

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SHIRA PERLMUTTER,)
)
)
Plaintiff,) CIVIL NO. 25-1659
)
v.)
) Wednesday, May 28, 2025
TODD BLANCHE, et al.,)
) 2:06 p.m. - 3:21 p.m.
)
Defendants.)
_____)

TRANSCRIPT OF TEMPORARY RESTRAINING ORDER

BEFORE THE HONORABLE TIMOTHY J. KELLY
UNITED STATES DISTRICT JUDGE

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PROCEEDINGS

(Court called to order at 2:06 p.m.)

DEPUTY COURTROOM CLERK: This is Civil
Matter 25-1659, *Shira Perlmutter v. Todd Blanche,*
et al.

Arguing on behalf of the plaintiff is
Allyson Scher, and arguing on behalf of the defendants
is Stanley Woodward, Jr.

THE COURT: All right. Well, good afternoon to
everyone.

We are here, obviously, for argument on the motion
for a TRO that was filed just before the long weekend.
And consistent with the practice in this Court, I had
gave the government an -- a quick opportunity to respond
and got you all here at the first possible time we could
do that, consistent with allowing the government the
opportunity to respond on paper.

So why don't I, without further ado, just -- I'm
going to hear from each side, and we'll proceed that
way.

I have a few questions, but given, again, the speed
with which a TRO has to be adjudicated, I'm mostly going
to rely on you all to present whatever affirmative
points you want.

I think, big picture, if I were the plaintiffs, I'd

1 focus on irreparable harm; and if I were the government,
2 I'd focus on the merits.

3 But why don't I hear from the plaintiffs --
4 plaintiff, please, up at the -- up at the podium.

5 MS. SCHER: Good afternoon, Your Honor.

6 The Library of Congress is in name and function,
7 Congress's library. The President's purported
8 appointment of Deputy Attorney General Todd Blanche as
9 acting Librarian of Congress, and Mr. Blanche's unlawful
10 appointment of two other Justice Department officials,
11 amounts to an unprecedented Executive Branch takeover of
12 the Library of Congress's operations and access to reams
13 of confidential information that belong to Congress.

14 (Reporter admonition)

15 MS. SCHER: Yes. Sorry.

16 THE COURT: Glad we got that out of the way
17 early.

18 MS. SCHER: Yes.

19 THE COURT: And for both parties to hear.

20 MS. SCHER: Defendants' claimed authority to
21 appoint Mr. Blanche and remove Plaintiff,
22 Shira Perlmutter, are not supported by the Constitution
23 or any statute.

24 In its exercise of equitable authority, this Court
25 did grant preliminary emergency relief to

1 Ms. Perlmutter, who has been serving as the
2 Register of Copyrights, with dignity, and is entitled to
3 continue her service and maintain the status quo because
4 there has been no lawful effort to remove her.

5 So I will briefly cover the merits here. And,
6 first, we'll start with something that ought to be
7 uncontroversial.

8 The Register of Copyrights is an inferior officer,
9 and for an inferior officer, Congress can decide to vest
10 the authority to hire and fire in a principal officer.
11 That is exactly what Congress has done here.

12 THE COURT: Do you take the government to
13 dispute that?

14 MS. SCHER: I do not take the government to
15 dispute that the Register of Copyrights is an inferior
16 officer.

17 THE COURT: Right.

18 MS. SCHER: They concede that.

19 But they do dispute that the authority is vested
20 only in the Librarian of Congress.

21 But finding precedent from the Supreme Court and
22 the D.C. Circuit say just that. And defendants point to
23 no basis in statute or case law that suggests otherwise.

24 And so the President does not have the authority to
25 hire or fire a Register of Copyrights unilaterally.

1 THE COURT: Would he have the right to direct
2 the person who you all believe is acting to fire her?

3 MS. SCHER: Yes, in that the President has
4 supervisory authority over the Librarian of Congress --
5 or the acting Librarian of Congress and can remove that
6 person from their position if they're not effectuating
7 the President's wishes.

8 THE COURT: Okay.

9 MS. SCHER: And, so for this reason, because
10 the authority to hire and fire the Register of
11 Copyrights is vested in the Librarian of Congress alone,
12 the President does not have the authority to fire her,
13 and so that was unlawful.

14 This will bring us next to whether the President
15 lawfully appointed Mr. Blanche as acting Librarian of
16 Congress. He did not.

17 To support their argument, the government
18 principally relies on the Federal Vacancies Reform Act,
19 which is a statutory authority that temporarily -- or
20 allows the President to temporarily appoint officers to
21 executive agencies in certain circumstances; and that
22 does not apply here because the Library of Congress is
23 not an executive agency.

24 The government doesn't --

25 THE COURT: Is it fair to say -- I'm going

1 to -- when I talk to the government about this point,
2 I'm going to raise the same point, which is I think
3 you've both -- it's interesting.

4 I think there's a sprinkling of evidence on both
5 sides, and maybe some evidence points to the fact that
6 the Library of Congress is sort of a unicorn in that it
7 has some functions that are properly part of different
8 branches.

9 So, you know, I think, at the end of the day, each
10 side is going to have to grapple on this question. You
11 each have to grapple with a significant amount of
12 evidence on the other side, it seems to me.

13 Is that fair? I mean, or tell me -- tell me --

14 MS. SCHER: Sure.

15 THE COURT: Because I do think you've got some
16 good points on this. No question. I think they have
17 some decent points on it, too.

18 And so, ultimately, it's me trying to make sense of
19 the evidence on one side and the other.

20 MS. SCHER: Sure.

21 Respectfully, I do disagree that it's --

22 THE COURT: You disagree they have any good
23 points; is that what you're telling me?

24 MS. SCHER: I do -- I -- specific to this, yes.

25 I think that an "executive agency" is a term that

1 Congress created and defined. We are not disputing that
2 Inter -- in the D.C. Circuit, in *Intercollegiate*, said
3 that the Library of Congress exercises some
4 executive-adjacent powers in addition to the legislative
5 powers that they exercise.

6 THE COURT: I don't -- did they say "adjacent"?
7 No, they didn't.

8 They said "executive power," but --

9 MS. SCHER: I think another case may have said
10 "adjacent."

11 THE COURT: All right.

12 MS. SCHER: That may have been the
13 Fourth Circuit case.

14 But *Intercollegiate* ruled that the Library of
15 Congress is part of the Executive Branch for the
16 specific purpose of appointing the copyright judges, and
17 that's a constitutional question.

18 And so I agree with you that it's a more difficult
19 constitutional question of whether the Library of
20 Congress can act with executive power or has more
21 executive power than legislative. But that's not the
22 question here.

23 Here, Congress enacted the FVRA. They intended to
24 have the FVRA cover a specific set of agencies. And I
25 think it's very, very clear from the context of Title 5

1 that executive agency does not include the Library of
2 Congress.

3 And I'll point you to Pages 2 through 5 of our
4 reply, where I think we have detailed and irrefutable
5 evidence that Congress considered the Library of
6 Congress to be legislative for the purpose of Title 5,
7 which is where the FVRA sits.

8 So this is separate from the constitutional
9 question.

10 THE COURT: Sure.

11 MS. SCHER: It's just a very strict statutory
12 question.

13 THE COURT: Right.

14 And your point is that they considered the library
15 sort of -- when they defined the various components,
16 they defined the library as its -- its -- in many cases,
17 as its own entity.

18 They didn't --

19 MS. SCHER: Yes.

20 THE COURT: -- lump it in in any kind of
21 general term -- in any, generally, category of compo- --
22 of agencies or components.

23 MS. SCHER: They actually have referred to the
24 Library of Congress as a legislative agency in some
25 provision of Title 5. So they actually have defined it

1 that way.

2 And then, as you said, for other provisions,
3 they'll say "executive agency" and also add the Library
4 of Congress, and the Architect of the Capitol, and other
5 legislative entities.

6 And I think those are all laid out in 2 through 5
7 of the reply.

8 THE COURT: Yep.

9 MS. SCHER: Although, there is some in the
10 opening motion, as well.

11 And I think our points about the APA and FOIA cases
12 that have shown that the Library of Congress was not --
13 is not subject to the APA or FOIA because courts
14 interpreted the APA exclusion of Congress to include the
15 Library of Congress, and so the Library of Congress was
16 excluded from FOIA and APA.

17 THE COURT: The government's -- or the
18 defendants' counter to that -- and I don't think it's an
19 unreasonable one -- is that, well, look, those are
20 statutes that were passed for specific purposes.

21 It makes sense that Congress might say, okay, we
22 don't want -- it doesn't make sense for our purposes
23 for -- let's take FOIA -- for FOIA to apply to the
24 Library of Congress, regardless of whether it fits into
25 the term "executive agency" or not.

1 In other words, Congress can define the scope of
2 the legislation that its passing to cover whatever it
3 wants and might have good reason to say, "We think that
4 particular" -- I don't even know what to call it --
5 "organization should not be covered by this statute,"
6 for whatever reason, but maybe in a different case it
7 would have covered.

8 So I don't know. I think of all the things that
9 you all can -- of all the evidence you have on your
10 side, I don't find that as persuasive as some of the
11 others.

12 MS. SCHER: Well, I'll add, just for what I
13 think it is most useful for -- at least the APA and the
14 FOIA points -- are that -- Congress was aware previous
15 to the enactment of the FVRA. Those APA and FOIA cases
16 were before the FVRA was enacted.

17 So Congress understood, or we can infer that they
18 understood, that courts have been finding the Library
19 of -- considering the Library of Congress to be a
20 legislative agency, while *Intercollegiate* was, I think,
21 15 years after the FVRA was enacted, and so Congress
22 would not have been aware of that holding.

23 And I think another important point here is that
24 the way that defendants would have you consider the term
25 "executive agency" would be an ever-changing, evolving

1 term depending on how courts rule related to executive
2 power.

3 And that's not what they've done here. They've
4 created a fixed meaning when they enacted the FVRA.

5 And just logically, Congress wouldn't give the
6 President sole and unreviewable authority to appoint an
7 acting Librarian of Congress to oversee an agency that
8 performs critical legislative functions and cut itself
9 entirely out of that process.

10 And so moving on to irreparable harm,
11 Ms. Perlmutter was lawfully appointed Register of
12 Copyrights, and she has not been properly removed.

13 The Court's urgent intervention is required to
14 avoid serious harms to Ms. Perlmutter in her critical
15 role and the institution that she's faithfully served
16 over the last nearly five years.

17 And we largely rest -- or at least in part rest on
18 the "statutory right to function" argument that this
19 Court is familiar with and has articulated in *Berry*.
20 And Ms. Perlmutter -- defendants' actions deprived her
21 of her statutory right to function in the Register of
22 Copyrights' role that she was lawfully appointed to by
23 the Librarian of Congress.

24 THE COURT: Can I just -- let me follow up on
25 that.

1 And let me just say none of this should be taken to
2 suggest that Ms. Perlmutter hasn't served well and
3 honorably and -- or should be taken to cast -- to
4 denigrate her service at all.

5 But I do think you have both the -- and, look,
6 you all laid out a number of cases, recent cases, in
7 which my colleagues, a number of them, have in one way
8 or another adopted that theory.

9 But you have, over these last few months, and
10 really just last week, first, the Circuit in staying one
11 district court injunction of some kind, and then the
12 Supreme Court just last week.

13 Also, I guess in that case, denying -- I can't
14 remember which posture it was. But both courts, courts
15 that I answer to, unlike the other district courts, that
16 I have to apply their precedent -- and I get these were
17 both hardly sort of final on the merits conclusions
18 about these things.

19 But they both kind of -- I'll put it -- they
20 both -- I'll say that they both gave a side eye to the
21 no- -- this theory.

22 And so what am I -- what am I to make of those two
23 cases?

24 MS. SCHER: What's the first one you're
25 referring to?

1 THE COURT: Well, the Circuit --

2 MS. SCHER: The second one is *Wilcox*.

3 THE COURT: Yeah, that's right. That's right.

4 And the first one was -- it might have been -- hold
5 on.

6 It's the only case in which we had a panel of our
7 Circuit stay -- it was the case before --

8 MS. SCHER: *Dellinger*?

9 THE COURT: -- Judge Jackson. The case before
10 Judge Jackson.

11 It's -- hold on. Hold on. Hold on.

12 Yeah, *Dellinger v.* --

13 MS. SCHER: Okay.

14 THE COURT: -- *Bessent*.

15 MS. SCHER: Yeah.

16 THE COURT: Yeah. Yeah.

17 In which I think it was a panel of Judge Henderson,
18 Judge Millett and -- I can't remember the other judge --
19 Judge Walker, perhaps.

20 But in any event -- and they basically said, well,
21 you know -- and, look, none of these cases sort of say
22 this is not a theory that can ever be accepted by a
23 court. I think that's clear.

24 But they do -- in that case, they did say, "Well,
25 look, you've got to come out" -- and they kind of called

1 back to the -- oh, gosh, I think the case is called
2 Sampson. I always want to call it Simpson.

3 Sampson, in which they say, "Look, you've got to
4 show a certain level of harm" -- first of all, you've
5 got to show harm to the individual, not to the
6 institution, not -- or at least it can't be
7 free-floating harm to the institution. It has to
8 connect to the individual.

9 And that's just a general proposition, right?

10 Any time a plaintiff comes in and asks for
11 preliminary relief, the irreparable harm focuses on the
12 harm to the person, not the harm to third parties.

13 Okay. And then they said, you know, "And you've
14 got to show that that harm is great enough so that it
15 overcomes the harm on the flip side."

16 And, again, that's what the Supreme Court
17 originally said in that Sampson case.

18 And the Supreme Court seemed to do the same kind of
19 analysis when it said, "Look, whatever the harms here
20 are, we don't -- we don't think -- we don't think that
21 the harm to the plaintiff is the kind of harm that would
22 override the harm to the government."

23 So I don't know. Tell me what I'm supposed to
24 make of those cases.

25 MS. SCHER: Sure.

1 So -- and, as you stated, it's -- it is -- it's
2 a -- there -- it's a signal. And I picked up that it is
3 a signal of something.

4 I read the Supreme Court's order in *Wilcox* last
5 week to talk about -- that the harm when a person is in
6 a position that exercises considerable executive power,
7 which is --

8 THE COURT: That's what they say.

9 MS. SCHER: -- what's mentioned in the order.

10 And that -- in that case, the President has more of
11 an interest in controlling who that person is basically,
12 than the person has a right to that position.

13 That's just not the case here, and defendants do
14 not suggest that the Register of Copyright exercises
15 extreme or considerable executive power.

16 THE COURT: Well, I guess I don't -- I don't
17 know quite what that phrase means in this context.

18 But, I mean, if you go back to the other Circuit
19 case that talks about and decided that, at least for
20 copyright purposes, the Library or the Office of
21 Copyrights, however you want to slice it --

22 MS. SCHER: Yeah.

23 THE COURT: -- that portion of the library, it
24 seems that that's all executive power, isn't it?

25 I mean, it's -- I don't know what considerable --

1 or, yeah, I can't remember what it -- it did use a word
2 like "considerable" --

3 MS. SCHER: "Considerable," yeah.

4 THE COURT: -- I think.

5 Whatever that means, it's executive power, and
6 that's what we're talking about here. I mean, we're not
7 talking about, you know, CRS.

8 MS. SCHER: Yes.

9 First, the plaintiff, who is the Register of
10 Copyrights, I would argue that that is not considerable
11 executive power, and that's because the Librarian of
12 Congress actually has supervisory authority over her.

13 And, also, to the extent that the Register of
14 Copyrights promulgates the rules, which is, like, a more
15 executive function, the Librarian actually approves
16 those rules. So the power at least is in the Librarian.

17 And, here, the President removed the Librarian, and
18 we are not -- we don't have any claims regarding that.

19 THE COURT: Right.

20 And I guess I should have said, like you -- I think
21 I said we're not talking about, you know, essentially
22 the Librarian.

23 You are talking about the Librarian, obviously, in
24 some of your claims. I mean, but in terms of the harm
25 analysis, it's kind of derivative harm, or I guess it's

1 not direct harm to her, other than insofar as it may
2 have resulted in her being removed.

3 MS. SCHER: I think whether it's a harm to her
4 is sort of a separate point.

5 But to, like, finish off the *Wilcox* point, the
6 President does have a, like -- is exercising supervisory
7 authority over the Librarian of Congress right now. So
8 I think that sort of covers the concerns that are
9 expressed in *Wilcox*. But beyond the statutory right to
10 function in her role, we argue that plaintiff's harm
11 goes well beyond that.

12 And Ms. Perlmutter is currently the Register of
13 Copyrights, and for that reason, she is tasked with
14 legislative functions by statute that are assigned to
15 the Register of Copyrights; and she is being -- she is
16 prevented and facing obstacles in fulfilling her
17 statutory duties because of these unlawful
18 appointments.

19 And these are covered in our opening and reply
20 brief, the sort of duties that are assigned to her,
21 including --

22 THE COURT: The report.

23 MS. SCHER: The report, yes.

24 -- fulfilling her statutory duty to conduct studies
25 and advise Congress.

1 She issued a report. She's working on the fourth
2 part of the report, and that task will be -- will face a
3 threat of not being able to be completed because of
4 these competing claims to who is the Register of
5 Copyrights.

6 And this is a big distinction with *English v. Trump*
7 case, because in that case, Ms. English was not serving
8 as the acting director. She was the deputy director,
9 and she had not been removed from her position.

10 And she was not facing obstacles in performing the
11 duties that Congress assigned to her because she was not
12 assigned the role of acting director, and so she was not
13 able to claim that she had a threat of irreparable harm
14 to prevent her from fulfilling her statutory
15 obligations.

16 THE COURT: That is no -- no doubt, that is a
17 distinction between that case and this case. I'm not
18 sure either side thinks that's -- that case is the
19 answer here.

20 But you're right, it is a distinction that
21 Ms. English had never served as the director.

22 MS. SCHER: And for that reason, the ask here
23 is to maintain the status quo, which is, again,
24 different than it is in the *English* case.

25 And, finally, sort of an irreparable harm section

1 is the institutional harm to the Library of Congress and
2 the Copyright Office that is tied to plaintiff's harm.

3 It's -- I think it should be considered as a -- as
4 a harm to the institution in the way that, sort of,
5 *Berry* and the *Harris* case have talked about it, but we
6 can also tie that harm specifically to plaintiff.

7 And I think the first order of harm is that the
8 President -- if the President's unlawfully appointed
9 person serves as the head of the Library of Congress,
10 having cut Congress completely out of the process while
11 it is -- the Library of Congress is an agency that is
12 very uniquely designed to benefit and assist Congress,
13 and so that harm sort of damages the reputation of the
14 library in being a neutral adviser to Congress.

15 THE COURT: It is striking that we don't have
16 Congress here. I'll just point that out. We don't --
17 you know, we don't have Congress appearing in this
18 case -- I'll just put it that way -- either as a
19 plaintiff, as an intervenor, or in any other way.

20 But, fair enough.

21 MS. SCHER: I can point you to at least
22 statements that are bipartisan from members of Congress
23 on both sides, I think, in our opening brief, and it
24 might also be in the reply, that express their
25 discomfort with the Executive Branch attempting to seize

1 control of the Library of Congress.

2 And so this harm, it's damaging the Library of
3 Congress's ability to be an adviser to Congress.

4 And at least, you know, as you mentioned, the
5 Congressional Research Service, by statute, has to give
6 nonpartisan advice; and that's obviously complicated if
7 the Executive Branch has essentially seized control and
8 inserted the Deputy Attorney General and two of his
9 associates into the leadership offices of the Library.

10 And the threat that they pose is imminent because
11 any access that they have will be unlawful; and this
12 unlawful access to the confidential data that the
13 Library of Congress keeps and the copyright deposits
14 that are housed in the Copyright Office are going to
15 damage the credibility of the institution and the system
16 that Ms. Perlmutter, my client, is tasked with
17 safeguarding.

18 And, again, this is another distinguishing
19 point with *English v. Trump* because, there, Ms. English
20 wasn't able to tie her harm to the agency, and the Court
21 had remarked that the CFPB continued to function with
22 Mr. Mulvaney as acting director. And that's just simply
23 not the case here.

24 And so plaintiff will -- if she's not given
25 emergency relief, will lose her ability to carry out her

1 role as a Register of Copyrights when the institution is
2 so damaged that she's unable -- she's unable to perform
3 the duties of the Register with, like, the public trust
4 and relationship with Congress that is so vital.

5 If you do not have any more questions, I will --

6 THE COURT: I will give you an opportunity to
7 respond. It's your motion, so you'll get an opportunity
8 to respond to anything the defendants say.

9 MS. SCHER: Thank you.

10 THE COURT: Absolutely.

11 Mr. Woodward.

12 MR. WOODWARD: Good afternoon, Judge. Good to
13 see you again.

14 THE COURT: Good afternoon. Same to you.

15 MR. WOODWARD: So, Your Honor, six days ago,
16 the plaintiff filed her motion, and six days ago, the
17 Supreme Court issued its order in *Wilcox*.

18 And I'll quote: "This stay also reflects our
19 judgment that the government faces greater risk of harm
20 from an order allowing a removed officer to continue
21 exercising the executive power that a wrongfully removed
22 officer faces from being unable to perform her statutory
23 duty."

24 And so with respect, Your Honor, six days into this
25 litigation, our position is the Court need not delve

1 into these mighty constitutional concerns that the
2 plaintiffs have flagged.

3 The fact of the matter is, is that the balance of
4 the equities weigh in favor of the government. What the
5 plaintiff is asking us to do is to reinstate someone
6 whom the President no longer believes will execute on
7 the prerogatives of his administration. That's
8 completely within his purview.

9 And how we get there, at least at this early
10 juncture, is irrelevant. As the Court points out, it is
11 certainly conceivable the -- that the President direct
12 the acting Librarian of Congress, whomever that is, to
13 remove the Register of Copyrights. That person refuses,
14 they're removed. The next Librarian of Congress steps
15 in, and so forth.

16 And so at the end of the day, the facts that are
17 not disputed by the parties leave us in the same place.

18 You know, so turning to the merits of the
19 plaintiff's argument, we would observe that the
20 following is beyond dispute.

21 There is no dispute that Congress designated the
22 Librarian of Congress as an officer of the United States
23 to be appointed by the Senate -- excuse me, to be
24 appointed by the President with advice and consent of
25 the Senate.

1 Everybody agrees.

2 There's also no dispute that the Librarian of
3 Congress can be fired by the President.

4 Everybody agrees.

5 THE COURT: Everyone agrees.

6 MR. WOODWARD: And there's no dispute that a
7 duly Senate-confirmed Librarian can appoint a Register
8 of Copyrights, and in so doing would be removing any
9 Register of Copyrights who was there.

10 And so it appears that where we disagree is how the
11 Court is to treat -- to use your word -- this unicorn of
12 an organization that exists.

13 We agree that the Library of Congress performs some
14 legislative functions, but we also think it's beyond
15 dispute that the Library of Congress serves a fair
16 amount of Executive Branch functions.

17 And we would observe that in particular that the
18 Register of Copyrights is almost exclusively focused on
19 the performance of Executive Branch functions.

20 Now, Congress could have done many things. But
21 what Congress did in creating the Library of Congress
22 was designate the Librarian of Congress as an Executive
23 Branch official to be appointed by the President.

24 They didn't have to do that, and I'm glad --

25 THE COURT: When you say "as an Executive

1 Branch official to be appointed by the President," I get
2 the second part of what you just said.

3 I mean, isn't the Executive Branch official the
4 whole nub of the argument?

5 MR. WOODWARD: It is.

6 THE COURT: Okay.

7 MR. WOODWARD: And to be sure --

8 THE COURT: I mean, I don't know that they
9 would agree with that. Obviously, they make the point,
10 among many, that it's codified in the legislative part
11 of the Code.

12 You all respond that that's not dispositive at all,
13 and maybe you would even respond it doesn't even -- it
14 doesn't even matter one whit.

15 And maybe that's right. I'm just saying that that
16 is the dispute, right? Is it in the executive or not?

17 MR. WOODWARD: I agree.

18 And so we've moved beyond the parts where we are
19 all in agreement.

20 THE COURT: Okay.

21 MR. WOODWARD: It is the position of the United
22 States government, the Department of Justice, that the
23 Librarian of Congress is an Executive Branch official,
24 an official whose appointment is governed by the
25 Appointments Clause.

1 And Congress created this office, the Office of the
2 Librarian of Congress, intentionally to put the
3 Librarian in this position.

4 And so the question really becomes does the FVRA
5 apply?

6 Now, Your Honor wrote the treatise on the FVRA. I
7 won't -- I won't even attempt to educate the Court on
8 this.

9 THE COURT: If only I could remember it, but I
10 did write something about it.

11 MR. WOODWARD: It was extensive.

12 I would -- you know, the question for the Court is
13 going -- will be, at some point in time, is the Office
14 of the Librarian of Congress an independent
15 establishment such that it is an executive agency under
16 the FVRA?

17 We submit that it is, and we submit that although
18 that specific question has not yet been decided, because
19 of the precedent by which the Court is bound, there's
20 no -- there's no way to decide otherwise.

21 And so what is that precedent? Most recently, in
22 Med Imaging & Tech v. The Library of Congress --
23 that's 103 F.4th 830 -- the D.C. Circuit concluded that
24 Congress was treating the Register of Copyrights and the
25 Librarian of Congress by virtue of his function in

1 overseeing the Register of Copyrights -- and not for
2 nothing, right?

3 But the copyright statute says that the Register of
4 Copyrights shall propose rules for the Librarian to
5 promulgate.

6 And Congress then went on top of that and said,
7 although the APA -- although the APA does not generally
8 apply to the Library of Congress, it is going to apply
9 to that specific function, looping in both the Register
10 of Copyrights, looping in the Librarian.

11 And so to be sure, the D.C. Circuit does not say
12 that the Library of Congress is an Executive Branch
13 agency covered by the FVRA. It is concluding that the
14 Library of -- the Librarian of Congress performs
15 executive functions.

16 THE COURT: No question.

17 MR. WOODWARD: Prior, we have *Intercollegiate*
18 *Broad. Systems*, which my colleague mentioned, again, a
19 decision by the D.C. Circuit.

20 That opinion is important because it is -- that is
21 the case that allows the Court -- and don't take my word
22 for it -- it allows the Court to conclude -- or,
23 frankly, requires the Court to conclude that the
24 Librarian of Congress is an officer of the United States
25 subject to Article II Section 2, Clause 2, the

1 Appointments Clause.

2 I apologize, the cite there is 684 F.3d 1332.

3 Not binding on this Court but persuasive, is a
4 decision we cite from the Fourth Circuit. That's *Eltra*
5 *Corp.*, 579 F.2d 294 from 1978.

6 And I quote, "In *Buckley*, the Court chose rather to
7 consider each function of the Commission separately and
8 to determine the character of each, whether legislative
9 or executive, resolving the validity of the function on
10 the basis of such determination. Adopting that same
11 procedure in reviewing the several functions of the
12 Librarian of Congress, it would appear indisputable that
13 the operations of the Office of Copyright are
14 executive."

15 And so if we agree that the copyright -- that the
16 Librarian of Congress, in performing the duties of the
17 Register of Copyrights, and the way that these two
18 offices are inextricably intertwined, are serving as an
19 Executive Branch function. And we overlay the fact that
20 Congress specifically -- specifically recognized the
21 Librarian of Congress as an official subject to the
22 Appointments Clause. Then the question is why isn't the
23 office an independent establishment and therefore an
24 executive agency?

25 My colleagues point to Title 5. And they say,

1 Well, Title 5 has references both to executive agencies,
2 as well as to the Library of Congress, and so it must
3 mean that Congress understood the Library of Congress
4 not to be an executive agency.

5 And our response to that is twofold.

6 First, no. Right?

7 Congress does what it wants and it writes statutes
8 the way it wants to write statutes; and simply because
9 it is mentioning both at that time in Title 5 doesn't
10 mean that throughout the entirety of the U.S. Code the
11 Librarian of Congress is excluded from the definition of
12 executive agency --

13 THE COURT: Sure.

14 But it's evidence, right, along with the canon of
15 statutory construction?

16 MR. WOODWARD: So we would -- exactly,
17 Your Honor. We would submit that, in fact, what
18 Congress was doing was belt and suspenders.

19 We are aware of the plethora of case law in which
20 the Library of Congress, the unicorn that it is, has
21 been found not to be an executive agency for purposes of
22 FOIA, for purposes of the APA, for other purposes that
23 I'm sure I'm not familiar with; and therefore, in
24 defining the Library of Congress, we're going to
25 specifically connote what it is and when it -- when

1 it -- where it applies and what statutes apply to it.

2 And so we think you can read this exactly the
3 opposite way, which is to say that Congress was just
4 being careful. It wanted to make sure everybody
5 understood because there is nothing like the Library of
6 Congress. There is nothing else out there. And so they
7 had to specifically designate it.

8 We also -- we also don't think the Court needs to
9 decide on the question of what authority the President
10 has under Article II, to appoint an officer where the
11 FVRA doesn't apply.

12 We do brief that, and it's long been the
13 Department's position that the President does have that
14 authority, that it can't be --

15 THE COURT: Go ahead.

16 MR. WOODWARD: Well, it can't be that if the
17 FVRA doesn't apply, that that office sits empty forever.

18 THE COURT: Right.

19 But who's saying -- well, okay.

20 But no one is saying -- there is a regulation that
21 elevates an enacting, correct, from within the
22 institution?

23 MR. WOODWARD: I can respond to that --

24 THE COURT: I mean, I'm sure --

25 MR. WOODWARD: -- twofold.

1 THE COURT: I'm just -- no one would maybe
2 doubt -- or your position I'm sure is that the President
3 can override that, and I'm not arguing that.

4 But at least to respond to your point that, like,
5 goodness, the office is -- there's no one there, what
6 are we to do?

7 Like, there are regulations that account for that,
8 right?

9 MR. WOODWARD: Well, there's a regulation
10 promulgated by the Librarian --

11 THE COURT: Right.

12 MR. WOODWARD: -- him or herself, and not done
13 so at the direction of Congress, not done so at the
14 request of Congress, right?

15 There's no statutory authority supporting that
16 delegation or that line of succession, if you will,
17 right? That was done and not blessed by Congress, not
18 blessed by the President.

19 So, you know, we would argue that regulations
20 should be, at best, in quotes. Observe that it exists.

21 And, of course, you know, we included it in our --
22 in our brief out of an abundance of transparency.

23 But, no, we don't think that binds the President in
24 any case.

25 THE COURT: Right.

1 MR. WOODWARD: And, two, even if it were part
2 of the law, to your earlier hypothetical, nothing
3 precludes the President from removing seriatim the
4 Librarian of Congress, which again puts us in a place
5 where if not subject to the FVRA, then the President
6 can't run the Library of Congress.

7 And so that opens up this whole can of worms about
8 whether his duty to faithfully execute the laws can be
9 met or not and should he have -- again, the Department
10 of Justice's position is we don't have to get there.

11 And the reason we don't have to get there today,
12 Your Honor, is because the balance of equities, the
13 Supreme Court has clarified for us, weigh in favor of
14 the government.

15 This Court should not enter an order forcing
16 someone into office that the President has now said, "I
17 do not think that you can pursue my policy prerogatives
18 moving forward."

19 And that's what the Court made clear in *Wilcox*.
20 And to be clear, *Wilcox* is a very different animal in
21 the sense that, as the dissent in *Wilcox* points out,
22 they were talking about success on the merits that may
23 very well include the Court's overturning precedent.

24 We don't even have that here. Here, we just have
25 an undecided question of law that will take time to

1 definitively resolve.

2 I'll conclude just by flagging that the parade of
3 horrors that the government is concerned about --
4 excuse me, that the -- old habits die hard.

5 THE COURT: Yeah, yeah. I was going to say.

6 MR. WOODWARD: The parade of horrors --

7 THE COURT: You have to get used to that
8 different hat, Mr. Woodward.

9 MR. WOODWARD: The parade of horrors that the
10 plaintiffs are concerned about, A, they have not come to
11 fruition; B, you know, they can be resolved.

12 You know, if -- to the extent that the concern
13 here -- first of all, the Register of Copyrights, to my
14 understanding, does not have access to CRS. So CRS is
15 not -- is not really an issue here.

16 The concern that there would be some takeover of
17 CRS, access to confidential data, like, that has not
18 been presented by a party that has any real interest.

19 The concern that the access to the funds in the
20 Copyright Office could be used to some harm, that's a
21 separate -- again, a separate cause of action. That
22 hasn't been done. There's no suggestion that that would
23 be done. And to the extent that that is done, I expect
24 that we'll be back here promptly.

25 THE COURT: I mean, that circles back to the

1 notion that I don't have anyone from Congress here.

2 MR. WOODWARD: We're aware.

3 THE COURT: I got it.

4 MR. WOODWARD: If Your Honor has no further
5 questions -- all right. Thank you.

6 THE COURT: I do not.

7 I'm going to give the plaintiffs an opportunity
8 to -- plaintiff an opportunity to respond to any points
9 you made.

10 MS. SCHER: Thanks.

11 Just very briefly, I think we've covered the
12 merits.

13 But I'll just point out for the independent
14 establishment point, that it's Page 7 to 8 on our
15 opening brief. That includes a provision where a
16 legislative agency is defined, and that is defined to
17 include the Library of Congress.

18 And, separately, as you're probably aware from the
19 CFPB case, agencies often have independent establishment
20 as part of their definition in their organic statute.

21 THE COURT: I don't know if it's invariably the
22 case, but I saw the many instances you pointed out in
23 your brief.

24 MS. SCHER: Thank you.

25 THE COURT: Yeah.

1 MS. SCHER: And just a final point on
2 irreparable harm.

3 The government's theory of irreparable harm is that
4 there's no limiting principle. And in their brief they
5 mention that the Senate parliamentarian is something
6 that they wouldn't -- that they would agree -- or
7 wouldn't disagree is a legislative function, that the
8 President would not be able to remove the Senate
9 parliamentarian.

10 And so if we're thinking of a hypothetical where
11 that's what happened here, why wouldn't that be
12 irreparable harm?

13 THE COURT: You're suggesting if -- you're
14 suggesting that would be a scenario where the removal of
15 a -- I'm trying to use a neutral term -- an employee --
16 a government employee would be irreparable harm, would
17 suggest irreparable harm?

18 MS. SCHER: Well, it's something where the
19 plaintiff and the defendants agree that the President
20 can't remove the Senate parliamentarian from office.

21 And so under their theory that we are not showing
22 irreparable harm, how could the Senate parliamentarian
23 show irreparable harm when we both agree that they have
24 a right to their office?

25 And so for that reason, plaintiff respectfully

1 requests emergency relief to maintain the status quo so
2 she can continue serving as Register of Copyrights in
3 the Library of Congress.

4 THE COURT: All right. Very, very well.

5 All right. So consistent with how at least I have
6 handled TROs, and I think generally how our court
7 handles them, they are requests for immediate relief.

8 So I'm prepared to rule right now.

9 Before me is Plaintiff Perlmutter's motion for a
10 temporary restraining order, which she filed after the
11 close of business last Thursday.

12 Consistent with the practice in this court, I'm
13 hearing the parties on this motion as fast as reasonably
14 possible while also providing the defendants the
15 opportunity to respond in writing.

16 On Friday, I entered an order requiring defendants
17 to respond to the motion over the Memorial Day
18 holiday -- sorry about that folks -- and so this hearing
19 is taking place about two and a half business days after
20 the motion was filed and on the very limited record
21 provided.

22 I am going to deny the motion because, at this
23 stage, Perlmutter has not shown that she will suffer
24 irreparable harm absent the entry of a TRO.

25 A temporary restraining order is "an extraordinary

1 remedy that should be granted only when the party
2 seeking the relief, by a clear showing, carries the
3 burden of persuasion."

4 That is *Hulli v. Mayorkas*, 549 F.Supp 3d, 95 at
5 Page 99. It's a D.D.C. case from 2021.

6 As with the preliminary injunction, a party seeking
7 a TRO must establish, one, that she is likely to succeed
8 on the merits; two, that she is likely to suffer
9 irreparable harm in the absence of preliminary relief;
10 three, that the balance of equities tips in her favor;
11 and four, that an injunction is in the public interest.

12 That's *Aamer v. Obama*, 742 F.3d 1023 at 1038. It's
13 a D.C. Circuit case from 2014.

14 A Court also considers the underlying purpose of a
15 TRO "preserving the status quo" in presenting
16 irreparable harm while proceedings for preliminary or
17 permanent injunctive relief are pending.

18 That's *AIDS Vaccine Advocacy Coalition v.*
19 *U.S. Department of State*, No. 25-5046, 2025 Westlaw
20 621396 at 1, a D.C. Circuit case from February 26th of
21 2025.

22 Thus, the plaintiff here must show that she will
23 suffer irreparable harm absent a TRO; that is, that the
24 harm will happen within the next 14 days.

25 And I cite for that *Doe v. OPM*, No. 25-CV-234, 2025

1 Westlaw 513268, at Page 7 and Note 4, a D.D.C. case. It
2 was Judge Moss, I believe, from February 17, 2025.

3 Even assuming that Ms. Perlmutter is likely to
4 succeed on the merits, my analysis begins and ends with
5 irreparable harm, perhaps with a dash of the balance of
6 the equities as it relates to irreparable harm.

7 But in any event, irreparable harm is "a threshold
8 requirement in granting temporary injunctive relief."

9 That's *Beattie v. Barnhart*, 663 F.Supp. 2d 5 at 8,
10 a D.D.C. case from 2009.

11 "If a party makes a sufficient showing of
12 irreparable -- a sufficient showing -- an insufficient
13 showing" -- I'm sorry.

14 "If a party fails to make a sufficient showing of
15 irreparable injury, a Court may deny a motion for
16 injunctive relief." That is the same *Beattie* case I
17 mentioned a moment ago.

18 This Circuit "has set a high standard for
19 irreparable injury." That's *Chaplaincy of Full Gospel*
20 *Churches v. England*, 454 F.3d 290, 297, a D.C. Circuit
21 case from 2006.

22 And all these quotes are from that *Chaplaincy* case.

23 Not only must the injury be "both certain and
24 great" and "actual and not theoretical," but it "must be
25 beyond remediation." The key word in this

1 consideration, of course, is "irreparable."

2 And as I mentioned a moment ago, I don't think the
3 plaintiff has satisfied this high standard on the record
4 here.

5 The irreparable harm analysis starts with the
6 Supreme Court's instruction that the loss of a job and
7 the injuries that go along with it generally "will not
8 support a finding of irreparable injury however severely
9 they may affect a particular individual."

10 That's *Sampson v. Murray*, 415 U.S. 61 at 92 and
11 Note 68, a Supreme Court case from 1974.

12 Accordingly, in the typical case in which an
13 employee challenges his firing, the loss of a job does
14 not "constitute an irreparable injury." *English v.*
15 *Trump*, 279 F.Supp. 3d, 307 at 334, a D.D.C. case from
16 2018. And that is particularly true in cases involving
17 government employment. Again, cite to the *English v.*
18 *Trump* again.

19 In *Sampson*, the Supreme Court recognized "the
20 well-established rule that the government has
21 traditionally been granted the widest latitude in the
22 dispatch of its own internal affairs." 415 U.S. at 83.

23 Thus, preliminary equitable intervention in
24 government personnel cases is strongly disfavored, and
25 the plaintiff here must show a "genuinely extraordinary

1 situation" to obtain the relief sought.

2 Again, that is the *Sampson* case at Page 92,
3 Note 68.

4 To make that showing, she must show that "the
5 circumstances surrounding her discharge, together with
6 the resultant effect on her, so far depart from the
7 normal situation that irreparable injury might be
8 found."

9 That's a cleaned-up quote, again, from *Sampson* at
10 92, Note 68.

11 She "at the very least must make a showing of
12 irreparable injury sufficient in kind and degree to
13 override these factors cutting against the general
14 availability of preliminary injunctions in government
15 personnel cases."

16 That's *Sampson* at 84.

17 It talks -- that quote talks about irreparable
18 injury. It sort of bakes in a little bit of -- as the
19 defendants argue here today, a little bit of the balance
20 of the equities, but I think it's fundamentally about
21 the level that irreparable harm -- of irreparable harm
22 that has to be shown in cases in which we're talking
23 about government personnel.

24 Ms. Perlmutter argues that four reasons justify
25 finding that this case presents a genuinely

1 extraordinary situation that satisfied the above
2 standard, but at least, as I see it, none does the
3 trick.

4 First, the plaintiff argues that she suffers
5 irreparable harm from defendants' deprivation "of her
6 statutory right to function in the role that the
7 Librarian of Congress has lawfully appointed her to
8 perform." That's ECF No. 2-1 at 12.

9 Acknowledging the Simpson case -- I'm sorry, the
10 *Sampson* case, Ms. Perlmutter argues that regardless of
11 the rule, in "garden-variety employment disputes," that
12 rule does not apply here because of her "statutory right
13 to function." Again, that's in the briefing, the ECF
14 No. 2-1 at 12.

15 And she points me to several recent cases where
16 courts in the District appear to have adopted to one
17 degree or another the argument that an officer's loss of
18 a statutory right to function can cause irreparable
19 harm. And that's at ECF No. 9, the reply brief, at 17
20 to 18. Those cases are collected there.

21 Ms. Perlmutter is right that this is not a
22 garden-variety case. Still, those cases are not binding
23 on me, and to the extent they adopt such a blanket rule,
24 or really any rule that apply here results in a finding
25 of irreparable harm, I respectfully disagree with them,

1 especially with the benefit of recent decisions that
2 we've just been talking about by the D.C. Circuit and
3 the Supreme Court in a few of those same very -- of
4 those very same cases.

5 To begin, though, even the reasoning of those cases
6 Ms. Perlmutter cites is not as clearly applicable to
7 this situation here, as she claims. In some of them,
8 the courts seem to link a finding of irreparable harm to
9 the President's disruption of a statutory scheme
10 involving "a Senate-confirmed principal officer of a
11 Congressionally created independent agency."

12 That's *Grundmann v. Trump*, No. 25-CV-425, 2025
13 Westlaw 782665, at Page 17, a case from this district
14 from March 12th of 2025.

15 Now, putting aside for the moment that this is not
16 harm that the officer herself "is likely to suffer,"
17 which is required in any case in which a party seeks
18 preliminary injunctive relief, and for that I cite
19 *Winter v. Natural Resources Defense Counsel Inc.*, 555,
20 U.S. 7 at 20, a Supreme Court case from 2008, the
21 situation here does not clearly present those same
22 factors.

23 Ms. Perlmutter was not confirmed by the Senate to
24 her position as Register of Copyrights and director of
25 the Copyright Office, and she has not explained why it

1 is similarly important that her position, unlike other
2 components of the Library of Congress, should function
3 with any degree of independence from control by the
4 Executive Branch, especially when, as the D.C. Circuit
5 has held and as we have discussed here today, it
6 exercises executive authority.

7 And for that I just cite *Intercollegiate Broad.*
8 *Systems Inc. v. Copyright Royalty Board*, 684 F.3d 1332
9 at 1341 through 42, a D.C. Circuit case from 2012.

10 In another of the recent District Court cases cited
11 by the plaintiff, Judge AliKhan went so far as to say
12 that it is not "clear" whether "the harm that comes from
13 the loss of a statutory right to function" is
14 irreparable. That's *Aviel v. Gor*, No. 25-CV-2025, 2025
15 Westlaw 1009035, at Page 10, a D.D.C. case from
16 April 4th of 2025. And Judge AliKhan did not rely
17 solely on such a theory to conclude that the plaintiff
18 had shown irreparable harm because the plaintiff in that
19 case had "identified an additional layer of harm on top
20 of her basic right to function."

21 There, Judge AliKhan found that "the very survival
22 of the plaintiff's organization was at stake," which put
23 her case squarely in the genuinely extraordinary
24 situation contemplated by *Sampson*."

25 That's a cleaned-up quote from Judge AliKhan's

1 case.

2 In other words, the existential risk to the agency
3 and the concomitant personal risk to the plaintiff that
4 there would be no agency for her to return to caused
5 Judge AliKhan to conclude that the circumstances
6 surrounding her discharge, together with the -- that
7 "the circumstances surrounding her discharge, together
8 with the resultant effect on her so far departed from
9 the normal situation that irreparable injury could be
10 found." And that quote is from the *Sampson* case again,
11 415 U.S. at 92, Note 68, a cleaned-up quote from it.

12 As I will explain further in a moment, the
13 plaintiff here has not made a similar showing.

14 Now, as we've discussed in some of the other cases,
15 District Court cases from this district cited by the
16 plaintiff, the D.C. Circuit and the Supreme Court have
17 recently weighed in.

18 Even if they have not definitively ruled it out,
19 they have been plainly skeptical of the "statutory right
20 to function" theory of irreparable harm for purposes of
21 preliminary injunctive relief. Indeed, in one case the
22 circuit stayed a District Court's grant of an
23 injunction, restoring a plaintiff to his position as
24 special counsel.

25 The Court noted that the plaintiff had to make "a

1 showing of irreparable injury sufficient in kind and
2 degree to override the factors cutting against the
3 general availability of preliminary injunctions in
4 government personnel cases." Obviously, invoking the
5 Supreme Court's *Sampson* decision.

6 That was *Dellinger v. Bessent*, No. 25-5052, 2025
7 Westlaw 887518 at 4, a D.C. Circuit case from
8 March 10th, 2025.

9 And the Circuit concluded that even assuming the
10 plaintiff "is correct that his removal is statutorily
11 ultra vires, and assuming that his removal constitutes a
12 cognizable injury, that does not mean such injury is
13 irreparable and weighs in his favor."

14 The Circuit noted that, "at worst, the plaintiff
15 would remain out of office for a short period of time,"
16 whereas, "the potential injury to the government" in
17 having the officer remain in office improperly would be
18 substantial."

19 Thus, like here, the "injury-focused factors"
20 favored a stay of the injunction that the District Court
21 has entered. Again, when we're talking about
22 irreparable harm or irreparable harm plus these -- the
23 balance of the equities.

24 Similarly, the Supreme Court just last week stayed
25 an order issued in another case cited by Ms. Perlmutter,

1 *Harris v. Bessent*, No. 25-CV-412, 2025 Westlaw 679303.

2 That case was a D.D.C. case from March 4th, 2025,
3 and reasoned that "the government" -- this is what
4 defendants led with understandably here this
5 afternoon -- and reasoned "the government faces greater
6 risk of harm from an order allowing a removed officer to
7 continue exercising the executive power than a
8 wrongfully removed officer faces from being unable to
9 perform their statutory duty."

10 That's *Trump v. Wilcox*, No. 24A966, 2025 Westlaw
11 1464804 at 1. This is a Supreme Court order from
12 May 22nd of 2025.

13 To be sure, the Court did not hold that an
14 officer's removal can never constitute irreparable harm
15 to the officer, but it strongly implied that being
16 unable to perform her statutory duty is typically not
17 such an irreparable harm, or at least not a harm that
18 outweighs the corresponding risk of harm to the
19 government. So, too, in this case.

20 So for all these reasons, Ms. Perlmutter's first
21 argument does not establish that she will likely suffer
22 irreparable injury, again, an injury that would
23 warrant -- certainly injury that would warrant relief
24 after considering the balance of the equities.

25 Second, the plaintiff contends that "beyond the

1 loss of her statutory right to function," she will "be
2 prevented from performing the legislative functions that
3 are assigned to her if the Court does not issue
4 preliminary relief."

5 That's ECF No. 2-1 at Page 13 in the briefing.

6 Specifically, the plaintiff argues that the final
7 part of an ongoing report on Copyright and Artificial
8 Intelligence "remains in process," and absent immediate
9 reinstatement, she "will be unable to complete the
10 report as expected by Congress."

11 I think there are several problems with this
12 argument. For starters, the plaintiff does not
13 meaningfully explain how this asserted harm goes beyond
14 the "loss of her statutory right to function." At
15 bottom, both assert the same theory of harm: That Ms.
16 Perlmutter cannot do the job she was appointed to do.
17 And for the reasons discussed previously, it is not
18 irreparable harm to her if someone else picks up this
19 task.

20 In any event, the plaintiff does not explain how
21 any harm flowing from the ongoing report she references
22 would likely be remedied by a TRO, which after all, can
23 only last 14 days.

24 Although she concludes that "she will be unable to
25 complete the report as expected by Congress" absent

1 immediate relief, the limited record before me does not
2 support that conclusion.

3 For example, plaintiff does not explain the
4 timeline for this final part of the report or show what
5 would happen if she did not -- or show that she needs to
6 act within the next 14 days to "complete the report as
7 expected."

8 Third, Ms. Perlmutter argues that "absent emergency
9 relief, she will be irreparably harmed because the
10 President's attempt to take over the Library of Congress
11 implicates separation-of-powers issues not ordinarily
12 present in an employment dispute." That's ECF No. 2-1
13 at 14.

14 But similarly, the separation-of-powers harms that
15 Perlmutter predicts -- Ms. Perlmutter predicts that
16 Congress, the Library of Congress, and the Copyright
17 Office will suffer absent preliminary relief because of
18 the Executive Branch's alleged encroachment do not count
19 as the harm to her that is required.

20 As I emphasized already, for me to grant the
21 preliminary relief sought, the plaintiff must establish
22 "that she is likely to suffer irreparable harm in the
23 absence of preliminary relief."

24 That's *Winter*, 555 U.S. at 20.

25 Indeed, defendants assert that Ms. Perlmutter is

1 suing in her personal capacity, ECF No. 7 at 27, which
2 she does not appear to contest.

3 Moreover, that Congress has not joined this lawsuit
4 as a party impacts -- it has to impact my assessment,
5 again, on this limited record and only two and a half
6 days into -- business days into the case, of the
7 likelihood and severity of the institutional harm that
8 she alleges may flow from separation-of-powers concerns.

9 It is striking at this point, as I've mentioned a
10 few times, that Congress does not seem to think that the
11 likelihood and nature of these separation-of-powers
12 harms she raises warrant any intervention by the
13 judiciary, at least at this time.

14 And I'll just circle back and say there certainly
15 are functions within the Library of Congress that one
16 can understand would give Congress concern if the
17 Executive encroached upon them.

18 But I don't have a record here, at all, for
19 example, the confidential requests that members of
20 Congress can make to CRS housed within the Library of
21 Congress, but I have no evidence before me today that
22 the confidentiality of those requests is being affected
23 by what's happened with Ms. Perlmutter.

24 And beyond that, if there was, again, you would
25 think that I would have Congress in front of me asking

1 to vindicate its equities.

2 Finally, the plaintiff advances a fourth argument
3 that tries to connect the institutional harm she alleges
4 to her personally.

5 She argues that "the institutional harm to the
6 Library of Congress and U.S. Copyright Office that will
7 emanate from defendants' unlawful actions will be such
8 that Ms. Perlmutter would be unable to return to her
9 position as it currently exists" without immediate
10 relief, meaning, "the harm to plaintiff and the harm to
11 the Library of Congress are inextricably intertwined."

12 That's ECF No. 2-1 at 15.

13 For support, Ms. Perlmutter cites to *English v.*
14 *Trump*, where I noted that removal is "plainly
15 irreparable" when absent an injunction, an officer's
16 position will terminate such that she "could not be
17 reinstated to it following a final judgment on the
18 merits. That's 279 F.Supp. 3d at 335.

19 And that part of the opinion discusses *Berry v.*
20 *Reagan*, No. 83-CV-3182, 1983 Westlaw 538, a D.D.C. case
21 from November 14th of 1983.

22 This is the same sort of irreparable harm that I
23 referenced earlier that Judge AliKhan found in the *Aviel*
24 case, 2025 Westlaw 1009035, at Page 10.

25 The problem for the plaintiff is that the record

1 here is devoid of factual support for this argument.
2 The plaintiff does not claim that her job will soon be
3 abolished, as was the case in *Berry*, where the position
4 at issue was about to -- was set to expire on a date
5 certain by operation of statute.

6 All she alleges is that because of defendants'
7 potential future actions, the Library and her position
8 will be changed in some dramatic but undefined way,
9 perhaps, that the public won't trust them as much as
10 they do now.

11 But her fears that anything along these lines will
12 happen are vague and speculative. They are not certain
13 and great, as is required -- as is required by the
14 relevant legal standard. And that's from *Chaplaincy of*
15 *Full Gospel Churches*, 454 F.3d at 297.

16 Thus, the plaintiff has not shown that it is at all
17 likely that defendants will so drastically change the
18 Register of Copyrights' position or the Copyrights
19 Office or duties such that should she win reinstatement
20 at the end of the case, the job would not be
21 "comparable" to the one she left. I cite there to *Davis*
22 *v. Billington*, 76 F.Supp. 3d, 59 at 65, a D.D.C. case
23 from 2014. And it is doubly speculative that any such
24 harm will accrue within the next 14 days.

25 So for all these reasons, I do find that

1 Ms. Perlmutter has not met her burden of showing that
2 she will suffer imminent irreparable harm within the
3 next two weeks absent a TRO. Certainly, that she won't
4 suffer such harm that when considering the balance of
5 the equities would warrant preliminary injunctive
6 relief. Thus, I will deny her motion.

7 But I emphasize, this is based on, you know, two
8 and a half -- this case is two and a half days --
9 business days old, and I've -- and this is my resolution
10 of a TRO on a very limited record.

11 If Ms. Perlmutter plans to move for a preliminary
12 injunction, I'll just ask the parties to confer and
13 submit by tomorrow at, let's say, 5:00 p.m., a proposed
14 briefing schedule for that preliminary injunction should
15 she wish to pursue it. Then I will take that up and
16 enter it.

17 Is there anything further from the plaintiffs
18 today -- from the plaintiff?

19 MS. SCHER: Yes, just one thing.

20 Could you clarify if the denial is without
21 prejudice should new facts arise?

22 THE COURT: I don't think -- well, I mean --
23 let's put it this way. I guess I've never been asked if
24 a motion for a TRO when it's denied typically is with or
25 without prejudice.

1 You know, the typical way that these cases proceed
2 is for -- if a TRO is denied, for the plaintiff to seek
3 a preliminary injunction if they still think preliminary
4 injunctive relief is warranted.

5 I -- so I've never had to think about that. And so
6 I don't -- I don't really have an answer for you, other
7 than to say, you know, obviously a preliminary
8 injunction and the speed at which I resolve that could
9 be something that -- I mean, I guess part of the reason
10 it probably tends not to come up is that a plaintiff
11 thinks if we are going to get a slightly more -- a
12 ruling with giving the judge a little more time and a
13 little more time for the parties to brief the issues,
14 that the thing the plaintiff gets out of a PI is it's
15 appealable.

16 So, I guess, I'm going to -- I just have never had
17 this asked of me, and so I don't want to say that it's
18 with prejudice when there might be authority out there
19 that says, in fact, you can file one tomorrow.

20 If you -- let's put it this way. If you want to go
21 that route, we could -- you could ask for a conference,
22 and we can talk about it.

23 But I just haven't had it come up because, again,
24 my impression has been that what plaintiffs, if they get
25 a TRO denied, really are focused on doing is obviously

1 turning -- getting -- convincing the judge that he or
2 she was wrong, and then, if not, having something they
3 can appeal.

4 MS. SCHER: Thank you.

5 THE COURT: All right. Anything further from
6 the defendants?

7 MR. WOODWARD: No, Your Honor.

8 THE COURT: All right. Very well.

9 Well, I hope it stopped raining outside for
10 everyone. Until I hear from you tomorrow, if indeed I'm
11 going to get a PI briefing schedule, the parties are
12 dismissed.

13 (Court adjourned at 3:21 p.m.)

14

15 CERTIFICATE

16

17 I, Chandra Kean, RMR, hereby certify that the
18 foregoing transcript is a true and correct transcription
19 of the proceedings held in the above-titled matter.

20

21

22



Chandra Kean, RMR

23

24

25

May 29, 2025
DATE

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