

IN THE
Supreme Court of the United States

NATIONAL PARK SERVICE, *et al.*,
Petitioners,

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

OPPOSITION TO PETITIONERS' APPLICATION FOR A STAY

Thaddeus A. Heuer
Counsel of Record
Matthew F. Casassa
Jack C. Smith
Kevin Y. Chen
FOLEY HOAG LLP
155 Seaport Boulevard
Boston, MA 02210
Tel. (617) 832-1000
theuer@foleyhoag.com
mcasassa@foleyhoag.com
jcsmith@foleyhoag.com
kchen@foleyhoag.com

Gregory B. Craig
FOLEY HOAG LLP
1717 K Street N.W.
Washington, DC 20006
Tel. (202) 223-1200
gcraig@foleyhoag.com

*Counsel for Respondent National Trust for
Historic Preservation in the United States*

TABLE OF CONTENTS

INTRODUCTION.....	1
STATEMENT.....	5
ARGUMENT.....	14
I. A Stay Will Irreparably Harm The National Trust And Denial Will Not Harm Petitioners.....	16
II. The Court Is Not Likely To Grant Certiorari And Reverse.	24
A. The National Trust Has Standing.....	24
B. Petitioners Are Unlikely To Succeed On The Merits For Multiple, Independent Reasons.....	31
a. Section 100101(a) Does Not Authorize the Ballroom.....	33
b. Section 105(d) Does Not Authorize the Ballroom.....	35
CONCLUSION.....	40

TABLE OF AUTHORITIES

Cases	Page(s)
<i>In re Aiken Cnty.</i> , 725 F.3d 255 (D.C. Cir. 2013)	20
<i>Ala. Ass’n of Realtors v. Dep’t of Health & Human Servs.</i> , 594 U.S. 758 (2021)	15, 20
<i>Am. Canoe Ass’n v. Murphy Farms, Inc.</i> , 326 F.3d 505 (4th Cir. 2003)	26
<i>Armstrong v. Bush</i> , 925 F.2d 282 (D.C. Cir. 1991)	35
<i>Bank of Am. Corp. v. City of Miami</i> , 581 U.S. 189 (2017)	35
<i>Clark v. Cmty. for Creative Non-Violence</i> , 468 U.S. 288 (1984)	18
<i>Ctr. for Biological Diversity v. U.S. Fish & Wildlife Serv.</i> , 146 F.4th 1144 (D.C. Cir. 2025)	25, 26
<i>Cummings v. Missouri</i> , 71 U.S. 277 (1867)	38
<i>Deal v. United States</i> , 508 U.S. 129 (1993)	39
<i>Envtl. Def. Fund v. FERC</i> , 2 F.4th 953 (D.C. Cir. 2021)	28
<i>FDA v. All. for Hippocratic Med.</i> , 602 U.S. 367 (2024)	28
<i>Friends of the Earth, Inc. v. Laidlaw Envtl. Services (TOC), Inc.</i> , 528 U.S. 167 (2000)	25, 27, 31
<i>Hollingsworth v. Perry</i> , 558 U.S. 183 (2010)	14
<i>Home Bldg. & Loan Ass’n v. Blaisdell</i> , 290 U.S. 398 (1934)	19
<i>Humane Soc’y v. Hodel</i> , 840 F.2d 45 (D.C. Cir. 1988)	30, 31
<i>Johnson v. Mayor, City of Jacksonville</i> , 178 F.4th 1240 (11th Cir. 2026)	28

<i>King v. St. Vincent’s Hosp.</i> , 502 U.S. 215 (1992)	40
<i>Kleppe v. New Mexico</i> , 426 U.S. 529 (1976)	19
<i>Learning Res., Inc. v. Trump</i> , 607 U.S. 229 (2026)	2, 20, 39
<i>Lemon v. Geren</i> , 514 F.3d 1312 (D.C. Cir. 2008)	27
<i>Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach</i> , 523 U.S. 26 (1998)	34
<i>Lujan v. Defs. of Wildlife</i> , 504 U.S. 555 (1992)	25
<i>Met. Wash. Airports Auth. v. Citizens for the Abatement of Aircraft Noise, Inc.</i> , 501 U.S. 252 (1991)	18
<i>NCUA v. First Nat’l Bank & Tr. Co.</i> , 522 U.S. 479 (1998)	3, 21, 33, 35, 38
<i>Nken v. Holder</i> , 556 U.S. 418 (2009)	15, 24
<i>Nuclear Reg. Comm’n v. Texas</i> , 605 U.S. 665 (2025)	35, 36, 39
<i>SEC v. Sloan</i> , 436 U.S. 103 (1978)	34
<i>Sierra Club v. Jewell</i> , 764 F.3d 1 (D.C. Cir. 2014)	25
<i>Sierra Club v. Kimbell</i> , 623 F.3d 549 (8th Cir. 2010)	26
<i>Sierra Club v. Morton</i> , 405 U.S. 727 (1972)	25, 27
<i>Steel Co. v. Citizens for a Better Eenvt.</i> , 523 U.S. 83 (1998)	29
<i>Steward Mach. Co. v. Davis</i> , 301 U.S. 548 (1937)	36
<i>Summers v. Earth Island Inst.</i> , 555 U.S. 488 (2009)	25, 28

<i>Sweetland v. Walters</i> , 60 F.3d 852 (D.C. Cir. 1995)	9, 36
<i>Trump v. Cook</i> , 609 U.S. ___, 2026 LX 364798 (June 29, 2026)	36
<i>Valley Forge Christian College v. Ams. for Separation of Church & State</i> , 454 U.S. 464 (1982)	28
<i>Whitman v. Am. Trucking Ass’ns</i> , 531 U.S. 457 (2001)	39
<i>WildEarth Guardians v. EPA</i> , 759 F.3d 1196 (10th Cir. 2014)	26
<i>Williams v. Zbaraz</i> , 442 U.S. 1309 (1979)	14
<i>Winter v. Nat. Res. Def. Council</i> , 555 U.S. 7 (2008)	19, 20
<i>Youngstown Sheet & Tube Co. v. Sawyer</i> , 343 U.S. 579 (1952)	2, 15, 19, 20
Statutes	
3 U.S.C. § 105	37
3 U.S.C. § 105(d)	8, 9, 32, 35, 36, 37, 38, 39, 40
31 U.S.C. § 1301(a)	32, 37
40 U.S.C. § 8106	2, 5, 6, 19, 21, 31, 32, 33, 34, 35, 36, 39
40 U.S.C. § 8722(b)	6
40 U.S.C. § 8722(d)	6
42 U.S.C. § 4332(2)	6
42 U.S.C. § 4336	6
42 U.S.C. § 4336(b)	7
54 U.S.C. § 100101	10, 32
54 U.S.C. § 100101(a)	10, 32, 33, 34
54 U.S.C. § 100101(b)	6, 11, 34
54 U.S.C. § 102901(a)	31
54 U.S.C. § 304101(a)	30
54 U.S.C. § 308602(b)	30, 31
54 U.S.C. § 308703	30

54 U.S.C. § 312102(a).....	5, 30, 31, 35
54 U.S.C. § 312102(b).....	31
54 U.S.C. § 312105(g).....	31
54 U.S.C. § 312105(k).....	31
54 U.S.C. § 320101	30, 31
45 Stat. 534 (1928)	40
46 Stat. 229 (1930)	40
Pub. L. No. 81-759, 64 Stat. 595 (1950)	40
Pub. L. No. 88-39, 77 Stat. 58 (1963)	40
Pub. L. No. 95-570, 92 Stat. 2445 (1978)	40
Pub. L. No. 101-121, 103 Stat. 701 (1989)	30
Pub. L. No. 118-47, 138 Stat. 460 (2024)	8, 32
Pub. L. No. 119-4, 1102 Stat. 9 (2025)	8
Pub. L. No. 119-75, 140 Stat. 173 (2026)	8
Constitutional Provisions	
U.S. Const. Ar. I, § 8, cl. 17	31
U.S. Const. Art. III	25, 27, 28
U.S. Const. Art. IV, § 3, cl. 2	2, 4, 5, 6, 18, 19, 20, 31
Regulations	
45 C.F.R. § 2101.1(a)	6
45 C.F.R. § 2101.2(b).....	6
Administrative Proceedings	
18 Comp. Gen. 262 (1938).....	38
52 Comp. Gen. 128 (1972).....	38
Treatises	
Joseph Story, Commentaries on the Constitution of the United States § 1319.....	19
Other Authorities	
Donald J. Trump, Truth Social, https://truthsocial.com/@realDonaldTrump/posts/116337483523761845 (Apr. 2, 2026).....	2

NPS, <i>Foundation Document: The White House & President’s Park</i> (Sept. 2014), available at https://www.nps.gov/whho/planyourvisit/upload/WHHO_FD_2015-508-accessible-resize.pdf (last accessed May 26, 2026)	6
NPS, <i>The White House and President’s Park</i> , https://www.nps.gov/whho/index.htm	1
Press Release, The White House, The White House Announces White House Ballroom Construction to Begin (July 31, 2025), https://perma.cc/6N2H-RLE9	6

INTRODUCTION

Federal law contains a panoply of provisions designed to protect historic buildings, parks, and places, including perhaps the most revered site in our nation: the White House and President’s Park. “[O]wned by the American people,” the White House is “more than the President’s residence;” it is integral to the “national discourse about what it means to be American.”¹ Each court to examine the question has agreed that Petitioners have no unilateral legal authority—constitutional, statutory, or otherwise—to build a massive ballroom on the site of the now-demolished East Wing. And each court has told Petitioners in no uncertain terms that they must stop their illegal construction unless and until they receive express approval from Congress. *See* App.27a, App.263a-264a.

Petitioners, however, insist they will keep building—no matter what anyone says. App.354a (“When asked ‘[w]hen ... it bec[a]me impossible for courts to stop this project,’ the Defendants stated point-blank: ‘[I]t would have been improper to enjoin it even on day one.’”); *id.* (“Question: ‘So if this were complete lawlessness by the [g]overnment ... , [it] couldn’t be stopped?’ Answer: ‘On these theories, I think that’s right.’”). More astonishing is Petitioners’ declaration that they are on the brink of a *fait accompli*. They tell this Court that because the ballroom is being built with the type of concrete used “in nuclear power plants,” it will soon be “virtually impossible to deconstruct.” App.443a. That striking admission decides this application. Absent an injunction, Petitioners candidly contend that if the ballroom were “ordered to be taken down, or even altered, by the court, there would

¹ NPS, *The White House and President’s Park*, <https://www.nps.gov/whho/index.htm>.

be no way to do so.” App.445a. That is the essence of irreparable harm.

The Constitution vests Congress with sole and preclusive authority over federal property. U.S. Const. Art. IV, § 3, cl. 2. And in our system of separated powers, when Congress tells the President that he cannot exercise its powers without “express authority,” 40 U.S.C. § 8106, and then proceeds to withhold that authority from him, there is nothing that the President can lawfully do *except* ask Congress for permission. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952); *see Learning Res., Inc. v. Trump*, 607 U.S. 229, 300 (2026) (Gorsuch, J., concurring) (explaining that while “it can be tempting to bypass Congress when some pressing problem arises ... the deliberative nature of the legislative process was the whole point of its design”).

Rather than obtain permission from Congress, Petitioners have instead decided to try to outrun judicial review. When the district court first enjoined ballroom construction in March 2026, above-ground work had not even begun.² It took the D.C. Circuit only four months to affirm the district court’s injunction—after highly expedited appellate proceedings during which the injunction was administratively stayed due largely to Petitioners’ assertions of emergency, *see* App.256a, App.284a-288a. While the D.C. Circuit deliberated, Petitioners accelerated construction, with a 250-person crew “working 20 hours a day, 7 days a week,” in an effort to put their illegal ballroom “beyond ... judicial intervention” for good. Br.40; *see* App.442a, App.445a-446a.

² A photograph posted to social media by the President several days after the district court entered its preliminary injunction reflects essentially no above-ground construction having commenced at the East Wing’s former site. *See* Donald J. Trump, Truth Social, <https://truthsocial.com/@realDonaldTrump/posts/116337483523761845> (Apr. 2, 2026).

Petitioners’ stay application should be denied for three reasons.

First, it is the National Trust, not Petitioners, that will suffer irreparable harm if a stay is granted. Petitioners’ application asserts the ballroom will “be substantially finished by November 2026,” and once completed will be “virtually impossible to deconstruct” or even alter. App.442a, App.445a. Petitioners make no secret of the fact that if the Court permits construction to continue, they will declare the case over. *See, e.g.*, Br.40 (asserting the ballroom is “beyond the point” of return); *id.* (asserting that courts “should not try” to enjoin construction at the White House); App.354a (“Question: ‘And so your position is [that] this can’t be stopped by a court? ... That [the district] court, [the D.C. Circuit], the Supreme Court, no court could stop the building of this today?’ Answer: ‘Yes.’” (quoting Oral Arg. Tr. 74:18-75:20)). The injuries to the National Trust, its members, and the public from the unauthorized construction of the ballroom—catalogued by Petitioners’ own Environmental Assessment and already found to be irreparable by the lower courts—will in all likelihood become irreversible. App.54a-59a, App.342a-346a, App.356a-359a.

By contrast, Petitioners will not be harmed in the absence of a stay. The preliminary injunction does not prevent them from building the underground bunker that, until the preliminary injunction entered in March 2026, was their sole articulated national-security concern. *See* App.237a (district court explaining “throughout this case, Defendants raised discrete national security concerns about construction of *underground* elements” and “distinguished between below-ground and above-ground construction”). And even if the Court granted the application, Petitioners would not have a usable ballroom until “a short number of months before the end” of the President’s term in January 2029. App.441a. The

posture here is thus unlike traditional emergency national-security stay applications, in which this Court's decision immediately affects the nation's security by permitting a program to take effect at once. Further, Petitioners suffer no cognizable harm from being unable to exercise powers the Constitution affirmatively denies them or by being unable to convert their illegal project into a *fait accompli* before the courts can review it.

Second, the preliminary injunction is already narrowly tailored, and limited in scope and duration. It expressly allows Petitioners to continue building their underground military facility, to protect the President, his family, and his staff, and to maintain the safety and security of the White House complex. App.62a-64a, App.349a. To the extent Petitioners fear delay, the National Trust would not oppose an expedited procedure by which the Solicitor General would file a certiorari petition within one week, the Trust would file its response one week later, and—should the Court grant certiorari—merits briefing would be expedited so the case could be argued in the October or November sitting. Even accepting Petitioners' national-security claims in full, whatever harm may be occasioned by a few additional weeks or months of delay (while this Court resolves the issues presented by the forthcoming petition) of a project that will not be complete for years is far outweighed by the irreparable harm of the completion of a structure at the White House that Petitioners themselves assert will be “virtually impossible to deconstruct.” Br.4.

Third, as every court that has reviewed the issue has agreed, Petitioners have not shown they are likely to succeed on the merits. The Property Clause vests exclusive control over all federal property in Congress, as Petitioners concede. App.265a. And Congress has put “a statutory exclamation point,” *id.*, on its constitutional authority over federal property

in the District of Columbia by prohibiting the erection of any “building or structure” in the District’s federal parks “without express authority of Congress,” 40 U.S.C. § 8106. Petitioners cannot identify any statute granting them “express authority” to destroy a third of the White House and replace it with a massive, privately funded ballroom, because none exists. And the National Trust—chartered by Congress “to facilitate public participation in the preservation of sites, buildings, and objects of national significance or interest,” 54 U.S.C. § 312102(a)—has standing to challenge the project through the immediate and concrete injury to its members.

In the end, the question is not “whether the proposed ballroom is desirable, or not, as a matter of policy.” App.264a. Nor is it even whether Petitioners may ultimately construct the ballroom. *Id.* The question is simply who decides whether a ballroom can be built on federal property. Our constitutional system and federal law commits that choice to Congress. U.S. Const. Art. IV, § 3, cl. 2. If Petitioners believe there is a pressing need for a ballroom, nothing prevents them from asking Congress for one—today, tomorrow, or any time in the future. But Petitioners’ efforts to foil judicial review and arrogate Congress’s exclusive powers should not be rewarded with a stay that allows Petitioners to complete a ballroom they lacked any authority to commence in the first place.

Petitioners’ application for a stay should be denied.

STATEMENT

1. In July 2025, a White House press release announced the planned construction of a White House ballroom. The press release stated that “[i]n recent weeks” the President had “held several meetings” with NPS, White House staff, and others to discuss “design

features and planning” of the ballroom, which would be “substantially separated from the main building of the White House.”³ It assured that the President was “fully committed to working with the appropriate organizations to preserv[e] the special history of the White House” and stated that the project would begin in September 2025. *Id.*

Like all federal construction projects, the ballroom must be authorized by Congress, in which the Property Clause of the Constitution vests plenary control over federal property and lands. U.S. Const. Art. IV, § 3, cl. 2. Where, as here, a project involves erection of a “building or structure” on D.C. federal parkland, that authorization must be “express.” 40 U.S.C. § 8106. Additionally, where a project impairs the foundational historic resources of a national park—for President’s Park, the “White House and [its] Wings”⁴—Congress must “directly and specifically” authorize those adverse actions. 54 U.S.C. § 100101(b)(2).

Even after being authorized by Congress, projects must still comply with numerous federal laws. Before work can begin on major D.C. federal construction projects, the lead agency must conduct and publish environmental reviews under the National Environmental Policy Act (“NEPA”), seek review by the Commission of Fine Arts, and secure approval from the National Capital Planning Commission. 40 U.S.C. § 8722(b), (d); 42 U.S.C. §§ 4332(2), 4336; 45 C.F.R. §§ 2101.1(a)(1), 2101.2(b).

In August 2025, NPS conducted a NEPA environmental assessment (“EA”). *See*

³ Press Release, The White House, *The White House Announces White House Ballroom Construction to Begin* (July 31, 2025), <https://perma.cc/6N2H-RLE9>.

⁴ NPS, *Foundation Document: The White House & President’s Park* (Sept. 2014), available at https://www.nps.gov/whho/planyourvisit/upload/WHHO_FD_2015-508-accessible-resize.pdf, 11-12 (last accessed August 18, 2026).

App.148a-195a, App.275a-277a. NPS concluded the ballroom would have numerous and “permanent adverse impacts on the cultural landscape” of President’s Park. App.175a. Per NPS, the ballroom would (among other things) “disrupt the historical continuity of the White House grounds,” “chang[e] the traditional spatial organization and sightlines,” and permanently alter the views of President’s Park for visitors in “certain locations, particularly Lafayette Square and portions of the Ellipse.” App.154a, App.183a. Incongruously, NPS nevertheless purported to find the project would have no “significant” impact because the White House would retain photographs and “salvage and stor[e] ... select historic building materials.” App.154a; *see* App.276a-277a. NPS then illegally failed to publish its EA or the accompanying finding of no significant impact (“FONSI”). *See* 42 U.S.C. § 4336(b)(2) (an EA must be a “concise public document”); App.277a.

On October 20, 2025, without any advance warning, the President posted on social media that “ground ha[d] been broken on the White House grounds to build the new, big, beautiful White House Ballroom.” App.7a. At the same time, various news outlets began reporting on the demolition of the East Wing. The National Trust urged NPS to pause demolition and construction, to no avail. App.8a. Within three days, the East Wing had been entirely bulldozed. App.7a. In the weeks that followed, Petitioners began construction at the East Wing site, despite not having even begun most of the required reviews and without having obtained the necessary authorization from Congress.

2. With no sign that Petitioners would comply with the law involving the most significant White House exterior construction project in over a century, the Trust sued. App.8a. The Trust alleged Petitioners were violating the Property Clause and the separation

of powers by building the ballroom without Congress’s authorization, and asserted APA claims. The Trust also moved for a temporary restraining order and preliminary injunction.

In the months that followed, Petitioners advanced a series of shifting and facially contradictory positions regarding the nature of—and their authority for—the ballroom project. In December 2025, Petitioners claimed authority to construct the ballroom under the Reception Clause of the Constitution and 3 U.S.C. § 105(d),⁵ asserted that NPS was uninvolved, and declared that the ballroom was independent of the bunker. By January 2026, Petitioners had disclaimed any constitutional authority and relied solely on § 105(d). In March 2026, Petitioners changed their tune again, asserting that far from being uninvolved, NPS (and its Organic Act) formed the foundation of their authority. And after the preliminary injunction entered in April 2026, they dropped their assertion that the ballroom was independent of the bunker, and began asserting that the two were inseparable.

Start with Petitioners’ December 2025 opposition to the National Trust’s motion for preliminary relief. Although NPS historically manages major construction in President’s Park, its final actions are subject to APA review. Petitioners asserted that EXR—an entity the district court held was likely *not* subject to APA review, and that historically has been responsible for tasks like “greet[ing] visitors,” “prepar[ing] and serv[ing] meals,” and

⁵ Section 105(d)(1) authorizes Congress to appropriate funds for “care, maintenance, repair, alteration, refurnishing, improvement, air-conditioning, heating, and lighting (including electric power and fixtures) of the Executive Residence at the White House,” and permits the President to spend only “[s]ums appropriated under” § 105(d). In 2024 and each year since, Congress appropriated \$2.475 million under § 105(d) for “required maintenance, resolution of safety and health issues, and continued preventative maintenance.” Pub. L. No. 118-47, 138 Stat. 460 (2024); Pub. L. No. 119-4, §§ 1101(a)(5), 1102, 139 Stat. 9, 11-12 (2025); Pub. L. No. 119-75, 140 Stat. 173, 451 (2026); *see* App.270a-271a.

flower arranging, *Sweetland v. Walters*, 60 F.3d 852, 854 (D.C. Cir. 1995)—was “managing the project,” App.120a. They also claimed the Trust’s suit was “unripe” because “architectural design for the above-grade elements [wa]s still in progress” and “above-grade structural work w[ould] not occur until April 2026, at the earliest.” App.280a.

At a December 16, 2025 hearing on the Trust’s motion for a temporary restraining order, Petitioners doubled down. They repeatedly assured the district court that there was “nothing here to suggest” that future changes to the ballroom “would be impossible” or that “anything irreversible” would occur during underground construction. App.280a. And they insisted there was “no agency action for [the] Court to enjoin” because the project was “being planned, directed, and executed by” EXR, not by NPS. App.279a.

On December 17, 2025, the district court denied the National Trust’s motion insofar as it sought a temporary restraining order. App.1a-4a. Expressly relying on Petitioners’ representations that “nothing about the ballroom ha[d] been finalized” and that ongoing below-grade work would not lock in the ballroom or its features, the court concluded the Trust had not shown it would suffer irreparable harm without immediate injunctive relief. App.3a. The court declined to reach the other factors, deferred ruling on the Trust’s request for a preliminary injunction, and ordered supplemental briefing. App.4a. However, it warned Petitioners—not for the last time—that “if there is any below-grade construction that dictates the size or scale of the proposed [above-grade] ballroom,” they “should be prepared to take it down” depending on the “resolution of the merits of this case.” App.3a.

In their supplemental brief, Petitioners abruptly changed their litigation position: they disclaimed any constitutional authority for the project, and relied solely on § 105(d).

However, Petitioners continued to assert that the ballroom was “independent” of ongoing below-grade work, App.237a, and that NPS had “no role” beyond funneling hundreds of millions of dollars in private donations to EXR, App.282a—a byzantine funding arrangement to which the National Trust objected as “illegal,” ECF 33 at 9.

On February 26, 2026, the district court ruled on the National Trust’s first motion for a preliminary injunction. App.5a. It concluded the Trust likely had associational standing based on the injury to longtime member Professor Alison K. Hoagland—a D.C. resident, architectural historian, and member of the Trust’s Board. However, it held that since EXR was likely not an APA “agency,” the Trust was unlikely to succeed on its APA claims. App.16a, App.20a. The court did not separately address the Trust’s APA claims against NPS, likely due to Petitioners’ insisting—falsely, as later became evident—that NPS was uninvolved. *See* App.20a. Then, after highlighting Petitioners’ shifting positions—initially asserting constitutional authority before disclaiming it—the district court allowed the Trust to amend its complaint to add *ultra vires* counts. App.26a.

The National Trust promptly amended its complaint and moved again for a preliminary injunction. In their opposition, Petitioners asserted—for the first time—a *second* source of supposed authority for the ballroom: NPS’s Organic Act, 54 U.S.C. § 100101. Petitioners’ eleventh-hour pivot “came as a surprise,” since—as the district court put it—it was “difficult to understand how [they could] rely” on the Act after claiming that NPS “had (and has) no role in directing” the project. App.52a-53a. Besides, § 100101(a) obligates NPS to “*conserve* ... historic objects ... in such manner ... as will leave them unimpaired for the enjoyment of future generations”—not to destroy them, 54 U.S.C.

§ 100101(a). Those obligations are reinforced by § 100101(b)(2), which prohibits administration of national parks “in derogation of the values and purposes for which the [parks] have been established, except as directly and specifically provided by Congress.”

3. On March 31, 2026, the district court granted the National Trust’s second preliminary-injunction motion. The district court concluded the Trust was likely to succeed on the merits of both its § 8106-based APA claim against NPS and its *ultra vires* claims against EXR. App.27a. On the other factors, the district court held that the National Trust had demonstrated that it would suffer “imminent, irreparable harm” without a preliminary injunction. App.58a. The equities and the public interest also favored preliminary injunctive relief, since Petitioners would not be harmed by “an injunction that merely ends an unlawful practice,” and continued construction would deprive the public and their “collective voice” in Congress of the “authority over federal property, including the White House,” that “the Constitution *itself* vests” in Congress[.]” App.59a.

The district court acknowledged Petitioners had asserted that “any delay to construction would imperil national security.” *Id.* But based on its review of “classified *ex parte* declarations” submitted by Petitioners, the court concluded that “an injunction halting construction” would not “in any way jeopardize national security.” *Id.* And “[b]ald assertions of ‘national security,’” the court explained, could not “excuse [Petitioners’] failure to follow the law and then insulate those failures from judicial review.” *Id.*

The district court then enjoined Petitioners from “taking any action in furtherance of the physical development of the proposed ballroom” except “actions strictly necessary to ensure the safety and security of the White House and its grounds” and to “provide for

the personal safety of the President and his staff.” App.63a. It entered a brief stay to permit Petitioners time to appeal, but again gave “fair notice” that “above-ground construction ... not in compliance” with the injunction was “at risk of being taken down.” App.60a.

4. Within hours, Petitioners began concerted efforts to evade the preliminary injunction. Characterizing the ballroom *itself* as “necessary to ... the safety and security of the White House and its grounds,” the President claimed that Petitioners were “allowed to continue building as necessary” under the injunction’s safety-and-security exception. *See* App.235a; ECF 65 at 1-2. Concerned that Petitioners would continue building the entire ballroom based on their patent and intentional misconstruction of the preliminary injunction, the National Trust moved for an order confirming that the safety-and-security exception did *not* permit Petitioners to construct the ballroom.

Several days later, Petitioners sought emergency relief from the D.C. Circuit, claiming for the first time that the ballroom *itself* was necessary for national security and to ensure the President’s safety. App.235a. The motion was challenging to follow and contradicted Petitioners prior representations, and many of its claims had no apparent connection to national security at all. *See* Emergency Mot. for Stay Pending Appeal, *Nat’l Tr. for Hist. Preservation v. Nat’l Park. Serv.*, No. 26-5101, at 1-5 (D.C. Cir. Apr. 3, 2026) (asserting, *inter alia*, concerns about “mold” and “mildew” in the former East Wing). Nevertheless, in an abundance of caution, the D.C. Circuit remanded for the district court to address the Trust’s motion for clarification and Petitioners’ belated and newly asserted national-security concerns, and administratively stayed the injunction. App.212a-215a.

In a superseding preliminary injunction issued the next week, the district court—

describing Petitioners’ self-serving interpretation of the first injunction as “unreasonabl[e],” “extraordinary,” and “incredible, if not disingenuous”—explicitly enjoined “only above-ground construction of the planned ballroom.” App.234a, App.236a, App.238a. The court exempted from its superseding injunction all “below-ground construction of national security facilities, work necessary to provide for presidential security, and construction necessary to protect and secure the White House and the construction site itself.” App.236a.

The district court specifically and directly addressed Petitioners’ contention that national-security imperatives necessitated construction of the entire ballroom-plus-bunker complex. It explained that “throughout this case, [Petitioners] raised discrete national security concerns about construction of *underground* elements.” App.237a. And it also emphasized that Petitioners’ new position—the ballroom *itself* was necessary for national security—was not only “in direct conflict with [their] prior representations that the above-ground and below-ground portions of the project were ‘independent of’ one another,” but was also unsupported by their *ex parte* evidence. App.238a. For a third time, the district court warned that above-ground construction “not in compliance” with the injunction was “at risk of being taken down pending the resolution of this case.” App.243a.

Petitioners again appealed, and again moved for emergency relief from the D.C. Circuit in April 2026. Together with their second motion, Petitioners submitted *another* new affidavit, advancing yet *another* new position. Based on a memorandum drafted that same day, the new affidavit claimed that a ballroom of the “height and mass” desired by the President was a necessary “sacrificial outer cover” for the bunker below—a claim

Petitioners had never previously advanced, despite ample opportunity. App.247a-248a. Without ruling on the merits of Petitioners’ motion, the D.C. Circuit issued an administrative stay, consolidated the motion with its consideration of the merits of the appeal, and set the case for highly expedited briefing and argument. App.256a.

5. On August 7, 2026, after full merits briefing and argument, the D.C. Circuit affirmed the injunction. It first concluded that the National Trust had associational standing based on the injury to Professor Hoagland. App.288a.-310a. Then, it concluded the Trust was likely to succeed on the merits of both its APA and *ultra vires* claims—each of which provided an independently sufficient basis for the injunction. App.310a-342a. As the court explained, Petitioners “very likely lack[ed] statutory authority to construct the ballroom given (i) Congress’s full constitutional control over federal property and the funding of its maintenance and development, (ii) the absence of any express or implied authorization for the ballroom construction, and (iii) express statutory limitations that the ballroom construction violates.” App.263a. Finally, the court concluded the Trust, its members, and the public would likely be irreparably harmed absent a preliminary injunction, and the equities favored relief, App.342a-356a. Judge Rao dissented. App.360a-394a.

ARGUMENT

Petitioners’ application should be denied because they have satisfied none of the conditions necessary for the “extraordinary relief” of a stay. *Williams v. Zbaraz*, 442 U.S. 1309, 1316 (1979) (Stevens, J., in chambers).

To start, the National Trust will be irreparably harmed by a stay, while Petitioners will not be harmed by its denial. *See Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010)

(per curiam). Petitioners have raced to build as much of the ballroom as they can before the injunction goes into effect, proclaiming that “the structure should be substantially finished by November 2026.” App.444a. They do not mince words about what will happen next: “[I]f the building were ... ordered to be taken down, or even altered, by the court, there would be no way to do so.” App.446a. But a stay is meant to preserve the prospect of relief, not foreclose it. *Nken v. Holder*, 556 U.S. 418, 421 (2009) (“A stay ... hold[s] a ruling in abeyance to allow an appellate court the time necessary to review it.”). And the fact that the harm to the Trust, its members, and the public—harm two courts have already found irreparable—will likely become permanent if construction continues is reason to deny the application, not grant it. App.54a-59a, App.342a-346a, App.356a-359a.

Petitioners will not be harmed without a stay. They cannot suffer any injury from being unable to exercise Property Clause powers that the Constitution vests exclusively in Congress. *Youngstown*, 343 U.S. at 582, 585-86; see *Ala. Ass’n of Realtors v. Dep’t of Health & Human Servs.*, 594 U.S. 758, 766 (2021) (“Our system does not permit agencies to act unlawfully even in pursuit of desirable ends.”). And nothing in the district court’s carefully tailored injunction prevents them from continuing work on the bunker, securing the East Wing site, or ensuring the safety of the President, his family, and staff. All the injunction stops is construction of a ballroom without prior congressional approval. Petitioners have not—and cannot—show that being temporarily unable to build that ballroom demands emergency relief.

The application should also be denied because Petitioners are not likely to obtain a grant of certiorari and reversal. *Hollingsworth*, 558 U.S. at 190 (requiring not only “a

reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari” but “a fair prospect that a majority of the Court will vote to reverse the judgment”). The National Trust has standing under decades of well-settled precedent. App.288a-310a, App.7a-17a. And the ballroom is not authorized under either of the two statutes that are independently required for Petitioners to carry out the project. App.310a-342a, App.37a-54a. Instead, neither even “comes close to giving the President the authority he claims to have.” App.27a.

I. A Stay Will Irreparably Harm The National Trust And Denial Will Not Harm Petitioners.

Granting Petitioners’ stay application and permitting construction of the ballroom to continue would likely cause irreparable harm to the National Trust, its members, and the public. Yet the absence of a stay would not harm Petitioners. That gross imbalance of the harms and equities—all caused by Petitioners’ insistence on continuing to build, as much and as fast as they can—requires that the application be denied.

1. Petitioners make no secret of the fact that they are trying to outrun judicial review. Br.7-8; *see, e.g.*, App.442a-446a. Despite not having even commenced above-ground construction when the district court ordered that it “ha[d] to stop[,]” App.60a, and being warned repeatedly they may be required to “take ... down” whatever construction they completed, *id.*, Petitioners assert that during the four months needed for highly expedited appellate proceedings, a “250-person crew working 20 hours a day, 7 days a week” has pushed the project “beyond the point of return.” Br.8.

Nor do Petitioners make any secret of what they will do next. They have rushed

to “install another 1 million pounds of rebar; pour another 3,000 cubic yards of concrete; and make substantial progress on filling in the remaining concrete into the structure” since the injunction was affirmed. App.443a. And they now declare that the “structure should be substantially finished by November 2026.” App.444a; *see* App.442a.

It is clear that in Petitioners’ view, if the Court grants their stay application, this case is over—despite every court to have reviewed their project having found it to be patently unlawful, and no matter the fact that this Court has not reviewed those decisions on the merits. *See* App.354a (detailing Petitioners’ “bold assertion that the Executive can act with utter lawlessness”), App.354a (“Question: ‘And so your position is [that] this can’t be stopped by a court? ... That [the district] court, [the D.C. Circuit], the Supreme Court, no court could stop the building of this today?’ Answer: ‘Yes.’”). As Petitioners put it, “if the building were tragically ordered to be taken down, or even altered, by the court, there would be no way to do so.” App.445a. The ballroom will become “virtually impossible to deconstruct.” App.443a.

The result? The Trust and Professor Hoagland would be irreparably injured, since if Petitioners succeed in completing the ballroom and convincing the courts that challenges to it are beyond judicial remedy, the “[c]oncrete and extensive architectural, historic-preservation, professional, and visual injuries of the types claimed by Professor Hoagland—and factually found by [NPS] itself to be material and permanent results of the ballroom’s planned size and scale,” App.342a-343a—will become irreversible.⁶

⁶ Contrary to Petitioners’ claim (at Br.38), the Trust did not lack diligence; it sued to halt the project before even subterranean construction began and secured an injunction

The public would be irreparably injured, since “[n]ational parklands in the District are ‘unique resources that the Federal Government holds in trust for the American people,’” App.356a (quoting *Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288, 290 (1984)), and “[e]xecutive actions that take control of [the White House] out of the hands of the people’s representative while irreparably harming the historical and visual architecture of perhaps the most prominent public building in the United States seriously intrude on the public interest,” App.359a. “After all, the White House” is a “historic and cultural icon” that “does not belong to any one man—not even a president[.]” App.58a-59a.

Congress, for its part, will be denied “its own expertise and constitutional role in matters of national security and safety,” since Petitioners will have built what they now describe as a major military installation on federal land without Congress’s input and with privately donated funds. App.358a. The separation of powers—which protects not only Congress’s prerogatives but “the liberty and security of the governed”—will be seriously undermined by Petitioners unjustifiably, but successfully, arrogating Congress’s Property Clause powers to themselves. App.359a (quoting *Met. Wash. Airports Auth. v. Citizens for the Abatement of Aircraft Noise, Inc.*, 501 U.S. 252, 272 (1991)). And the “weighty public interest in the preservation and conservation of historic sites on federal property” that “Congress has inscribed into law” will be vitiated. App.356a.

2. In contrast, Petitioners will suffer no irreparable harm in the absence of a stay.

a. To start, all Petitioners’ asserted harms stem from their inability to build the

on the § 8106-based APA claim asserted in its original complaint, App.52a-54a.

ballroom—that is, to exercise Property Clause power that the Constitution vests “complete[ly]” and preclusively in Congress. *Kleppe v. New Mexico*, 426 U.S. 529, 540 (1976); Joseph Story, Commentaries on the Constitution of the United States § 1319 (Congress’s Property Clause power “applie[s] to the due regulation of all ... personal and real property rightfully belonging to the United States”). But Congress has expressly withheld that power from Petitioners, 40 U.S.C. § 8106, and Petitioners have disclaimed any constitutional authority to construct the ballroom of their own, App.10a.

The Executive cannot exercise authority belonging to Congress when Congress has expressly refused to delegate it—no matter the circumstances. *Youngstown*, 343 U.S. at 582-84 (affirming preliminary injunction over the Executive’s assertion that it would cause a “national catastrophe” “endanger[ing] the well-being and safety of the Nation” and “immediately jeopardizing” national defense); *id.* at 637-38 (Jackson, J., concurring) (explaining that the Executive’s authority is at its “lowest ebb” when Congress does not delegate its powers); *Home Bldg. & Loan Ass’n v. Blaisdell*, 290 U.S. 398, 425 (1934) (explaining that the Constitution’s “grants of power ... were determined in the light of emergency” and “are not altered by emergency”). Nor can he suffer any cognizable harm by being unable to exercise powers that the Constitution affirmatively denies him.

Winter is not to the contrary. Br.33, 38-39. It does not follow that because the balance of equities excused the Executive from his procedural obligation to prepare an environmental impact statement there, he can usurp powers that the Constitution vests solely in Congress here. See *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 23-24, 33 (2008); App.355a. While equity does not “mechanically obligate[.]” courts to “grant an injunction

for every violation of law,” *Winter*, 555 U.S. at 32 (citation omitted), neither does it permit looking past “serious implications for our constitutional structure,” *In re Aiken Cnty.*, 725 F.3d 255, 266-67 (D.C. Cir. 2013) (Kavanaugh, J.), or the substantial harms to the National Trust, Professor Hoagland, and the public present here, *supra* pp.16-19. It is unsurprising, then, that this Court has never permitted the President to usurp Congress’s exclusive constitutional powers based on nothing more than his own claim of necessity. *See Youngstown*, 343 U.S. at 582-84.

Nothing prevents the President from going to Congress for permission to build the ballroom. *See Learning Res.*, 607 U.S. at 300 (Gorsuch, J., concurring) (explaining that while “it can be tempting to bypass Congress when some pressing problem arises ... the deliberative nature of the legislative process was the whole point of its design”); App.355a-356a. And Congress surely would make an appropriate delegation of its Property Clause powers if exigent circumstances required it. *See* App.356a. But, again, the solution is to ask Congress, not this Court. *See Ala. Ass’n of Realtors*, 594 U.S. at 766. Put simply, Petitioners’ application is directed to the wrong branch. That ends the matter.

b. Regardless, the carefully circumscribed preliminary injunction accommodates any national-security concerns present here. The district court thoroughly considered Petitioners’ classified evidence and carefully crafted a detailed injunction *authorizing* them to continue working on their subterranean bunker, which to that point had been their sole articulated national-security concern, App.237a (“[T]hroughout this case, [Petitioners] raised discrete national security concerns about construction of *underground* elements.”). After its own detailed review of that evidence—as well as new material Petitioners

submitted (however improperly) for the first time on appeal, App.350a—the D.C. Circuit agreed that the preliminary injunction posed no security risk. App.348a-356a.

Both courts’ conclusions were correct. And none of the three asserted harms that Petitioners identify in their stay application changes the calculus. Br.33-34.

First, Petitioners contend that “every part” of the ballroom project “is an integrated whole.” Br.33. That claim is something of a headscratcher. For one thing, it is “in direct conflict” with Petitioners’ prior representations that the “national security concerns” that drove the “below-surface work” were “*independent of* the above-grade construction.” App.237a. Petitioners try to paper over the contradiction, insisting that they had merely been assuring the district court and the National Trust that below-grade work would not lock in “minor design decisions.” Br.35-36. That is neither tenable nor true. From the very beginning of this case, the National Trust has challenged the Petitioners’ authority to carry out the ballroom project at all. *See* ECF 2-1 at 22-23 (seeking TRO on § 8106 claim). And the Trust and the district court focused on whether below-grade work at the East Wing site would lock in the ballroom’s “footprint,” “height,” “width,” “size,” and “location”—not just minor design decisions. *See, e.g.*, Dec. 2025 TRO Hr’g Tr. 10:18-11:6.

Yet Petitioners never told the district court that *only* minor design changes would supposedly be feasible once below-grade construction started. Br.35-36. Had they done so, the district court almost certainly would have halted the project in its tracks. App.2a-3a (denying TRO because “the Government represented that nothing about the ballroom has been finalized, **including its size and scale**” (emphasis supplied)); Dec. 2025 TRO Hr’g Tr. 21:16-18 (counsel stating “[t]here’s nothing here to suggest that it would be impossible

to change the size of the ultimate structure.”). None of the fourteen declarations Petitioners publicly filed with the district court before the injunction entered claimed the ballroom itself was needed for national security. *See, e.g.*, App.78a-144a. And none of the four declarations they submitted to the district court *ex parte* for *in camera* review “shed ... further light on the question,” App.240a, even though one would have expected Petitioners to have informed the court of any national-security need for the ballroom at the very earliest opportunity. (Petitioners lodged their first classified declaration, apparently about the bunker, just three days after the National Trust filed its complaint, *see* ECF 13; App.237a.)

Instead, it was only four months later, in March 2026—*after* the district court had entered the preliminary injunction—that the President (to reporters) and then the rest of Petitioners (in various filings) began claiming the ballroom *itself* was necessary for national security. App.349a. And they still have never been able to explain how “every part” of the two structures form a supposedly “integrated” whole. Br.35. When the D.C. Circuit remanded for factfinding (after Petitioners claimed for the first time in their appellate stay motion a national-security need for the ballroom, *see* App.213a-215a), the sole declaration they submitted (from a Secret Service official) said little about the issue, App.228a-230a.

Even now, the only “example” that Petitioners’ application offers of the two structures’ “integrated national-security features” is “electrical work necessary to install heating and air-conditioning systems” that, if delayed, might cause “mold” or “freez[e]” pipes. Br.33-34. That is not a national-security emergency. And the fact that *some* building might eventually need to sit atop the bunker (and again, Petitioners did not meaningfully elaborate upon the point until appeal, effectively frustrating any factfinding on the issue,

see App.244a-251a, App.430a-433a, App.350a) does not mean they can dragoon the courts into service of their effort to bypass Congress and give the President a ballroom of the exact size, shape, location, and design he wants.

Instead, Petitioners' argument "essentially boils down to the position that the ballroom, once completed two or more years from now, will be more secure than the now-demolished East Wing and an active construction site." App.350a; see Br.3-5, 33-34. The features they mention—"bullet- and blast-proof windows, drone-proof roofing, and missile-resistant steel columns," Br.33—might make for a more secure *ballroom*, but that puts the cart before the horse: Congress has not authorized a ballroom in the first place.

Nor do the ten declarations that Petitioners belatedly submitted with this Application provide additional clarity. See, e.g., App.434a-439a, App.400a, App.402a-407a. The National Trust has the utmost concern for the President's personal safety, as it has reiterated throughout the case, see, e.g., ECF 70 at 5 (collecting statements), but it is difficult to discern how threats to the President or other officials at mostly far-flung locations create irreparable harm from the absence of a White House ballroom that will not be usable until "a short number of months" before the President's term ends. App.441a; see App.350a-351a. And to date, the President and his staff have by all indications continued to use the White House complex much in the same manner as their predecessors. The President continues to live in the residence, work from the West Wing, and host high-profile events (such as a recent state dinner for King Charles III) at both the building and grounds.

Second, Petitioners claim that "freezing the construction site would create a veritable obstacle course for the Secret Service." Br.34. They made the same argument to

the district court, App.228a; the Trust responded that it had “no objection to the Secret Service ameliorating the alleged security risks it identified to its personnel” by removing construction debris, ECF 70 at 7; and the district court tailored the injunction to accommodate those concerns, App.232a-233a. There is no emergency here.

Third, Petitioners claim that the injunction “will inflict ‘massive construction-related problems,’” mostly concerning the structural integrity of the partially completed ballroom. Br.34. But they can hardly blame the injunction for that: When it first issued, they had not begun above-grade construction, *supra* n.2. Regardless, the solution is not to allow Petitioners to illegally complete the entire ballroom just because they illegally commenced it. It is instead to wind the project down in an orderly fashion unless and until they receive authorization from Congress. Even Petitioners admit that can still be done. *See* App.446a. They simply have decided that it would be more convenient to declare a *fait accompli*. That is an affront to the Court’s power to grant a stay—not a reason to issue one. *See Nken*, 556 U.S. at 421 (stays “allow an appellate court the time necessary to review”).

II. The Court Is Not Likely To Grant Certiorari And Reverse.

Petitioners’ application should also be denied because the Court is unlikely to grant certiorari and reverse. Both lower courts correctly concluded the Trust has standing. App.16a-17a, App.288a-310a. And Petitioners are unlikely to succeed on the merits. Under Petitioners’ own theory, two statutes would have to separately authorize the ballroom, *see* App.311a, yet neither statute even “comes close” to doing so, App.27a.

A. The National Trust Has Standing.

Both the district court and the D.C. Circuit correctly concluded that the National

Trust has shown a substantial likelihood of associational standing through the concrete and imminent injury to Professor Hoagland, a longtime Trust member. Petitioners offer no basis to disturb that sound application of well-established standing principles.

1. The “desire to use or observe” something, “even for purely [a]esthetic purposes, is undeniably a cognizable interest for purpose of standing.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 562-63 (1992). Numerous decisions from this Court and the federal courts of appeals recognize Article III injury where a plaintiff suffers concrete and imminent harm to her use and enjoyment of a particular place. *See App.293a-294a*. In *Friends of the Earth*, this Court held that individuals who lived within driving distance of a river and who fished and picnicked in it had standing to challenge water pollution. *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 181-83 (2000). The individuals “use[d] the affected area,” the “aesthetic and recreational values” of which “w[ould] be lessened” by the defendants’ conduct. *Id.* (quoting *Sierra Club v. Morton*, 405 U.S. 727, 735 (1972)). That harm established an Article III injury because, as this Court has explained, if the “harm in fact affects the recreational or even the mere aesthetic interests of the plaintiff, that will suffice.” *Summers v. Earth Island Inst.*, 555 U.S. 488, 494 (2009).

The courts of appeals have likewise found Article III injuries where individuals had personal and professional interest in looking for a rare beetle species during summer vacations to Block Island in Rhode Island, *Ctr. for Biological Diversity v. U.S. Fish & Wildlife Serv.*, 146 F.4th 1144, 1157-58 (D.C. Cir. 2025); planned to “view and enjoy” the historic Blair Mountain Battlefield in West Virginia for its “aesthetic features and historical significance,” *Sierra Club v. Jewell*, 764 F.3d 1, 5-6 (D.C. Cir. 2014); “enjoy[ed] looking

for and viewing all species of fish in the San Juan River” in Utah “three times a year,” *WildEarth Guardians v. EPA*, 759 F.3d 1196, 1205-06 (10th Cir. 2014); or used the country’s vast natural resources for recreational and observational purposes, *Sierra Club v. Kimbell*, 623 F.3d 549, 557-58 (8th Cir. 2010); *Am. Canoe Ass’n v. Murphy Farms, Inc.*, 326 F.3d 505, 518-20 (4th Cir. 2003); see App.293a-294a, 299a-300a (collecting cases).

Under such precedents, Professor Hoagland easily has standing. She lives in Capitol Hill, less than two miles from President’s Park, and visits the area “about once a month.” App.73a-74a. In a detailed declaration, she explained how she “regularly walk[s] through portions of President’s Park, including Lafayette Square, in order to enjoy the historic buildings” in the area, the carefully preserved historical architecture, “the beauty of the L’Enfant Plan ... , and the innovative preservation program concerning the buildings surrounding Lafayette Square.” App.73a-74a. A particular focus of her visits is the “iconic” White House complex, which embodies the republican “ideals on which the nation was founded” and has “continue[d] to ... impress[]” her after years of visits. App.74a. Her deep appreciation for the White House and President’s Park is augmented by her professional expertise as an architectural historian who has written six books (including on D.C. architecture), and served as the senior historian for NPS’s own Historic American Buildings Survey. See *Ctr. for Biological Diversity*, 146 F.4th at 1157; App.72a. The White House has informed her research and professional work. See App.74a.

On these undisputed facts, it cannot be seriously disputed that Professor Hoagland is among those “for whom the aesthetic and recreational values” of President’s Park “will be lessened” by the construction of the ballroom. *Friends of the Earth*, 528 U.S. at 183

(quoting *Sierra Club*, 405 U.S. at 735); see App.75a. With the completion of the ballroom, she will no longer be able to use, observe, or enjoy the “innovative preservation project concerning the buildings surrounding Lafayette Square” on her regular visits to President’s Park as she did previously, since the park’s historical coherence will be destroyed by a significant change to its most important building: the White House itself. App.73a.

When it comes to standing to challenge actions that will harm historic places like President’s Park, that is the whole point: The way historic “buildings, memorials, and monuments” are “used” is by actively visiting, viewing, and experiencing them, because these places “tell the American story,” App.299a-300a. President’s Park and the White House are no exception. Indeed, Professor Hoagland uses President’s Park exactly as NPS *itself* tells the public President’s Park should be used: to visit, view, and experience “one of the most iconic sites in the country,” where visitors can reflect on “what it means to be American,” *supra* n.1. Someone like Professor Hoagland who uses and enjoys places like President’s Park and the White House suffers an Article III injury when they are damaged or destroyed. App.299a-300a; see *Lemon v. Geren*, 514 F.3d 1312, 1313-15 (D.C. Cir. 2008) (standing to challenge transfer of a historic fort); App.299a-300a (collecting cases).

Finally (and unusually), here the Court can also take *Petitioner’s own word* for the fact that the injuries asserted by Professor Hoagland are both actual and concrete. As NPS conceded in its EA and FONSI, construction of the ballroom will “result in a permanent adverse impact for those who value the experience of this specific space.” App.155a, App.276a. The ballroom “will disrupt the historical continuity of the White House grounds and alter the architectural integrity of the east side.” App.154a. Its “larger footprint and

height” will “dominate the eastern portion of the site, creating a visual imbalance with the more modestly scaled West Wing and Executive Mansion.” *Id.* It will permanently alter the views of the Park for visitors “in certain locations, particularly in Lafayette Square and portions of the Ellipse.” App.183a. In sum, it will “adversely alter the design, setting, and feeling of the White House and the grounds over the long term.” App.154a. That all is more than enough for Professor Hoagland to establish an Article III injury in her use and enjoyment of President’s Park. *See Summers*, 555 U.S. at 494.

Misconstruing Professor Hoagland’s declaration and this Court’s precedent, Petitioners attempt to reduce her regular use and enjoyment of President’s Park to “subjective displeasure of an offended observer.” Br.15-16. But Professor Hoagland has not been offended by reading about something she dislikes in a news release, *Valley Forge Christian College v. Ams. for Separation of Church & State*, 454 U.S. 464, 469 (1982); by incidentally viewing an “eyesore” that she does not care for on private property, *Envtl. Def. Fund v. FERC*, 2 F.4th 953, 970 (D.C. Cir. 2021), by others engaging in conduct with which she might have “only a general legal, moral, ideological, or policy objection,” *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 381 (2024), or by a place being named for someone she does not like, *Johnson v. Mayor, City of Jacksonville*, 178 F.4th 1240, 1244, 1248 (11th Cir. 2026). Instead, Professor Hoagland has detailed how she regularly and intentionally uses and enjoys a specific national park precisely how NPS states it is intended to be used and enjoyed, *see supra* n.1; App.73a-74a, and has explained how she is injured in her use and enjoyment of that national park in precisely the manner that NPS admits that people who use that national park will be harmed by the ballroom, *see supra*

pp.27-28; App.296a.

Petitioners’ assertion that Professor Hoagland “must use or enjoy public land in a particularized manner, and lose that use or enjoyment, thereby suffering a concrete, non-self-inflicted follow-on harm,” Br. 16, is therefore puzzling—that is exactly what Professor Hoagland’s declaration details, *see* App.71a-76a, App.292a-293a. Petitioners (like the dissent) attempt to distinguish this case from those in which courts have found Article III standing by ignoring what the declaration actually says. *See* Br. 17 (asserting, contrary to the declaration, that she only claims “vague” injuries from “occasionally being near a federal building”); App.373a (Rao, J., dissenting). And their myopic focus on Professor Hoagland’s professional background is likewise misplaced, Br.18-19, since while Professor Hoagland’s experience informs her deep appreciation for President’s Park, no one has ever claimed that her injury arises from her resumé alone, *contra* Br.19-20. Nor should it come as a surprise that Professor Hoagland, an architectural historian who lives in D.C. and regularly uses its historic public places, might be injured by more than one of the President’s illegal efforts to remake them to suit his personal preferences. Br.17-18.

None of this amounts to a “generalized grievance” or harm to an “undifferentiated public interest.” Br.19-20 (quoting *Steel Co. v. Citizens for a Better Env’t.*, 523 U.S. 83, 106 (1998)). No one disputes that the ballroom is massively unpopular—indeed, approximately 97% of the more than 30,000 people who submitted comments to NCPC opposed the project. But broad public disapproval does not insulate the ballroom from challenges from those like Professor Hoagland who regularly use and enjoy the park and will be harmed by the construction of the ballroom. On Petitioners’ “cramped theory of standing,” no one

would be “injured by a decision to raze the Statue of Liberty, obscure the names on the Vietnam War memorial, ... install a political billboard atop Mount Rushmore,” or make transformative and destructive changes to all other treasured public lands, parks, and historic places throughout the country. App.300a.

2. This suit is also germane to the National Trust’s purposes—an undemanding standard that serves “the modest yet important” purpose “of preventing litigious organizations from forcing the federal courts to resolve numerous issues as to which the organizations themselves enjoy little expertise and about which few of their members demonstrably care.” *Humane Soc’y v. Hodel*, 840 F.2d 45, 57 (D.C. Cir. 1988).

Nothing could be further from the case here. The National Trust was established by Congress “to facilitate public participation in the preservation of sites, buildings, and objects of national significance or interest” and to “further” the “preserv[ation] for public use [of] historic sites, buildings, and objects of national significance for the inspiration and benefit of the people of the United States.” 54 U.S.C. § 312102(a); *id.* § 320101. For decades, the Trust has done just that, by maintaining its own historic properties, suing to protect others, and assisting in the administration of federal historic preservation programs. App.65a-67a, App.288a; *see, e.g.*, 54 U.S.C. §§ 308602(b), 308703, 304101(a)(9); Pub. L. No. 101-121, 103 Stat. 701, 707 (1989). As the district court correctly concluded, the Trust has an “‘obvious interest’ in challenging the construction of a massive new ballroom on White House grounds that could likely alter the aesthetic, cultural, and historical integrity of one of the most historic sites in the country.” App.16a (citation omitted).

Contrary to Petitioners’ claims, Congress has not carved the White House out “from

the Trust’s mandate.” Br.21. True, the Trust cannot *purchase* the White House, 54 U.S.C. § 312105(g) (excluding “[r]eal [p]roperty” within national parks from that which the Trust can “acquire”), but no one else can either, *id.* § 102901(a), and nothing in precedent or logic supports the notion that an association may sue on behalf of its members only to protect land it can buy, *cf. Friends of the Earth*, 528 U.S. at 181-84 (standing based on use of a river). Nor does the fact that Congress has invested the National Trust with additional functions—mostly concerning acquisition and maintenance of historic properties, *see id.* § 312102(b), and administration of preservation programs, *see, e.g., id.* § 308602(b)—mean this suit is not germane to the purposes for which Congress expressly established the Trust and charged it with furthering, *see supra* p.30; *id.* §§ 320101, 312102(a), (b)(4), 312105(k)(5). And while that is all more than enough to meet the “modest” germaneness standard, *Humane Soc’y*, 840 F.2d at 57, the detrimental effects of the ballroom project on Trust-owned property (the nearby Decatur House on Jackson Place, a direct abutter to Lafayette Park) independently satisfy it as well. *See* App.306a-308a.

B. Petitioners Are Unlikely To Succeed On The Merits For Multiple, Independent Reasons.

Petitioners are also unlikely to succeed on the merits. Because they concede the Constitution gives Congress the sole authority to regulate federal property and the District of Columbia, *see* U.S. Const. Art. IV, § 3, cl. 2; *id.* Art. I, § 8, cl. 17, they must show Congress “express[ly] authori[zed]” the ballroom by statute, 40 U.S.C. § 8106.

Neither of the two statutes upon which Petitioners rely—54 U.S.C. § 100101(a) and 3 U.S.C. § 105(d)—provides the necessary authorization. Section 100101(a) “says nothing

about construction, much less construction in the District of Columbia,” App.314a, and thus cannot possibly provide “express authority” required to build the ballroom, 40 U.S.C. § 8106. Nor can § 105(d) authorize the project, since it permits the President to do no more than expend funds “appropriated under th[at] subsection” for the purposes set by Congress—here, \$2.475 million annually for “required maintenance, resolution of safety and health issues, and continued preventative maintenance” for “the Executive Residence at the White House,” *see* 138 Stat. 532; 31 U.S.C. § 1301(a).⁷

That dooms the project twice over, because even by Petitioners’ own theory, they need authorization to build the ballroom under *both* § 100101(a) and § 105(d). App.311a. The entity leading the project, EXR, cannot construct the ballroom unless it is authorized by § 105(d)—since no one disputes that *NPS’s* Organic Act, 54 U.S.C. § 100101, gives *EXR* no authority whatsoever. And even if § 105(d) somehow authorized EXR to expend the \$2.475 million annually appropriated under that statute on the ballroom instead of on congressionally prescribed maintenance, *but see* 31 U.S.C. § 1301(a) (appropriated funds must be spent for the purposes appropriated), Petitioners would still need some other source of funding and “express authority” for the remainder of their \$400 million project. 40 U.S.C. § 8106. Indeed, they have expressly conceded as much. App.312a. Since *NPS’s* Organic Act is the only other source of funding and authority Petitioners have identified, the absence of authorization under § 100101(a) independently dooms the ballroom as well.

⁷ Petitioners assert, without citation, that neither the National Trust “nor the lower courts” dispute that “the East Wing had to be replaced or that the President can build ‘layered, hardened, and tested protection.’” Br.4-5 (quoting App.410a). That is false. *See* App.312a.

a. Section 100101(a) Does Not Authorize the Ballroom.

The National Trust is likely to succeed on its APA claim against NPS—a claim that Petitioners completely ignore, Br.23 (asserting, falsely, that the Trust “raises only an *ultra vires* challenge”); see App.53a, App.60a (granting the Trust a preliminary injunction on its § 8106-based APA claim against NPS); App.342a (affirming same). The Trust’s APA claim is based on § 8106, which prohibits the erection of any “building or structure” “on any reservation, park, or public grounds of the Federal Government in the District of Columbia without express authority of Congress.” Section 100101(a) does not provide that “express authority,” *id.*, for two independently sufficient reasons. App.314a-318a.

First, § 100101(a) cannot “express[ly] authori[ze]” the ballroom, 40 U.S.C. § 8106, because the statute “says nothing about construction, much less construction in the District of Columbia,” App.314a, App.53a. Thus, even if § 100101(a) might permit NPS to engage in “certain construction in national parks” elsewhere in the country by authorizing “means” and “measures” which conform to those parks’ “fundamental purpose[s],” it plainly does not afford NPS the type of “express authority” to erect buildings in the District of Columbia that § 8106 demands, App.314a (quoting 54 U.S.C. § 100101(a)).⁸

Second, the Organic Act itself prohibits construction of the ballroom not just once, but twice. App.314a-316a. Section 100101(a) requires NPS to “conserve” “historic objects” in national parks so as to “leave them unimpaired for future generations.” And

⁸ Petitioners claim the district court held that § 8106 requires only general authority from Congress. Br.31. Not so. The court did not resolve “the level of specificity” § 8106 requires because Petitioners came nowhere near satisfying its requirements. App.46a-47a.

§ 100101(b)(2)—the Act’s so-called Redwood Amendment—forbids administration of parks in derogation of their established purposes “except as directly and specifically provided by Congress.” *Id.* § 100101(b)(2). Yet as Petitioners themselves conceded, the ballroom will permanently and irreversibly damage President’s Park’s purposes and “historic objects” like the White House. App.316a. Plainly, the Organic Act cannot provide the “express authority,” 40 U.S.C. § 8106, for construction the Organic Act itself forbids.

Unable to show the ballroom has been expressly authorized by Congress, Petitioners advance a succession of theories for why § 8106 does not apply. Each is meritless.

To start, Petitioners’ reliance on other, purportedly unauthorized projects gets them nowhere. *See* Br.22-23, 26-27. Even if it had been NPS’s “longstanding practice” not to adhere to the prohibitions of § 8106, that would not relieve the Court of its obligation “to give effect to [the statute’s] plain command” now, *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998), since “the existence of a prior administrative practice” does not relieve courts of their “responsibility to determine whether that practice is consistent with the agency’s statutory authority,” *SEC v. Sloan*, 436 U.S. 103, 118 (1978). Besides, Petitioners’ few scattered examples do not even establish a practice of noncompliance with § 8106. Congress has regularly and expressly authorized construction projects on D.C. public grounds, *see* App.318a (collecting examples), and at the White House specifically, as the Trust has exhaustively detailed, App.197a-210a (compiling congressional authorization for all major projects at the White House since 1790).

Next, Petitioners’ assertion that § 8106 does not apply to the President, Br.31-32, is both irrelevant (since the district court did not enjoin the President) and wrong. “Section

8106 concerns a limited and defined subject over which Congress, all agree, has twofold constitutional primacy: construction on federal property within the District of Columbia.” App.321a. Applying § 8106 to the President therefore does “not significantly alter the balance between Congress and the President,” *id.* (quoting *Armstrong v. Bush*, 925 F.2d 282, 289 (D.C. Cir. 1991)); instead, it ensures the maintenance of Congress’s exclusive constitutional authority over federal property in the District of Columbia, App.320a-321a.

Petitioners’ claim that the ballroom is within their “broad discretion” under the Organic Act, Br.29-30, also misses the point. The Act does not provide the necessary authority, as already explained. Anyway, there “is no finding” (nor could there be) that the ballroom “conserves” the “historic objects” in President’s Park. App.316a. That is not a “revolution in federal land management,” Br.29; rather, it simply holds NPS to the obligations with which Congress has charged it, *see* App.314a-316a.⁹

b. Section 105(d) Does Not Authorize the Ballroom.

While the National Trust’s APA claim is itself sufficient to halt the ballroom project, *see supra* pp.31-32, the Trust’s *ultra vires* challenge provides a second, independent basis for the district court’s preliminary injunction, *see* App.311a, App.319a.

⁹ The zone-of-interests test also poses no bar to the Trust’s claims. Br.32. The Trust was chartered to “facilitate public participation in the preservation of sites, buildings, and objects of national significance or interest.” 54 U.S.C. § 312102(a). Its interests are at minimum “arguably within the zone” protected by § 8106, which imposes uniquely heightened restrictions in the most historically dense area in the country. *NCUA v. First Nat’l Bank & Tr. Co.*, 522 U.S. 479, 488 (1998). And because the test concerns “whether the statute grants the plaintiff the cause of action that [the plaintiff] asserts,” *Bank of Am. Corp. v. City of Miami*, 581 U.S. 189, 196-97 (2017), the Trust need not satisfy the test for its “nonstatutory *ultra vires*” challenge, although it easily does, *NRC*, 605 U.S. at 680-81.

Because the district court concluded that EXR—historically responsible for catering, floral arrangements, and the like, *see Sweetland*, 60 F.3d at 854—was not an APA agency, the Trust sued EXR “in equity without a congressionally-provided cause of action” to enjoin actions in excess of its authority. *Trump v. Cook*, 609 U.S. ___, 2026 LX 364798, at *34 n.2 (June 29, 2026) (cleaned up); App.17a, App.26a. Construction of the ballroom is “entirely in excess” of the powers of EXR and the President under § 105(d) for several independent reasons, and also runs headlong into § 8106’s “specific[] prohibit[ion]” on the erection of buildings in D.C. federal parks without express authority of Congress. *Nuclear Reg. Comm’n v. Texas*, 605 U.S. 665, 681 (2025) (“NRC”) (cleaned up).

1. First, and most fundamentally, § 105(d) cannot permit the President to build the ballroom because it gives him no independent authority at all. *See* App.326a. Instead—and prototypical of what is referred to in appropriations law as an “appropriation authorization,” GAO Red Book, 2-54 (4th Ed. 2016)—§ 105(d) authorizes *Congress* to appropriate funds 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); *see Steward Mach. Co. v. Davis*, 301 U.S. 548, 577 (1937) (“All [an appropriation authorization] does is to authorize future appropriations.”). Hammering the point home, § 105(d)’s “immediately surrounding and concurrently enacted provisions” contain the exact sort of language that is conspicuously absent from § 105(d) itself—providing, for example, that “the President is authorized” to take other, unrelated actions. App.323a (quoting 3 U.S.C. § 105(a)-(c)).

In stark contrast, § 105(d) affords the President only the modest and limited

authority to spend the “[s]ums appropriated under th[at] subsection” for the purposes set by Congress in a subsequent appropriating act. 3 U.S.C. § 105(d); 31 U.S.C. § 1301(a); *see* GAO Red Book 2-65 (“Congress can expressly restrict the use of an appropriation for a purpose or purposes included in the authorization.”). In each of the last three fiscal years, Congress appropriated only \$2.475 million, and only for “required maintenance, resolution of safety and health issues, and continued preventative maintenance” for the Executive Residence at the White House, *supra* n.5. That is all Congress did. Congress did not permit the President to spend any more than the \$2.475 million annually appropriated under § 105(d). Nor did Congress authorize the President to redirect funds appropriated under § 105(d) toward other projects, like a massive ballroom. 31 U.S.C. § 1301(a) (“Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.”).

Petitioners have no solution to this fatal flaw in their argument. *See* App.326a. They halfheartedly advance an atextual theory that “the scope of [§ 105(d)’s] authorization” does not “expand or contract based on the size of any appropriation.” Br.25. But § 105(d) only permits the President to expend funds appropriated “under th[at] subsection,” 3 U.S.C. § 105(d); beyond the limits of those funds, § 105(d) does not authorize the President to do anything at all, App.326a. Petitioners’ assertion that § 105(d) “does not prohibit the use of private donations,” Br. 25, is also wrong, since by authorizing the President to do no more than spend funds “appropriated under” § 105(d), it does just that. Besides, Petitioners must identify affirmative *authority* to build the ballroom—and they have none.

Attempting to circumvent § 105(d)’s limits, Petitioners resort to the Economy Act.

Br.30. But that effort falls flat for four separate reasons. *First*, NPS has no authority to build the ballroom, *supra* pp.33-35, and Petitioners concede NPS cannot transfer authority under the Economy Act that it does not have, App.329a-330a. *Second*, even if NPS were authorized to construct the ballroom, the Act would not permit NPS to “delegat[e]” its “statutory duties” to care for and maintain national parks wholesale to EXR, *see* 52 Comp. Gen. 128 (1972). *Third*, the Act does not give a “performing agency”—here, EXR—“any authority which it would not otherwise have,” GAO Red Book, 12-28 (citing 18 Comp. Gen. 262, 266 (1938)), and Congress has not authorized EXR to build the ballroom, App.330a. *Fourth*, Petitioners have not attempted to show that EXR is an Economy Act “agency,” a prerequisite to EXR carrying out the project. App.329a.

Likewise meritless is Petitioners’ claim that the Trust failed to object to their use of the Economy Act to transfer funds from NPS to EXR. Br.30. The Trust *expressly* challenged the project’s funding structure. *See* ECF 50 ¶ 213 (challenging use of Economy Act). But the district court did not reach that claim (and did not need to) because the Trust also challenged both EXR and NPS’s authority to build the ballroom in the first place. *Id.* ¶¶ 172-78, 197-208; App.60a (granting injunction on the Trust’s claims). And when Petitioners tried to solve each entity’s lack of statutory authority by invoking the Economy Act, the Trust explained why it made no difference. App.329a-331a; *see Cummings v. Missouri*, 71 U.S. 277, 325 (1867) (“[W]hat cannot be done directly cannot be done indirectly.”). Contrary to the dissent, the D.C. Circuit’s affirmance of the injunction on the basis the district court entered it does not violate party-presentation principles, App.382a-383a (Rao, J., dissenting)—an argument that, ironically, not even Petitioners advance.

2. Because the President’s assertion of freewheeling power to spend hundreds of millions of dollars is “entirely in excess” of the limited authority he actually has under § 105(d) and contravenes § 8106’s “specific prohibition” to boot, the Court need go no further. *NRC*, 605 U.S. at 681; App.319a. Yet even if § 105(d) could be read to allow the President to make “alterations” or “improvements” with any funds he can muster—it cannot, *supra* pp.35-37—it still would not authorize the ballroom. App.41a, App.335a-342a.

Petitioners’ argument that § 105(d) authorizes the ballroom begins—and ends—with the dictionary definitions of “alter” and “improve.” *See* Br.22-24. Yet it is a “fundamental principle of statutory construction” that “the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used.” *Deal v. United States*, 508 U.S. 129, 132 (1993). And no sensible reader of English would understand Congress to have hidden a delegation of vast and transformative authority over the most important historic building in the country in the same statute as it authorized itself to appropriate sums to pay the President’s utility bills. *See Learning Res.*, 607 U.S. at 250; *Whitman v. Am. Trucking Ass’ns*, 531 U.S. 457, 468 (2001) (Congress “does not ... hide elephants in mouseholes”). As the lower courts correctly concluded, § 105(d) does not give the President the extraordinary power to “demolish and replace the entire” White House “with whatever new structure he prefers.” App.340a (emphasis removed); App.27a.

Resisting that obvious conclusion, Petitioners insist that unless “alteration” and “improvement” are read to encompass everything up to and including the demolition and reconstruction of the White House, both words will be rendered “mere surplusage.” Br.24.

Hardly. The President might “alter[]” the White House with funds appropriated under § 105(d) by renovating a bathroom, or he might “improve[]” it with those funds by adding a patio. 3 U.S.C. § 105(d). That does not leave either word without “independent significance,” Br.24; to the contrary, it gives the statute “as a whole” its only sensible meaning, *King v. St. Vincent’s Hosp.*, 502 U.S. 215, 221 (1992); see App.41a-42a.

If any doubt remains, history dispels it. Congress did not enact § 105(d) “against the backdrop” of presidential control over major White House construction, as Petitioners claim. Br.9, 23. Rather, there is “a nearly unbroken history of congressional authorization for construction and major renovations at the White House” dating back to 1790. App.44a; see App.196a-210a. Petitioners’ example simply proves the Trust’s point. Br.24, 31. When it was discovered that the White House was on the verge of collapse, Congress passed a statute to repair it—specifying, however, that the “architectural appearance of the exterior” was not to be changed. App.206a-207a. But Congress for decades also made appropriations for more minor “care, maintenance, repair and alteration, refurnishing, [and] improvement”¹⁰—language that Congress substantially carried forward into § 105(d) when it enacted the statute in 1978. See Pub. L. No. 95-570, 92 Stat. 2445, 2446 (1978).

Text and history are both clear: Section 105(d) does not authorize the ballroom.

CONCLUSION

For the foregoing reasons, Petitioners’ application for a stay should be denied.

¹⁰ See, e.g., 45 Stat. 534, 574 (1928); 46 Stat. 229, 230 (1930); Pub. L. No. 81-759, ch. 896, 64 Stat. 595, 698 (1950); Pub. L. No. 88-39, 77 Stat. 58, 64 (1963).

Respectfully submitted



Thaddeus A. Heuer
Matthew F. Casassa
Jack C. Smith
Kevin Y. Chen
FOLEY HOAG LLP
155 Seaport Boulevard
Boston, MA 02210
Tel. (617) 832-1000
theuer@foleyhoag.com
mcasassa@foleyhoag.com
jcsmith@foleyhoag.com
kchen@foleyhoag.com

Gregory B. Craig
FOLEY HOAG LLP
1717 K Street N.W.
Washington, DC 20006
Tel. (202) 223-1200
gcraig@foleyhoag.com

*Counsel for Respondent National Trust for
Historic Preservation in the United States*