

Nos. 25-3030

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES,
AFL-CIO, et al.,

Plaintiffs-Appellees,

v.

DONALD J. TRUMP, in his official capacity as
President of the United States, et al.,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
DISTRICT OF NORTHERN CALIFORNIA AT SAN FRANCISCO

No. 3:25-cv-03698
The Honorable Susan Illston
United States District Court Judge

**AMICI CURIAE BRIEF OF WASHINGTON, ARIZONA, CALIFORNIA,
COLORADO, CONNECTICUT, DELAWARE, DISTRICT OF
COLUMBIA, HAWAI'I, ILLINOIS, MAINE, MARYLAND,
MINNESOTA, NEVADA, NEW JERSEY, NEW YORK,
NORTH CAROLINA, OREGON, RHODE ISLAND, AND VERMONT
IN OPPOSITION TO EMERGENCY MOTION FOR STAY PENDING
APPEAL**

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TABLE OF CONTENTS

I.	INTRODUCTION AND INTERESTS OF AMICI CURIAE	1
II.	ARGUMENT	3
	A. The TRO Is Not Appealable.....	3
	B. The District Court Correctly Determined Defendants- Appellants’ Extensive RIFs and Reorganizations Impermissibly Trample on Power Reserved to Congress	4
	C. The Dismantling of Federal Agencies and Mass Firing of Federal Employees Harms Amici States	6
III.	CONCLUSION.....	13

TABLE OF AUTHORITIES

Cases

<i>Aids Vaccine Advoc. Coal. v. U.S. Dep’t of State</i> , ___ F. Supp. 3d ___, No. 25-00400 (AHA), 2025 WL 752378 (D.D.C. Mar. 10, 2025).....	5
<i>City & County of San Francisco v. Trump</i> , 897 F.3d 1225 (9th Cir. 2018).....	4, 6
<i>Clinton v. City of New York</i> , 524 U.S. 417 (1998)	5
<i>East Bay Sanctuary Covenant v. Trump</i> , 932 F.3d 742 (9th Cir. 2018).....	4
<i>Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.</i> , 561 U.S. 477 (2010)	5
<i>Gregory v. Ashcroft</i> , 501 U.S. 452 (1991)	6
<i>In re Aiken County</i> , 725 F.3d 255 (D.C. Cir. 2013)	5
<i>La. Pub. Serv. Comm’n v. FCC</i> , 476 U.S. 355 (1986)	5
<i>League of Women Voters of U.S. v. Newby</i> , 838 F.3d 1 (D.C. Cir. 2016)	7
<i>Myers v. United States</i> , 272 U.S. 52 (1926)	5
<i>Seila Law LLC v. CFPB</i> , 591 U.S. 197 (2020)	4

<i>Washington v. Trump</i> , 847 F.3d 1151 (9th Cir. 2017)	3
<i>Youngstown Sheet & Tube Co. v. Sawyer</i> , 343 U.S. 579 (1952)	4

Constitutional Provisions

U.S. Const. art. I § 1	4
U.S. Const. art. II	4

Statutes

2 U.S.C. § 683(b)	5
6 U.S.C. § 753(b)(2)	2
7 U.S.C. § 7656(b)(6)	2
7 U.S.C. § 7656(d)	2
7 U.S.C. § 8914(b)(2)	2
16 U.S.C. § 551c-1(b)	2
33 U.S.C. § 3204(b)	2
42 U.S.C. § 247b-13(a)	7
42 U.S.C. § 280b	9
42 U.S.C. § 290bb-36c(c)	2
42 U.S.C. § 5143(b)(3)	2
42 U.S.C. § 5143(c)	2

43 U.S.C. § 3101(8) 1

43 U.S.C. §3102(b) 1

Rules

Fed. R. Civ. P. 65(b) 3

I. INTRODUCTION AND INTERESTS OF AMICI CURIAE

Washington, Arizona, California, Colorado, Connecticut, Delaware, the District of Columbia, Hawai‘i, Illinois, Maine, Maryland, Minnesota, Nevada, New Jersey, New York, North Carolina, Oregon, Rhode Island, and Vermont (Amici) are collectively home to tens of thousands of federal employees who provide important government services to Amici States and their residents. Collaborations and partnerships with federal agencies and employees are integral to the States’ ability to deliver critical services to their citizens.

Federal and state governments cooperate with each other regularly to share resources and information, respond to emergencies, protect the environment, and perform a wide range of work to protect the health, welfare, and well-being of the public. When the federal government destabilizes and dismantles its own agencies, including by terminating a substantial proportion of its employees, with little planning or notice to affected individuals or States, it abruptly upends the States’ ability to protect and serve their residents.

Numerous federal statutes ensure that the federal government collaborates with state and local governments on a broad range of issues, such as the U.S. Geological Survey’s work to plan for landslide hazards, 43 U.S.C. §§ 3101(8), 3102(b); the creation of a tsunami hazard mitigation program by the

Environmental Protection Agency and Federal Emergency Management Agency (FEMA), 33 U.S.C. § 3204(b); the U.S. Forest Service’s extensive coordination with states when managing national land and conducting prescribed burns, 16 U.S.C. § 551c-1(b); HHS’s national suicide and mental health hotlines, 42 U.S.C. §§ 280g-18(c)(4), 290bb-36c(c); U.S. Department of Agriculture’s (USDA) deployment of a team to address “threat[s] to human health from food-borne pathogens,” 7 U.S.C. § 7656(b)(6), (d); FEMA’s responsibilities to develop operational plans, 6 U.S.C. § 753(b)(2), and “coordinate the administration of relief” after emergency declarations, 42 U.S.C. § 5143(b)(3), (c); and USDA’s plans to respond to diseases or pests of concern, 7 U.S.C. § 8914(b)(2), to name a few. These partnerships and collaborations are indispensable to the ability of Amici to effectively perform their duties.

Amici have already experienced the extraordinarily widespread impact of Defendants-Appellants’ attempt to abruptly demolish the work and workforce of so many federal agencies and departments at once, and are increasingly concerned that their ability to manage natural disasters like floods and wildfires, treat emergent diseases, protect workers from workplace safety hazards, address homelessness, and provide innumerable other critical services that their

constituents depend upon, will be substantially, if not catastrophically, impaired as a result of the government's actions.

The temporary restraining order (TRO) issued by the district court is not appealable. Even if it were appealable, the district court correctly determined that Executive Order No. 14210 (EO) and the Defendants-Appellants' implementation of it are likely unlawful. The TRO's temporary preserving of the status quo is proper and this Court should deny the stay.

II. ARGUMENT

A. The TRO Is Not Appealable

The TRO's limited 14-day duration is in accordance with Federal Rule of Civil Procedure 65(b), and the district court has scheduled a hearing on Plaintiffs-Appellees' preliminary injunction motion the day before the TRO expires on May 23, 2025. The TRO temporarily pauses implementation of the EO to preserve the status quo and protect the power of the legislative branch. It does not require Defendants-Appellants to reinstate employees or disburse funds not already appropriated by Congress for the functioning of federal agencies. The TRO is not appealable. *See Washington v. Trump*, 847 F.3d 1151, 1158 (9th Cir. 2017); *East Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 762 (9th Cir.

2018). Even if the TRO were appealable, it is set to expire at the end of the week, likely mooted the stay motion before this Court has an opportunity to rule on it.

B. The District Court Correctly Determined Defendants-Appellants' Extensive RIFs and Reorganizations Impermissibly Trample on Power Reserved to Congress

Even if the TRO were appealable, Defendant-Appellants are unlikely to establish they are likely to succeed on the merits of their appeal. The district court correctly determined that Defendants-Appellants' mass layoffs and wholesale closure of offices, departments, and agencies in implementing the EO exceed the Executive's authority, and have impermissibly prevented those federal entities from performing statutorily mandated work. Defendants-Appellants' actions violate the separation of powers doctrine, a foundational tenet of our Constitution. *Seila Law LLC v. CFPB*, 591 U.S. 197, 227 (2020).

Article I of the Constitution vests all legislative powers in Congress, U.S. Const. art. I, § 1, and “exclusively grants the power of the purse to Congress, not the President.” *City & County of San Francisco v. Trump*, 897 F.3d 1225, 1231 (9th Cir. 2018) (citing U.S. Const. art. I, § 9, cl. 7). The President's constitutional authority, set forth in Article II, “must stem either from an act of Congress or from the Constitution itself.” *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952). Accordingly, the Executive has no power “to enact, to amend,

or to repeal statutes.” *Clinton v. City of New York*, 524 U.S. 417, 438 (1998). And “settled, bedrock principles of constitutional law” require the Executive to expend the funds that Congress duly authorizes and appropriates. *In re Aiken County*, 725 F.3d 255, 259 & 261 n.1 (D.C. Cir. 2013)); 2 U.S.C. § 683(b) (all funds appropriated by Congress “shall be made available for obligation” unless Congress has rescinded the appropriation).

The constitutional separation of powers ensures that only Congress may create, define, or dismantle federal agencies. *See Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 500 (2010) (“Congress has plenary control over the salary, duties, and even existence of executive offices.”); *La. Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 374 (1986) (“[A]n agency literally has no power to act . . . unless and until Congress confers power upon it.”); *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.”). No authority allows the President or the head of an agency to take actions that incapacitate core functions of an agency that Congress created and funded. *See Aids Vaccine Advoc. Coal. v. U.S. Dep’t of State*, __ F. Supp. 3d __, No. 25-00400 (AHA), 2025 WL 752378, at *17 (D.D.C. Mar. 10, 2025) (explaining that it is not for the Executive to refuse to undertake statutorily

prescribed work for which Congress has power of the purse by disregarding mandatory statutory duties and congressional appropriations), *appeal docketed*, No. 25-5098 (D.C. Cir.). “And ‘the President may not decline to follow a statutory mandate . . . simply because of policy objections.’” *City & County of San Francisco*, 897 F.3d at 1232 (quoting *Aiken County*, 725 F.3d at 259).

Defendants-Appellants’ structural dismantling of federal agencies and departments cannot be reconciled with the separation of powers doctrine. The district court properly determined that Plaintiffs-Appellees are likely to succeed on the merits of their separation of powers claim.

C. The Dismantling of Federal Agencies and Mass Firing of Federal Employees Harms Amici States

Defendant-Appellants are also unlikely to establish that reversal of the TRO is in the public interest. The extensive reorganization of federal agencies and mass firing of federal employees have damaging—in some cases devastating—repercussions for the States. These harms are spread across countless state agencies and programs that rely every day on the services of agencies and employees throughout the federal government to protect and serve their constituents. Because the States “possess sovereignty concurrent with that of the Federal Government,” *Gregory v. Ashcroft*, 501 U.S. 452, 457-58 (1991), they are equal sovereign entities charged to advance the public interest. The

harms Amici have experienced from Defendants-Appellants' unlawful actions constitute a distinct harm to the public interest. *See League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) (emphasizing a “substantial public interest ‘in having governmental agencies abide by the federal laws that govern their existence and operations’” (quoting *Washington v. Reno*, 35 F.3d 1093, 1103 (6th Cir. 1994))).

The significant cuts in programs and workforce Defendants-Appellants have already made at the Centers for Disease Control and Prevention (CDC) are illustrative of the harms Amici face. For example, the work of the National Center for Chronic Disease Prevention and Health Promotion within the CDC focuses on leading causes of preventable deaths in the United States. It oversaw the Division of Reproductive Health (DRH) and Office on Smoking and Health (OSH) until Defendants effectively eliminated both.

DRH worked to improve the health of women and infants by studying maternal mortality, improving quality of care for mothers and infants, and collecting quality data on women and infants, including through the Pregnancy Risk Assessment Monitoring System (PRAMS), a population-based surveillance system mandated by Congress to collect data nationwide regarding maternal and infant health outcomes. 42 U.S.C. § 247b-13(a). Defendants fired nearly all of

the employees in DRH, and the CDC has notified states that it is unable to continue to provide resources promised under PRAMS agreements it entered with them. Amici States have lost their PRAMS partnership support and the critical reproductive health data that came with it, including data on maternal and infant health outcomes, maternal mortality, and pregnancy success rates in IVF. The PRAMS agreements also committed substantial grant funding and provided post-award trainings and technical assistance by CDC program officials. These resources will be lost to Amici with the termination of DRH staff who managed the grants and ran the trainings.

OSH is the lead federal agency for tobacco prevention and control, and played a critical role in preventing smoking and tobacco use among youth and adults, and funded tobacco control efforts in the states. Defendants terminated nearly all OSH's employees, leaving it unable to fulfill its statutory mandates to collect and publish relevant data, manage annual submissions of cigarette ingredient reports from manufacturers and importers, and monitor tobacco use trends and health impacts. Amici States rely on these reports, including as a basis for their tobacco control or enforcement laws. Losing OSH resources will also impair Amici States' ability help their citizens quit tobacco use.

The National Center for HIV, Viral Hepatitis, STD and Tuberculosis Prevention within the CDC fulfills its mission to reduce the incidence of infection, morbidity, mortality, and health disparities in the U.S. and abroad by monitoring public health, researching disease prevention, funding local disease-prevention programs, and developing tools for providers and at-risk communities. It oversees the Division of HIV Prevention (DHP), whose mission includes preventing HIV infection and reducing HIV-related illness and death. Defendants fired the entire staff of several DHP branches, including those responsible for behavioral and clinical surveillance HIV research, HIV prevention capacity development, prevention communications, quantitative sciences, and all global work. As a result, Amici have lost important resources for reducing HIV-related illness and death.

Defendants also eliminated entire teams at the National Center for Injury Prevention and Control (NCIPC), whose mission is to prevent injury, overdose, suicide and violence across the lifespan through science and action. 42 U.S.C. § 280b. Among the teams eliminated were those that focused on motor vehicle crashes, child maltreatment, rape prevention and education, drowning, traumatic brain injury, falls in the elderly, and other topics. Amici relied on NCIPC and its data on injury and violence in efforts to prevent these types of lethal accidents.

The significant workforce cuts mean that data collection efforts will be significantly limited, and data previously collected from hospitals throughout the country on injuries in the National Electronic Injury Surveillance System will no longer be collected.

Defendants-Appellants also eliminated the Division of Environmental Health Science and Practice within the CDC, which provided critical environmental health support and funding for environmental health departments and other partners. This Division was responsible for asthma control and lead poisoning prevention, and maintained the Environmental Public Health Tracking Program, which provided States with data to inform their responses to environmental health emergencies. The loss of these resources impairs States' ability to prepare for and manage such emergencies.

Defendants eliminated a substantial percentage of the scientists and public health workers at the National Center for Birth Defects and Developmental Disabilities within the CDC, including eliminating the Division of Blood Disorders and Public Health Genomics, which performed research on conditions affecting blood, such as hemophilia and sickle cell disease. Defendants also completely eliminated the Disability and Health Promotion Branch. Amici will lose federal expertise and support in these areas.

Cuts at the CDC are by no means the only ones that harm Amici States. In Washington State, for example, federal agencies are invaluable partners for the State Department of Ecology (Ecology), which relies extensively on work performed by employees at FEMA, the Bureau of Reclamation, the National Oceanic and Atmospheric Administration (NOAA), the United States Forest Service, the National Parks Service, and the Fish and Wildlife Service, among others. Washington's Department of Ecology relies on its federal partners to protect Washington's citizens and infrastructure from flood risk, manage water resources throughout the State, protect State coastal resources, manage millions of acres of national forest, maintain and restore ecological forest health, protect wetlands, and address drought conditions. Disruptions in staffing at these federal agencies substantially impair this work. Terminations at NOAA also threaten the existence of data critical to Ecology's management of Washington's shellfish, its shellfish industry, and water quality generally.

The Washington Department of Fish and Wildlife, which is responsible for managing fish and wildlife resources throughout the State, also interacts extensively with employees at NOAA, and mass terminations have interfered with projects aimed at releasing salmon from hatcheries and reintroducing salmon into the ocean as a food source for killer whales, which is predicted to

have a devastating impact on important sectors of Washington's economy, as well as a deleterious effect on salmon populations that will affect the State for years to come. Sweeping terminations of employees at the Department of Housing and Urban Development could effectively incapacitate Washington's housing authorities, which provide vital services to low-income Washingtonians. Mass firings at the National Institutes of Health have deep financial implications for Washington's top research institutions. Terminations of National Park Service employees will lead to unsafe conditions in Washington's national parks—which receive tens of millions of visitors per year—and hamper park rangers' ability to assist or rescue injured visitors. Terminations at agencies like the Bureau of Reclamation and the U.S. Army Corps of Engineers risk compromising critical infrastructure such as the Grand Coulee Dam, the largest hydropower producer in the United States. And employee terminations impacting wildfire response will significantly diminish Washington's ability to prevent, respond, and contain catastrophic wildfires. These harms are just a few of those experienced by Washington; the other Amici States similarly face a variety of harms and challenges as a result of Defendants-Appellants' actions.

In sum, the Amici States rely extensively on programs mandated by Congress, data created by the federal government, and on collaboration and

partnership with federal agencies and employees to protect the health and welfare of their citizens, fight communicable diseases, combat homelessness, keep waters clean, and respond to natural disasters such as floods and wildfires, among many other critical functions. Defendants-Appellants' dismantling of federal agencies and termination of federal employees substantially impedes these efforts, and the harm will compound over time. Harm to the public interest, including that of the Amici States, weighs heavily against reversal of the TRO.

III. CONCLUSION

For the reasons above, this Court should deny the stay pending appeal.

RESPECTFULLY SUBMITTED this 22nd day of May, 2025.

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**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

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