No. 26-1070

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

STATE OF RHODE ISLAND; STATE OF NEW YORK; STATE OF HAWAI'I; STATE OF CALIFORNIA; STATE OF COLORADO; STATE OF CONNECTICUT; STATE OF DELAWARE; STATE OF ILLINOIS; STATE OF MAINE; STATE OF MARYLAND; COMMONWEALTH OF MASSACHUSETTS; PEOPLE OF THE STATE OF MICHIGAN; STATE OF MINNESOTA; STATE OF NEVADA; STATE OF NEW JERSEY; STATE OF NEW MEXICO; STATE OF OREGON; STATE OF VERMONT; STATE OF WASHINGTON; STATE OF WISCONSIN; STATE OF ARIZONA,

Plaintiffs-Appellees,

v.

(caption continued on next page)

On Appeal from the United States District Court
for the District of Rhode Island

BRIEF OF CONSTITUTIONAL ACCOUNTABILITY CENTER AS *AMICUS CURIAE* IN SUPPORT OF APPELLEES AND AFFIRMANCE

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Defendants-Appellants,

INSTITUTE OF MUSEUM AND LIBRARY SERVICES; LISA SOLOMSON, in the official capacity as Senior Official Performing Duties of Director of the Institute of Museum and Library Services,

Defendants.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, *amicus curiae* states that no party to this brief is a publicly held corporation, issues stock, or has a parent corporation.

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

I. PARTIES AND *AMICUS CURIAE*

Except for any *amicus* who had not yet entered an appearance in this case as of the filing of Appellees' brief, all parties, intervenors, and *amici* appearing in this Court are listed in Appellees' brief.

II. RULINGS UNDER REVIEW

Reference to the rulings under review appears in Appellees' brief.

III. RELATED CASES

Reference to any related cases pending before this Court appears in Appellees' brief.

Dated: May 13, 2026

/s/ Brianne J. Gorod
Brianne J. Gorod

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

TABLE OF AUTHORITIES – cont'd

Page(s)

TABLE OF AUTHORITIES – cont'd

TABLE OF AUTHORITIES – cont'd

TABLE OF AUTHORITIES – cont'd

TABLE OF AUTHORITIES – cont'd

INTEREST OF *AMICUS CURIAE*[1]

Constitutional Accountability Center (CAC) is a think tank and public interest law firm dedicated to fulfilling the progressive promise of the Constitution's text and history. CAC works in our courts, through our government, and with legal scholars to improve understanding of the Constitution and preserve the rights, freedoms, and structural safeguards that it guarantees. CAC accordingly has an interest in this case.

INTRODUCTION AND SUMMARY OF ARGUMENT

When Congress creates an agency, that agency is required by law to exist. Only Congress—not the President—has "plenary control over the . . . existence of executive offices." *Free Ent. Fund v. PCAOB*, 561 U.S. 477, 500 (2010). Thus, every action to establish, restructure, or eliminate a federal agency must stem from an act of Congress.

Congress exercised its power to create federal agencies when it established the Federal Mediation and Conciliation Service, the Minority Business Development Agency, and the United States Interagency Council on Homelessness (collectively, "the Agencies"). In creating the Agencies, Congress responded to

[1] No person or entity other than *amicus* and its counsel assisted in or made a monetary contribution to the preparation or submission of this brief. All parties consent to its filing.

our country's needs, tasking these agencies with specific responsibilities to serve the American people.

Congress created the Federal Mediation and Conciliation Service (FMCS) in 1947 to mediate collective bargaining disputes between employers and unions. Act of June 23, 1947 ("Taft-Hartley Act"), Pub. L. No. 80-101, 61 Stat. 136, 153 (codified at 29 U.S.C. §§ 171-83). Congress created the United States Interagency Council on Homelessness (USICH) nearly forty years ago as part of a bipartisan effort "to use public resources and programs in a more coordinated manner to meet the critically urgent needs of the homeless of the Nation." McKinney-Vento Homeless Assistance Act of 1987, Pub. L. No. 100-77, 101 Stat. 482, 485 (codified as amended at 42 U.S.C. § 11301b); 133 Cong. Rec. 6573 (1987) (statement of Sen. Moynihan) (noting that the law was passed with "the strong support of both the [Democratic] majority and Republican leaders, as well as numerous Members of both parties"). And Congress established the Minority Business Development Agency (MBDA) in 2021—again through bipartisan legislation—"to focus exclusively on the needs of minority businesses." 167 Cong. Rec. 5813 (2021) (statement of Sen. Cardin); Minority Business Development Act of 2021, Infrastructure Investment & Jobs Act, Pub. L. No. 117-58, 135 Stat. 429 (codified as amended at 15 U.S.C. §§ 9501 *et seq.*).

Yet Appellants now seek to effectively shutter the Agencies, gutting them through mass layoffs and the dismantling of core programs, thereby rendering them incapable of fulfilling their statutory obligations. JA 99-102. Appellants' actions infringe on Congress's legislative authority and in so doing violate the Constitution's separation of powers, the "structural protections against abuse of power [that are] critical to preserving liberty." *Bowsher v. Synar*, 478 U.S. 714, 730 (1986). As longstanding historical practice confirms, the power to abolish or fundamentally restructure the Agencies lies with Congress through the lawmaking process prescribed by Article I.

The Constitution vests "[a]ll legislative Powers" in Congress, U.S. Const. art. I, § 1, and, exercising those powers, Congress has created, restructured, and eliminated executive departments and agencies since the Founding. Among Congress's first statutes were those creating the Departments of Treasury, War, and Foreign Affairs. As the nation grew and faced new challenges, Congress established various departments, agencies, and offices to address them. And in response to changing conditions, Congress has at times reorganized, downsized, and eliminated certain executive agencies. Critically, all of these actions to restructure the executive branch have been accomplished through legislation passed by Congress and signed into law by the President.

Congress's exclusive power to reorganize the executive branch is underscored by the fact that when Presidents have previously played a role in such reorganizations, they have always done so pursuant to Congress's delegation of its reorganization power—delegations made through legislation and subject to appropriate restraints. Throughout the twentieth century, Congress passed a series of statutes called Reorganization Acts. *See, e.g.*, 5 U.S.C. §§ 901-12. These Acts, which always had expiration dates, authorized the President to make substantial changes to the structure of the executive branch that could not be accomplished through ordinary discretionary actions like modifying internal operations, managing federal employees, and determining policy priorities. The Acts authorized the President to take actions ranging from creating and abolishing certain agencies to consolidating agency statutory functions. *See id.* § 902(2). The history of these Acts demonstrates that when Congress wants to give the President the power to fundamentally restructure or abolish an agency, it knows how to do so. But absent such express authorization, that power remains solely with Congress. This Court should affirm the grant of summary judgment.

ARGUMENT

I. Congress Has the Sole Authority to Create, Restructure, and Abolish Federal Departments and Agencies.

The Constitution provides that "[a]ll legislative Powers," U.S. Const. art. I, § 1, including "plenary control over the . . . existence of executive offices," *Free*

Ent. Fund, 561 U.S. at 500, "shall be vested in a Congress of the United States," U.S. Const. art. I, § 1. Pursuant to this prerogative, Congress has been creating, restructuring, and eliminating executive offices, departments, and agencies since the Founding. And because power over the basic structure of the federal government belongs to Congress, the executive branch can neither establish nor abolish an executive agency unilaterally.

A. The Constitution grants Congress the exclusive power to "carr[y] into Execution" not only the "foregoing Powers" under Article I, Section 8, but also "all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof." U.S. Const. art. I, § 8, cl. 18. By referencing the Vesting Clauses of Article II and Article III, this affirmative textual grant of congressional power "undoubtedly" authorizes Congress to pass legislation creating executive departments, agencies, and offices. *Buckley v. Valeo*, 424 U.S. 1, 138 (1976); *see* U.S. Const. art. II, § 2, cl. 2 (granting Congress the authority to establish offices "by Law"); *Myers v. United States*, 272 U.S. 52, 129 (1926) ("To Congress under its legislative power is given the establishment of offices [and] the determination of their functions and jurisdiction."). Once the President signs such legislation, it becomes law. *See* U.S. Const. art. I, § 7, cl. 2. Agencies are thus

"creatures of statute," *NFIB v. OSHA*, 595 U.S. 109, 117 (2022) (per curiam), and Congress has plenary authority over the structure of the federal government.

With that plenary authority comes substantial flexibility. Indeed, the Framers rejected a plan to delineate the specific departments of the executive branch and their duties in the Constitution, choosing instead to give Congress the power to create those departments through the legislative process. *See* 2 *Records of the Federal Convention of 1787*, at 335-36 (Max Farrand ed., 1911). The First Congress promptly exercised that power, recognizing that executive departments would be essential to a functional government. Some of the very first statutes Congress passed established new executive departments, including the Department of Treasury, Act of Sept. 2, 1789, ch. 12, § 1, 1 Stat. 65, 65; the Department of War, Act of Aug. 7, 1789, ch. 7, § 1, 1 Stat. 49, 49-50; and the Department of Foreign Affairs, Act of July 27, 1789, ch. 4, § 1, 1 Stat. 28, 28-29.

To ensure these departments could function as envisioned, the First Congress gave some of them specific responsibilities, while instructing others simply to execute the duties the President assigned them. *Compare* Act of Sept. 2, 1789, § 2, 1 Stat. at 65-66 (requiring the Secretary of the Treasury to "digest and prepare plans for the improvement and management of the revenue . . . ; to prepare and report estimates of the public revenue, and the public expenditures . . . and generally to perform all such services relative to . . . finances"), *with* Act of July 27, 1789, § 1,

1 Stat. at 29 (providing that the "Secretary for the Department of Foreign Affairs . . . shall perform and execute such duties as shall from time to time be enjoined on or intrusted to him by the President of the United States"), *and* Act of Aug. 7, 1789, § 1, 1 Stat. at 50 (authorizing the Secretary of War to "perform and execute such duties as shall from time to time be enjoined on, or entrusted to him by the President"). And whatever the scope of each department's statutory responsibilities, Congress ensured that each department could hire the staff it needed to accomplish its work. *See* Act of Sept. 11, 1789, ch. 13, § 2, 1 Stat. 67, 68. Over the ensuing decades, Congress created additional executive departments to meet the nation's evolving needs. *See, e.g.*, Act of Mar. 3, 1849, ch. 108, § 1, 9 Stat. 395, 395 (Department of the Interior); Act of June 22, 1870, ch. 150, § 1, 16 Stat. 162, 162 (Department of Justice).

Congress's power over the structure of the federal government extends beyond the establishment of executive departments to the creation of federal agencies to address the nation's most pressing problems. In 1887, Congress created the first regulatory agency: the Interstate Commerce Commission (ICC). *See* Act to Regulate Commerce, ch. 104, § 11, 24 Stat. 379, 383 (1887). Railroads were "central[] . . . to the national economy in the post-Civil War period," Robert L. Rabin, *Federal Regulation in Historical Perspective*, 38 Stan. L. Rev. 1189, 1197 (1986), but with this booming industry came considerable challenges, including

"[r]uinous rate wars," "price fixing and pooling agreements," and "onerous" working conditions, Paul Stephen Dempsey, *The Rise and Fall of the Interstate Commerce Commission: The Tortuous Path from Regulation to Deregulation of America's Infrastructure*, 95 Marq. L. Rev. 1151, 1155-56, 1159 (2012). Because states were unable to address these problems themselves, a national solution was needed. *See* Rabin, *supra*, at 1206. Congress thus created the ICC to "regulate the rates and practices of the railroads," Dempsey, *supra*, at 1152, which included the power to receive and investigate complaints about rail carriers and to issue orders if it found rates to be unjust or unreasonable, *see* Henry B. Hogue, Cong. Rsch. Serv., R47897, *Abolishing a Federal Agency: The Interstate Commerce Commission* 4 (2024) [hereinafter Hogue, *ICC*].

In the years since, Congress has continued to create federal departments and agencies, including the Department of Education, 20 U.S.C. § 3411; the Department of Homeland Security, 6 U.S.C. § 111(a); the Food and Drug Administration, 21 U.S.C. § 393(a); the Social Security Administration, 42 U.S.C. § 901(a); and the National Aeronautics and Space Administration, 51 U.S.C. § 20111(a). The creation of each of these departments and agencies reflected Congress's judgment about the proper means to respond to a unique moment in history, provide a public service, or effectuate a policy. Each agency's powers are prescribed by "the authority that Congress has provided" through statute. *NFIB*, 595 U.S. at 665. That is, "an agency

literally has no power to act . . . unless and until Congress confers power upon it." *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986). But once Congress mandates certain functions for an agency, those duties are nondiscretionary.

B. Congress also has the power to restructure and to abolish federal agencies, including renaming them, subsuming one federal agency or office within another, changing an agency's functions, and eliminating an agency altogether. Congress has exercised this power since its earliest days. *See, e.g.*, Act of Sept. 15, 1789, ch. 14, § 1, 1 Stat. 68, 68 (renaming the "Department of Foreign Affairs" the "Department of State").

In the early nineteenth century, Congress began creating new offices that were housed within executive departments and reassigning and reorganizing their functions and supervision. *See, e.g.*, Act of Apr. 25, 1812, ch. 68, § 1, 2 Stat. 716, 716 (establishing the General Land Office (GLO) within the Treasury Department); Act of July 4, 1836, ch. 352, §§ 1-5, 5 Stat. 107, 107-11 ("reorganiz[ing]" the GLO); Act of July 4, 1836, ch. 357, § 1, 5 Stat. 117, 117-18 (establishing the Patent Office within the Department of State). Later, when Congress created the Department of the Interior, it transferred the GLO and the Patent Office from their original departments to the new Department and reassigned certain powers previously

exercised by the Secretaries of Treasury, War, and State to the new Secretary of the Interior. *See* Act of Mar. 2, 1849, ch. 108, §§ 2-7, 9 Stat. 395, 395-96.

Even when past Presidents have called for agencies to be abolished, they have always recognized that Congress retains the ultimate power to eliminate agencies and transfer their functions. Consider again the ICC. Beginning in the 1970s, as the importance of railways waned, railroads became less profitable and "regulation . . . took the blame." Dempsey, *supra*, at 1172. In a series of statutes, Congress began limiting the ICC's powers. *See id.* at 1173. Notably, President Reagan pushed to abolish the ICC and proposed legislation to do so, but Congress did not pass the legislation. Hogue, *ICC*, *supra*, at 18. The ICC therefore continued to operate until 1995, when Congress passed, and President Clinton signed into law, the ICC Termination Act, Pub. L. No. 104-88, 109 Stat. 903 (1995), which transferred the ICC's remaining functions to a newly created Surface Transportation Board and the Department of Transportation, Hogue, *ICC*, *supra*, at 22.

The creation of today's Postal Service is another example of presidential recognition that the proper means to seek reorganization of the executive branch is by recommending legislation to Congress. In 1970, postal-service reform was urgently needed because the nation's "vast sprawling postal complex [was] heavily overburdened and in deep trouble" and struggled to "[keep] pace with the advances of the national economy." H.R. Rep. No. 91-1104, at 3652-53 (1970). After

extensive negotiations about how to change the postal system, "President Nixon transmitted [his] proposed legislation to" Congress, *id.* at 3652, and the reorganization was implemented "[w]hen, in 1970, Congress enacted the Postal Reorganization Act [Pub. L. 91-375, 84 Stat. 719]," *Nat'l Ass'n of Greeting Card Publishers v. U.S. Postal Serv.*, 462 U.S. 810, 813 (1983). "The Act abolished the Post Office Department, which since 1789 had administered the Nation's mails," and, "[i]n its place, . . . established the United States Postal Service as an independent agency." *Id.* (citations omitted).

Congress has reorganized agencies through more recent legislation as well, often to increase efficiency. In 1998, Congress passed the Foreign Affairs Reform and Restructuring Act, Pub. L. No. 105-277, div. G, 112 Stat. 2681-761, to "consolidate and reinvigorate" the nation's foreign affairs functions "by abolishing the United States Arms Control and Disarmament Agency, the United States Information Agency, and the United States International Development Cooperation Agency, and transferring the functions of these agencies to the Department of State." *Id.* § 1102(2), 112 Stat. at 2681-766. When Congress created the Department of Homeland Security in 2002 in response to the September 11th attacks, it abolished the Immigration and Naturalization Service and transferred its functions to the new Department. *See* Homeland Security Act of 2002, Pub. L. No. 107-296, § 471, 116 Stat. 2135, 2205 (codified at 6 U.S.C. § 291). Other examples abound. *See, e.g.*,

Department of Agriculture Reorganization Act of 1994, Pub. L. No. 103-354, tit. II, §§ 202, 211, 108 Stat. 3178, 3209; Energy Reorganization Act of 1974, Pub. L. No. 93-438, §§ 101, 104(a), 88 Stat. 1233.

C. This "[l]ong settled and established practice" of Congress using the lawmaking process to reorganize or eliminate agencies—and receiving consistent deference from the President in doing so—underscores that the authority to create, restructure, and abolish federal agencies lies with Congress as the nation's lawmaking body. *NLRB v. Noel Canning*, 573 U.S. 513, 524 (2014) (noting that "long settled and established practice" is entitled to "'great weight in a proper interpretation of constitutional provisions' regulating the relationship between Congress and the President" (quoting *The Pocket Veto Case*, 279 U.S. 655, 689 (1929))). That legislative process must "be exercised in accord with [the] single, finely wrought and exhaustively considered, procedure" of bicameralism and presentment that the Framers selected. *INS v. Chadha*, 462 U.S. 919, 951 (1983). Pursuant to that process, the President can recommend that Congress create an executive agency, *see* U.S. Const. art. II, § 3, and he can veto a congressional effort to create one, *see id.* art. I, § 7, cl. 2, but he has no power to create or destroy an agency on his own, for the Constitution simply "does not confer upon him any power to enact laws or to suspend or repeal such as the Congress enacts," *United States v. Midwest Oil Co.*, 236 U.S. 459, 505 (1915); *see Youngstown Sheet & Tube Co. v.*

Sawyer, 343 U.S. 579, 655 (1952) (Jackson, J., concurring) ("The Executive, except for recommendation and veto, has no legislative power."). That is why when past Presidents have reorganized or eliminated agencies through executive action, they have always done so pursuant to statutory delegations of authority, as the next Section explains.

II. As Historical Practice Demonstrates, When Congress Wants to Give the President Reorganization Authority, It Does So Through Legislation.

From 1932 to 1984, Congress gave the President reorganization authority by passing and renewing laws known as the Reorganization Acts. This history demonstrates that when Congress decides to delegate its authority over the structure of the federal government to the President, it knows how to do so while simultaneously guarding against executive branch overreach.

Broadly speaking, the Reorganization Acts authorized presidents to reorganize executive agencies by submitting a Reorganization Plan to Congress. *See* Henry B. Hogue, Cong. Rsch. Serv., R42852, *Presidential Reorganization Authority: History, Recent Initiatives, and Options for Congress* 1 (2012) [hereinafter Hogue, *Reorganization*]. If Congress consented to the plan, through either its inaction or express approval, then the plan became law. *Id.* at 1-2; *cf.* Henry B. Hogue, Cong. Rsch. Serv., R48763, *Presidential Reorganization Authority: Potential Approaches for Congressional Consideration* 4 (2025) (noting that the

Acts' statutory design evolved such that "congressional disapproval of plans [submitted by the President] was made easier over time").

Some of today's major federal departments and agencies were created by Reorganization Plans. The Department of Health, Education, and Welfare (HEW)—predecessor to the Department of Health and Human Services (HHS) and Department of Education—was established by President Eisenhower through a Reorganization Plan. *See* Reorganization Plan No. 1 of 1953, *in* 67 Stat. 631; 20 U.S.C. § 3441 (transferring the educational functions of the Secretary of Health, Education, and Welfare to the new Secretary of Education); *id.* § 3508 (changing HEW's name to HHS). The Environmental Protection Agency and the Federal Emergency Management Agency were similarly created by Reorganization Plans. *See* Reorganization Plan No. 3 of 1970, *in* 84 Stat. 2086 (Environmental Protection Agency); Reorganization Plan No. 3 of 1978, *in* 92 Stat. 3788 (Federal Emergency Management Agency).

Congress passed the first law expressly delegating reorganization authority to the President in 1932 at the urging of President Hoover. In a statement to Congress on "[t]he need for reorganization," President Hoover emphasized that the "gradual growth" of the executive branch had led to "overlapping and waste," such that "the number of agencies can be reduced." 75 Cong. Rec. 4181 (1932). He recommended that the "[a]uthority under proper safeguards . . . to effect these transfers and

consolidations" should "be lodged in the President" via executive orders subject to Congress's review. *Id.* at 4182; *see* Statement about Congressional Action on Reorganization of the Executive Branch (Feb. 24, 1932), *in Public Papers of the Presidents of the United States: Herbert Hoover* 74, 74 (U.S. Gov't Printing Off., Wash. 1977) ("It is a most unpleasant task to abolish boards and bureaus and to consolidate others . . . . [Reorganization] should be lodged with the Executive with the right of Congress to review the actions taken.").

Congress subsequently passed legislation to permit the President to transfer the functions of one agency to another and to consolidate the functions of agencies or departments, but it did not allow the President to abolish agencies or departments. *See* An Act of June 30, 1932, Pub. L. No. 72-212, §§ 403, 406, 47 Stat. 382, 413-15. Hoover lamented this limit on his authority. *See* Statement About Signing the "Economy Act" (June 30, 1932), *in Public Papers of the Presidents of the United States: Herbert Hoover*, *supra*, at 283 ("[T]he bill is so framed as to render abolition or consolidation of the most consequential commissions and bureaus impossible of consummation.").

Hoover thus continued to push for the expansion of reorganization authority. *See* Hogue, *Reorganization*, *supra*, at 7-8. In 1933, with the Act set to expire in two years, Congress acquiesced in part, amending it to allow the President to abolish an executive agency (defined as "any commission, independent establishment, board,

bureau, division, service or office in the executive branch of the Government"), but still prohibiting presidential abolition of an executive department. *See* Act of Mar. 3, 1933, Pub. L. No. 72-428, tit. IV, §§ 402, 403, 409, 47 Stat. 1489, 1517-19. Congress explained that it was delegating such power to the President on a temporary basis due only to the "serious emergency [that] exists by reason of the general economic depression" and a corresponding "imperative to reduce drastically governmental expenditures." *Id.* § 401, 47 Stat. at 1517. President Franklin Roosevelt later used this delegated power to consolidate certain agency functions into newly created agencies and to abolish other agencies. *See* Hogue, *Reorganization*, *supra*, at 9 (citing A.J. Wann, *The President as Chief Administrator: A Study of Franklin D. Roosevelt* 25 (1968)).

In 1937, after the 1933 Act expired, President Roosevelt requested more robust reorganization authority from Congress. *Id.* at 10. One of the proposed bills would have allowed the President to reorganize the executive branch without any involvement from Congress and without an expiration date. *See id.* This proposal sparked sharp rebuke from members of Congress, who were concerned about giving away their constitutional power over the structure of the executive branch in such a sweeping fashion. *See, e.g.*, 83 Cong. Rec. 4190 (1938) (Sen. Brown) ("[L]eave final authority for changes in the Congress, where it belongs."); *id.* at 4195 (Sen. Borah) ("If the President could abolish or consolidate these agencies without

authority of Congress you may rest assured he would not be here asking for authority. He cannot act [unless] we give him power which belongs to Congress."); *id.* at 4196 (Sen. Johnson) ("The powers which are proposed to be given by the bill . . . are yet the greatest legislative powers which exist in the Congress of the United States.").

Congress then passed the Reorganization Act of 1939, Pub. L. No. 76-19, 53 Stat. 561, a narrower version of the bills considered the year before—indeed narrower still than the reorganization authority Congress had granted in 1933. The purpose of the Act was, in part, to "increase efficiency of the operations of the Government" and "to abolish such agencies as may not be necessary." *Id.* § 1(a)(2), (4), 53 Stat. at 561. The Act permitted the President to reorganize federal agencies and departments through the submission of a Reorganization Plan (rather than an executive order) to Congress, which would become law absent a concurrent resolution rejecting the Plan. *Id.* §§ 4-5, 57 Stat. at 562-63. This time, however, Congress prohibited the President from creating or abolishing executive departments or abolishing independent agencies in whole or in part. *See id.* § 3, 57 Stat. at 561-62. This Act expired in 1941. *Id.* § 12, 57 Stat. at 564.

Over the following decades, Congress passed additional Reorganization Acts, each with a sunset date, and at times modified the scope of the delegation of its power over the structure of the federal government. *See* Hogue, *Reorganization*,

supra, at 22; *see, e.g.*, Reorganization Act of 1945, Pub. L. No. 79-263, 59 Stat. 613 (prohibiting the President from limiting the independence of an independent federal agency); Reorganization Act of 1949, Pub. L. No. 81-109, 63 Stat. 203 (permitting the President to create departments); Reorganization Act of 1977, Pub. L. No. 95-17, 91 Stat. 29 (prohibiting the President from creating or abolishing departments or abolishing an independent agency).

Congressionally authorized presidential reorganization power came to an end in the 1980s. President Reagan requested such authority in 1981, but Congress did not renew the Act until 1984. *See* Reorganization Act Amendments of 1984, Pub. L. No. 98-614, 98 Stat. 3192 (codified at 5 U.S.C. §§ 901-12).[2] The 1984 Act expired on December 31, 1984, *see* 5 U.S.C. § 905(b), and Congress has not delegated any reorganization authority to the executive branch since then, despite requests from both President George W. Bush and President Obama to do so, *see* Hogue, *Reorganization*, *supra*, at 31-32, 34. President Trump also sought to reorganize the executive branch during his first term, although his administration conceded that any "significant changes will require legislative action." Executive Office of the President, *Delivering Government Solutions in the 21st Century* 4

[2] In light of the Supreme Court's then-recent decision holding the legislative veto unconstitutional, *see Chadha*, 462 U.S. at 959, the 1984 Act required a joint resolution by Congress to approve the plans, *see* 5 U.S.C. § 906(a). Congress also passed a law to ratify reorganization plans that had become law through the previous procedure. Act of Oct. 19, 1984, Pub. L. 98-532, 98 Stat. 2705.

(2018); *see* Exec. Order No. 13,781, 82 Fed. Reg. 13959 (Mar. 13, 2017) (requiring the Office of Management and Budget to create a report with reorganization recommendations).

* * *

Because the power to abolish executive agencies belongs to Congress, Appellants cannot unilaterally shutter the Agencies nor render them incapable of fulfilling their statutory obligations. Allowing Appellants to do so would wreak havoc on our constitutional separation of powers.

CONCLUSION

For the foregoing reasons, this Court should affirm the grant of summary judgment.

Respectfully submitted,

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Dated: May 13, 2026

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) because it contains 4,326 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

I further certify that this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6), because it has been prepared in a proportionally spaced typeface using Microsoft Word 14-point Times New Roman font.

Executed this 13th day of May, 2026.

/s/ Brianne J. Gorod
Brianne J. Gorod

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of May, 2026, I electronically filed the foregoing document using the Court's CM/ECF system, causing a notice of filing to be served upon all counsel of record.

Dated: May 13, 2026

/s/ Brianne J. Gorod
Brianne J. Gorod