mechanisms by which each Branch may check the others. The “choices . . . made in the Constitutional Convention impose burdens on governmental processes that often seem clumsy, inefficient, even unworkable, but those hard choices were consciously made by men who had lived under a form of government that permitted arbitrary governmental acts to go unchecked.” *INS v. Chadha*, 462 U.S. 919, 959 (1983). There is no “White House Complex” exception to separation of powers, and Presidents are not exempt from either constitutional or statutory limits, no matter how urgently they may desire to build a ballroom.

B. The Plain Language of Relevant Statutes Forecloses the Executive’s Position

If Congress were to have delegated to the Executive Branch the power to destroy and rebuild White House buildings at will, one would imagine it would have said so plainly. After all, the White House is oft-referred to as the “People’s House,” App. 31, and the White House complex stands as one of the most significant and recognizable symbols of American democracy. Congress “does not hide elephants”—

or ballrooms—“in mouseholes.” *Whitman v. Am. Trucking Associations*, 531 U.S. 457, 468 (2001). Yet under the Executive’s view, “the President could bulldoze the entire White House and replace it with a new building of his own design, including a ‘skyscraper.’” App’x at 341a-42a. No other President has asserted such transformative power, App’x 262a, and the plain language of the governing statutes do not support the Executive’s claims.

The laws Congress passes pursuant to its Constitutional authority—whether it be Congress’s power over public property, the public fisc, or any of its other enumerated powers— “shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby.” U.S. Const. Art. VI, cl. 2. Among other things, this means that the Court must interpret and apply the law as written by Congress. *E.g.*, *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 511 (2018) (“[I]t’s the job of Congress by legislation, not this Court by supposition, both to write the laws and to repeal them.”). Adherence to the ordinary meaning of statutory text is not just a technical canon of construction. Instead, “judicial adherence to ordinary meaning facilitates the democratic accountability of America’s elected representatives for the laws they enact.” *Bostock v. Clayton Cnty., Georgia*, 590 U.S. 644, 785 (2020) (Kavanaugh, J., dissenting); *see also id.* at 654–55 (majority op.) (judicial reliance on extratextual sources “risk[s] amending statutes outside the legislative process”). In seeking legal justification for his unprecedented actions, the Executive casts these essential principles aside.

First, 40 U.S.C. § 8106 provides that “[a] building or structure shall not be erected on any reservation, park, or public grounds of the Federal Government in the

District of Columbia without express authority of Congress.” This statutory text “unambiguously bars the ballroom construction, absent another statute providing the National Park Service with ‘express authority’ to construct” a ballroom. App’x 312a. The Executive contends that Section 8106’s clear language does not limit the President although nothing in the text suggests any such exemption. App. 31. Instead, the Executive proposes that the President is above any generally applicable law unless a “clear statement” from Congress includes him in its sweep. *See id.*

That argument “overread[s]” *Franklin v. Massachusetts*, the case on which the Executive relies. App’x 320a. In *Franklin*, 505 U.S. 788, 800-01 (1992), the Court construed the term “agency” in the Administrative Procedure Act (APA), 5 U.S.C. § 701 et seq., to exclude the President, thereby avoiding the serious separation-of-powers questions that would have arisen if the APA’s judicial review provisions were understood to permit Article III courts to review “the President’s performance of his statutory duties” for “abuse of discretion.” *Franklin*, 505 U.S. at 800-801. Thus, the Department of Justice has in the past “advocated for a clear-statement rule if applying a statute would ‘raise serious constitutional questions relating to the President’s constitutional authority.’” *Trump v. United States*, 603 U.S. 593, 653 n.3 (2024) (Barrett, J., concurring) (quoting *Application of 28 U.S.C. § 458 to Presidential Appointments of Federal Judges*, 19 Op. O.L.C. 350, 354, 357 (1995)). No such question—certainly not a “serious” one—is presented here. Indeed, the Executive concedes it has no explicit or implicit constitutional authority to erect new buildings on federal property in the District of Columbia. *See supra* at p.5. And Court has repeatedly rejected calls to presume Presidential power in the absence of statutory

warrant. *E.g., Learning Res., Inc. v. Trump*, 607 U.S. 229, 255 (2026) (requiring President to identify “clear congressional authorization”); *Trump v. Illinois*, 146 S. Ct. 432, 434 (2025). Instead, “[i]n our system of government, as this Court has often stated, no one is above the law. That principle applies, of course, to a President.” *Trump v. Vance*, 591 U.S. 786, 812 (2020) (Kavanaugh, J., concurring); *see also id.* at 791 (majority op.) (“Since the earliest days of the Republic, ‘every man’ has included the President of the United States.”). The Executive’s invitation to infer an exemption that is not present in the text ignores that carving out exceptions from statutes is a task for Congress. The Court “may not engraft [its] own exceptions onto the statutory text.” *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 70 (2019).

Second, in an effort to satisfy Section 8106’s “express authority” requirement, the Executive invokes 54 U.S.C. § 100101, a provision of the original statute creating the National Park Service. Once again, its position “is notably devoid of any argument based on the statute’s text.” App’x 317a. Indeed, Section 100101 says “nothing about construction, much less construction in the District of Columbia.” *Id.* Instead, in a passage that contradicts rather than supports the Executive’s argument, Section 100101 charges the Park Service with using “means and measures” “to *conserve* the scenery, natural and *historic objects*, and wild life in the System units and *to provide for the enjoyment* of the scenery, natural and *historic objects*, and wild life *in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.*” 54 U.S.C. § 100101(a) (emphasis added). Notably, “[t]he Defendants do not explain how their construction project ... can possibly ‘conserve’ the East Wing,

much less the ‘scenery’ of President’s Park, so as to ‘leave them unimpaired for the enjoyment of future generations.’” App’x 315a.

Third, the Executive’s claim that 3 U.S.C. § 105(d) authorizes the destruction and rebuilding of the White House’s East Wing “amounts to a ‘patent[] misconception of the law.’” App’x 321a (quoting *Fed. Express Corp. v. United States Dep’t of Com.*, 39 F.4th 756, 764 (D.C. Cir. 2022)). Section 105(d)(1) “authorize[s]” the appropriation of “such sums as may be necessary for ... the care, maintenance, repair, alteration, refurnishing, improvement, air-conditioning, heating, and lighting (including electric power and fixtures) of the Executive Residence at the White House[.]” 3 U.S.C. § 105(d)(1). Applying a textualist approach, the Court of Appeals rejected the Executive’s reliance on this statute on multiple and compelling grounds, concluding, *inter alia*, that: (1) “The plain text” of Section 105(d)(1) is an “appropriation authorization” only, which “confers no affirmative authority to act on the Executive Branch,” App’x 322a-326a; *see id. at* App’x 324a (“glaringly absent from Section 105(d) is any affirmative grant of authority to the Executive.”); (2) even if Section 105(d)(1) did authorize the President to act, he could do so “only with funds ‘appropriated under [that] subsection’ (not donated funds), and “subject to any terms and conditions accompanying the appropriation.” App’x 325a-27a, *see id. at* 327a (“Government funds may be spent only as Congress directs.”) (citing *Reeside v. Walker*, 52 U.S. (11 How.) 272, 291 (1851) (quotation omitted)); (3) the plain text of Section 105(d)(1) confines the usage of Congressionally appropriated funds to “the Executive Residence at the White House,” a description that does not include the now demolished East Wing. App’x 333a; and (4) the statutory words “alteration” and

“improvement” in Section 105(d)(1) “presuppose an already-existing structure and indicate minor changes;” they do not authorize either destroying or wholly replacing the Executive Residence. App’x 335a-342a; *see id.* at 339a (“[T]he proposed ballroom—which would replace the East Wing with a new structure dwarfing other parts of the White House—constitutes new construction, not an improvement.”). In short, the Executive’s statutory authorization arguments regarding Section 105(d)(1) are subject to numerous and fatal “textual blow[s].” App’x 335a; *see id.* at 338a.

C. No President Has Ever Claimed the Sweeping Power the Executive Asserts

Consistent with the command from Constitutional structure and plain statutory language, no President has ever claimed the power to unilaterally destroy and rebuild a White House building. App’x 262a. Quite the contrary: when President Truman sought to undertake a comprehensive White House reconstruction, he went to Congress. Expressing the President’s “grave[] concern[s] with what appeared to be unsafe conditions in the Executive Mansion,” including concern for “the safety of the members of the presidential household,” President Truman asked Congress to appropriate funds and create a Commission for study before breaking ground.⁵ Congress then created a Commission on Renovation of the Executive Mansion, which oversaw the reconstruction. Pub. L. No. 81-40, 63 Stat. 45 (1949). Even with

⁵ Letter to the President of the Senate Transmitting Appropriation Estimate for White House Repairs, 1 Pub. Papers 133 (February 17, 1949); Letter to the President of the Senate and to the Speaker of the House on Establishing a Commission on the Renovation of the White House, 1 Pub. Papers 185 (March 25, 1949); *Records of Temporary Committees, Commissions and Boards: Records of the Commission on the Renovation of the Executive Mansion*, Harry S. Truman Library and Museum, <https://perma.cc/G53V-G8XP>.

substantial renovations, the Commission chose to preserve the outside walls of the Executive Mansion and rebuild it from the inside specifically to maintain the White House's historical and aesthetic integrity.⁶ This careful effort to both preserve a national treasure and ensure necessary construction demonstrates how White House renovations should proceed under our Constitutional scheme.

The examples the Executive instead gives to support its assertion of power only demonstrate how truly unprecedented the current project is. For example, the Executive invokes President Roosevelt's 1933-1934 expansion of the West Wing, as well as his 1942 East Wing renovation project. App. 8-9. Unlike the ballroom at issue here, however, Congress had in fact appropriated funds for public buildings. *See* National Industrial Recovery Act, ch. 90, §§ 202, 220, 48 Stat. 195, 201, 210 (1933) (authorizing a "comprehensive program of public works" including "construction, repair, and improvement of ... public buildings"); Sixth Supplemental National Defense Appropriation Act, Pub. L. No. 77-528, 56 Stat. 236 (1942) (generally appropriating funds for "public buildings and grounds in the District of Columbia"). Further, and importantly, neither project involved the full-scale demolition of historic buildings. Nor is President Ford's installation of a pool on the South Lawn, or President Trump's earlier addition of a tennis court, in any way analogous in size and scale to the project here. Both structures were out of public view and for the President's private, essentially personal or domestic use. App'x 51a. And nothing in these projects required the demolition of a historic or iconic structure.

⁶ *Overview: The White House and President's Park*, National Park Service, <https://perma.cc/7DJ4-SDPW>.

In contrast to the modest examples cited by the Executive, the project here is enormous: according to the Executive's own documents, it will inflict "long-term adverse effects on the cultural landscape" and cause "permanent[] alter[ation]" of the public's views of the White House. App'x 153a. The National Park Service determined that this construction would "result[] in the permanent loss of a component that has been integral to White House operations since 1942," and that the "change will disrupt the historical continuity of the White House grounds." App'x 154a. Further, in its Environmental Assessment of the project, the National Park Service concluded that the "increased footprint and the addition of a second story along the colonnade, compared to the existing East Wing ... [could] potentially deemphasiz[e] the prominence of the West Wing and the Executive Mansion ... a departure from the traditional aesthetic values and architectural integrity that have been maintained over the years." App'x 175a. This massive destruction and rebuilding project here does not compare to adding a pool or a tennis pavilion out of public view.

The "lack of historical precedent ... coupled with the breadth of authority' that the President now claims, suggests" that destroying the East Wing was "beyond the President's 'legitimate reach.'" *Learning Res., Inc.*, 607 U.S. at 231 (quoting *NFIB v. Dep't of Lab., Occupational Safety & Health Admin.*, 595 U.S. 109, 119 (2022)). Longstanding practice confirms what plain statutory language makes clear: the President does not enjoy unfettered unilateral authority over iconic structures such as White House buildings. The Constitution gives that power to Congress, to which the President may freely apply for authorization and funding.

II. Safety, Security, or Other Policy Factors Do Not Justify Ignoring Statutory Limits

The Executive’s Application argues that, even if its actions violate the law, it cannot be enjoined because of supposed safety and security concerns. App. 33. The courts below carefully considered the Executive’s concerns and tailored the injunction in response. Yet they also rejected the Executive’s belated claim (pressed with great vigor here) that *any* injunction jeopardizes safety and security. In any event, the supposed security concerns do not justify the extraordinary relief sought from this Court. If the Executive Branch feels unduly constrained by its statutory obligations, it should seek relief from Congress, not this Court.

A. The Lower Courts Accommodated the Executive’s Safety and Security Concerns

There is every reason to doubt the Executive’s hyperbolic rationalization of harm. All contemporaneous statements suggest the reason the President wanted to build the ballroom was because he wanted a ballroom, not because it was required for national security. *E.g.*, Press Release, The White House, *The White House Announces White House Ballroom Construction to Begin* (July 31, 2025), <https://perma.cc/6N2H-RLE9>. Even deferential review does not require courts “to exhibit a naiveté from which ordinary citizens are free.” *Trump v. Cook*, 146 S. Ct. 2234, 2249 (2026).

Significantly, much of the evidence the Executive submitted to this Court is brand new, though this litigation has been pending for months. *See* App’x 396a-472a (including *ten* new declarations dated after the Court of Appeals decision). And its primary argument to this Court—that anything short of a completed ballroom will imperil security—first “materialized in April” and contradicted its earlier arguments

to the district court. App’x at 349a-350a. “[L]ate-breaking changes in position, last-minute claims arising from long-known facts, and other ‘attempt[s] at manipulation’ can provide a sound basis for denying equitable relief.” *Ramirez v. Collier*, 595 U.S. 411, 434 (2022). The Executive’s “shifting and contradictory positions” are “a frail reed on which to rest equitable arguments.” App’x 350a.

The substance fares no better. The Executive’s contention that the current state of construction “present[s] safety and security risks at the White House Complex and operational challenges to the Secret Service,” App. 8 (quotations omitted), ignores that it was the Executive Branch that chose this path. “[A]ny risk caused by the construction project and its multi-year timetable is overwhelmingly a problem of the Defendants’ own creation” by “commencing a lengthy construction project” and then “publicly announc[ing] to the world the vulnerabilities that self-chosen endeavor has created.” App’x 351a. It is doubtful that the President and his advisors chose to dig a hole that would imperil the President’s safety. And on the Executive’s own submission the site will remain unfinished for at least two more years even if a stay issues, App’x 351a—which is impossible to reconcile with the “extreme irreparable harm” it now asserts, App. 33.

Nevertheless, the courts below took “seriously the Government’s concerns regarding the safety and security of the White House grounds and the President himself.” App’x 59a; *id.* at 350a n.15 (emphasizing the “singular importance of safety and security” in informing the court’s review of evidence). But deference to the Executive does not mean “abdicat[ion]” to it. *United States v. Zubaydah*, 595 U.S. 195, 205 (2022); *accord, e.g., United States v. U.S. Dist. Ct. for E. Dist. of Mich.*, 407

U.S. 297, 320 (1972) (“We cannot accept the Government’s argument that internal security matters are too subtle and complex for judicial evaluation. . . . There is no reason to believe that federal judges will be insensitive to or uncomprehending of the issues involved in domestic security cases.”). When the District Court reviewed the evidence before it, it found that “halting construction would [not] in any way jeopardize national security,” App’x 59a n.20—a finding that the Executive makes no effort to show to be clearly erroneous, Fed. R. Civ. P 52(a); *see also infra* at pp. 16-17. Instead, implicitly conceding it cannot prevail under the appropriate standard, the Executive improperly submits a mountain of new evidence for this Court to wade through. But quantity of evidence is no substitute for quality, and nothing in the new submissions (even if they could be properly considered) warrants a different outcome.

Despite the many reasons to doubt the Executive’s belated security rationalization, the courts below bent over backwards to accommodate them by expressly allowing the Executive to take all actions needed for safety and security. App’x 286a-287a. Thus, the District Court “exclude[d] construction necessary to ensure the safety and security of the White House from the scope of the injunction.” App’x. 60a. The District Court explicitly allowed “below-ground construction, including . . . construction of national security facilities,” as well as above-ground construction needed to “cover, secure, and protect such national security facilities.” App’x 232a.

The Executive dismisses the accommodation it received because the injunction “would still block construction of the ballroom.” App. 35. But beyond generic invocations of “integrated national-security features,” the application is sparse on

details on why a *ballroom* is vital to national security. The best it can muster is a complaint that “it is anyone’s guess what the district court might approve as ‘strictly necessary.’” App. at 35. This ignores that the District Court explicitly authorized the Executive to take substantial steps in response to the Executive’s specific security concerns. If the Executive had further concerns, it could seek (as it already has once) clarification from the District Court. App’x 231a-234a. And, going forward, if the District Court’s injunction becomes unworkable or if new threats to national security arise, the proper course of action is to present those concerns to the District Court for resolution in the first instance. The Executive did none of that, hoping to leverage its undefined worries about the scope of the injunction into complete nullification.

B. Safety and Security Concerns Do Not Excuse Executive Lawlessness

Even if the Executive’s safety and security concerns were substantial, that would not excuse a violation of a constitutionally valid statute. The equitable nature of the Executive’s application does not change that one bit, as no one can “obtain through equity that which the law . . . forbids.” *Reno v. Bossier Par. Sch. Bd.*, 520 U.S. 471, 485 (1997).

The invocation of national security is not a magic incantation that suspends the rule of law. Threats come and go but the power to write, amend, and repeal laws remains vested in Congress, and neither the Executive nor the Judicial Branch can ignore its commands based on even the most sincere and urgent safety or security concerns. “The Founders of this Nation entrusted the law making power to the Congress alone in both good and bad times.” *Youngstown Sheet & Tube Co.*, 343 U.S.

at 589; *see also id.* at 645-46 (Jackson, J., concurring) (“No penance would ever expiate the sin against free government of holding that a President can escape control of executive power by law through assuming his military role.”). Thus, if the Executive were to argue that it has no obligation to follow the plain language of a statute because of safety, security, or any other policy rationale, this Court would properly reject that position, as it has many times before. *E.g., BP P.L.C. v. Mayor & City Council of Baltimore*, 593 U.S. 230, 245 (2021) (“[E]ven the most formidable’ policy arguments cannot ‘overcome’ a clear statutory directive.” (quoting *Kloeckner v. Solis*, 568 U.S. 41, 56, n. 4 (2012))). Indeed, the lessons of history caution against allowing Executive Branch claims of “[p]ressing public necessity” to surpass the solemn duties of the law. *Korematsu v. United States*, 323 U.S. 214, 216 (1944), *abrogation acknowledged in Trump v. Hawaii*, 585 U.S. 667, 710 (2018). Yet such is essentially the result the Executive urges here, claiming that its policy concerns—smuggled in through the language of equity—*prohibit* the courts from holding it to its statutory obligations. *See App.* at 39-40.

Not so. What it cannot do under law, the Executive also cannot “obtain through equity.” *Bossier Par. Sch. Bd.*, 520 U.S. at 485. Consistent with the constitutional structure, “it is well established that ‘[c]ourts of equity can no more disregard statutory and constitutional requirements and provisions than can courts of law.’” *INS v. Pangilinan*, 486 U.S. 875, 883 (1988) (quoting *Hedges v. Dixon Cnty.*, 150 U.S. 182, 192 (1893)). “[A] court sitting in equity cannot ‘ignore the judgment of Congress, deliberately expressed in legislation.’” *United States v. Oakland Cannabis Buyers’ Co-op.*, 532 U.S. 483, 497 (2001) (quoting *Virginian R. Co. v. Railway Employees*, 300

U.S. 515, 551 (1937)). And this Court has rejected as “despotic” the suggestion that a court of equity possesses “unbounded jurisdiction” for “correcting, controlling, moderating, and even superseding the law.” *Grupo Mexicano de Desarrollo S.A. v. All. Bond Fund, Inc.*, 527 U.S. 308, 332 (1999) (quoting 1 J. Story, Commentaries on Equity Jurisprudence § 19, at 21).

None of this means that an injunction must follow from every statutory violation. See *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006). In fact, the lower courts exercised their discretion to “authorize[] construction that would be unlawful under [their] view of the merits.” App. 39. But the question here is not whether this Court would have balanced the equities precisely as the District Court did. It is whether the District Court *abused its discretion* in forbidding the Executive from doing what Congress has banned. Nothing in the constitutional structure or in the historical practice of equity supports that conclusion, which misunderstands “the general role of equity in our ‘government of laws, not of men.’” *Grupo Mexicano*, 527 U.S. at 321.

Nor does *Winter* help the Executive’s position. The plaintiffs there did not contend that Congress had prohibited the Navy’s training exercises—only that the Navy had to complete an environmental study first. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 32 (2008). And the exercises had proceeded for forty years without a single “documented episode of harm.” *Id.* at 33. Here, Congress did not provide a procedural detour on the way to the ballroom: It forbids the project outright. And here, the harm is occurring now, and, by the Executive’s own account, is irreparable. See *infra* at p. 24. Equity is fully empowered to enforce Congress’s judgment.

This Court refused to elevate equity above law when it enjoined a rule the Executive insisted would “save over 6,500 lives and prevent hundreds of thousands of hospitalizations.” *NFIB*, 595 U.S. at 120. It was not the Court’s “role to weigh” the Executive’s equitable concerns; “[i]n our system of government, that is the responsibility of those chosen by the people through democratic processes.” *Id.* So too here, where the stakes are a construction schedule rather than the lives and health of thousands. If the Executive Branch finds its legal obligations too confining, its remedy lies with Congress, not with this Court.

III. The Executive’s Actions Have Stymied Orderly Judicial Review

A. The Executive’s Application Flouts the Structure of Article III and Historical Practice by Introducing New Evidence and Ignoring Rules of Deference

Since *Marbury v. Madison*, this Court has recognized that this Court’s power is one of appellate review; the Court does not act as a trial court except when specifically authorized by the Constitution. 5 U.S. (1 Cranch) 137 (1803). This Constitutional allocation of judicial power ensures that the Supreme Court can fulfill its core function to develop a uniform body of federal law, while courts with greater institutional capacity for fact-finding and error correction can resolve the bulk of disputes presented to the judiciary. The process also ensures that the parties can establish a set record, refine their arguments, and narrow the set of disputes to only those that require higher court intervention.

The deeply embedded structure of Article III is reflected today in several overlapping doctrines. Although this Court need not follow statutory interpretations adopted by either lower courts or the Executive Branch, *Loper Bright Enters. v.*

Raimondo, 603 U.S. 369, 412 (2024), findings of fact, “whether based on oral or other evidence, must not be set aside unless clearly erroneous.” Fed. R. Civ. P. 52(a). This standard governs “even when the district court’s findings do not rest on credibility determinations, but are based instead on physical or documentary evidence or inferences from other facts.” *Anderson v. City of Bessemer City*, 470 U.S. 564, 574 (1985). Moreover, reflecting the “discretion that courts have traditionally exercised when faced with requests for equitable relief,” *Starbucks Corp. v. McKinney*, 602 U.S. 339, 347 (2024), discretionary judgments—such as weighing the harms to the parties or crafting the scope of an injunction—are reviewed for an abuse of discretion. *eBay Inc.*, 547 U.S. at 391. And when cases are appealed, it is based on the arguments and record developed by the litigants in the courts below. *See, e.g., Witters v. Washington Dep’t of Servs. for the Blind*, 474 U.S. 481, 488 n.3 (1986). As this Court has repeatedly reminded litigants, this Court is “a court of review, not of first view.” *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005).

The Executive’s application ignores every one of these structural rules. To start, the introduction of new evidence for the first time in this Court flouts centuries of practice. *Witters*, 474 U.S. at 486 n.3. Indeed, it has been a longstanding rule that “[t]his court must affirm or reverse upon the case as it appears in the record. ... [A]ccording to the practice of the court of chancery from its earliest history to the present time, no paper not before the court below can be read on the hearing of an appeal.” *Russell v. Southard*, 53 U.S. (12 How.) 139, 159 (1851); *accord, e.g.*, 2 Stat. 244, § 2 (“no new evidence shall be received” in the Supreme Court). These

longstanding limits on equitable practice control to this day. *See, e.g., Grupo Mexicano*, 527 U.S. at 318.

Moreover, even as the Executive demands seemingly unquestioned deference to itself, it does not even acknowledge the deference due to the District Court’s weighing of the evidence or factual findings. For example, the District Court carefully reviewed the evidence the Executive submitted and made a finding that “halting construction would [not] in any way jeopardize national security.” App’x 59a n.20. The Executive never once mentions the clear error standard, but simply urges the Court to reweigh the evidence itself. App. 33-34. Yet under clear error standard, a “reviewing court oversteps the bounds of its duty under Rule 52(a) if it undertakes to duplicate the role of the lower court.” *City of Bessemer City*, 470 U.S. at 573. Similarly, although the Executive briefly nods to the governing abuse-of-discretion standard, App. 38, its argument does not engage with the standard in any meaningful way. A stay “is not a matter of right, even if irreparable injury might otherwise result”; it is “an exercise of judicial discretion,” and the applicant “bears the burden of showing that the circumstances justify” it. *Nken v. Holder*, 556 U.S. 418, 433–34 (2009). The Executive cannot meet a burden it refuses to acknowledge.

It is not simply that the Executive’s extraordinary request here exudes disrespect to the role and the efforts of other members of the federal judiciary (although it does). It is also disrespectful to the role that *this* Court occupies in our Constitutional structure. And granting relief on this basis would announce a rule with consequences well beyond this case: that a party who loses on the record it assembled over months of litigation may obtain a second bite here by submitting new

evidence and demanding a new ruling within days. The expectation that this Court perform the work of a trial court takes the Court away from its “principal responsibility ... to ensure the integrity and uniformity of federal law.” *Kansas v. Marsh*, 548 U.S. 163, 183 (2006) (Scalia, J., concurring).

The orderly course is to let this litigation proceed. If the Executive believes the record it developed below is incomplete, it may seek to supplement that record in the District Court. The District Court can then resolve remaining issues, and the case can reach this Court, if at all, on a record and in a posture suited to review. *See AARP v. Trump*, 605 U.S. 91, 96 (2025) (directing lower courts to proceed “expeditiously” in light of “the significance of the Government’s national security interests as well as the necessity that such interests be pursued in a manner consistent with the Constitution”). The desire for a ballroom or maintaining a construction schedule is no reason to displace the ordinary processes of judicial review that have served this Nation for centuries.

B. The Executive’s Assertion that Its Rushed Construction Is Irreparable Weighs Strongly Against a Stay

Marbury v. Madison stands for another important principle: the federal judiciary has the power to address lawless action by the other branches of government. 5 U.S. at 163 (“The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right.”). The injunction issued in this case is a routine application of this settled authority.

The Executive Branch openly bristles at the notion the Judiciary can require it to follow the laws passed by Congress, App. 39-40, and it has done all it can to evade judicial review for this project. First, it sought to rush the project through before anyone could stop it. With little warning and no consultations with Congress, over just 3 days, the President “unilaterally ... destroyed a large portion of the White House structure.” App’x 351a. Then, when initially haled into Court, the Executive successfully avoided a preliminary injunction by assuring the Court that “nothing about the ballroom has been finalized, including its size and scale.” App’x 3a. The District Court relied on these representations and specifically noted that “[i]f there is any below-grade construction that dictates the size or scale of the proposed ballroom before the Court can act on plaintiff’s motion for a preliminary injunction, then the Government should be prepared to take it down depending on the Court’s resolution of the merits.” App’x 3a. The Executive agreed, asserting that the work that was ongoing would not necessarily preclude revisiting the above-ground components. App’x 3a. When that argument no longer suited it, however, the Executive changed course and now claims the opposite. App. at 7. And then the executive exploited the delay caused by the Court of Appeals’ stay to push construction forward at a breakneck pace, apparently seeking to out-race judicial review.

The Executive now claims it won that race. Citing a declaration signed just days ago, App’x 441a, the Application contends that the project now has “gone beyond the point of judicial intervention.” App. 40. Thus, it suggests, no court—not even this Court—can stop it from proceeding. App’x 354a. This new argument and new evidence should be presented in the first instance to the District Court, where it can

be subjected to adversarial testing to see if the Executive has carried its “formidable burden” of showing that the case is moot. *Fed. Bureau of Investigation v. Fikre*, 601 U.S. 234, 241 (2024). The District Court is best positioned to determine how to proceed *with* the injunction in place.

The Executive’s argument of irreversibility compellingly demonstrates why the injunction is needed. By the Executive’s own telling, it was its own exploitation of the earlier stays of the district court’s injunction that allowed the situation to reach this point. App. at 40. And the more irreversible the construction is, the more compelling the case for stopping it now becomes. Indeed, “the basis for injunctive relief in the federal courts has always been irreparable injury.” *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982). An injunction is most warranted precisely where delay would make the injury permanent, since a key “purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held.” *Lackey v. Stinnie*, 604 U.S. 192, 200 (2025)). Such relief also preserves the courts’ jurisdiction to adjudicate the issues at stake and afford effectual relief. See *FTC v. Dean Foods Co.*, 384 U.S. 597, 604 (1966). Otherwise, the Executive Branch will continue to build until the project is a *fait accompli*, having evaded the checks on its power from both other Branches. App’x 353a.

CONCLUSION

For the foregoing reasons, the Court should deny the application for a stay of the district court’s injunction.

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