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10 **IN THE UNITED STATES DISTRICT COURT**  
11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
12 **SAN FRANCISCO DIVISION**

13 AMERICAN FEDERATION OF  
14 GOVERNMENT EMPLOYEES, AFL-  
15 CIO, *et al.*,

16 Plaintiffs,

17 v.

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

21 Defendants.  
22  
23  
24  
25  
26  
27  
28

Case No. 3:25-cv-03698-SI

**PROPOSED BRIEF OF  
MONTANA AND 20 OTHER  
STATES AS *AMICI CURIAE* IN  
SUPPORT OF DEFENDANTS'  
RESPONSE TO PLAINTIFFS'  
MOTION FOR TEMPORARY  
RESTRAINING ORDER**

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## INTEREST OF *AMICI CURIAE*

*Amici curiae* are the 21 States of Montana, Alabama, Alaska, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Mississippi, Missouri, Nebraska, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, West Virginia, and the Arizona Legislature (“Amici States”) which submit this brief in support of Defendants. The Supreme Court has recognized that the States have a unique role in preserving the vitality of the Constitution’s structural guarantees of liberty. *See, e.g., United States v. Lopez*, 514 U.S. 549, 575-77 (1995) (Kennedy, J., concurring). Because Plaintiffs seek to turn the separation of powers on its head and diminish the President’s authority under Article II of the Constitution, the Amici States have a direct and substantial interest in this case.

## SUMMARY OF ARGUMENT

Plaintiffs seek a temporary restraining order to block more than 20 federal agencies from carrying out efforts to manage their workforce. In essence, Plaintiffs invite this court to begin micromanaging the personnel decisions of virtually the entire federal government, from the Department of Defense and Department of State to the EPA and Social Security Administration. This sweeping request may be more extreme than any currently pending case. Plaintiffs’ request should be denied.

Plaintiffs are not likely to succeed on the merits. The separation of powers supports the Defendants, not Plaintiffs, because Article II empowers the President to manage Executive Branch employees. In addition, Congress created a separate, comprehensive process for federal employment issues, which guts Plaintiffs’ Administrative Procedure Act claims. And the Court should be cautious before interfering with the President’s Article II power to manage the federal workforce or Congress’ intent to resolve claims through a carefully defined statutory process.

Plaintiffs also fail to show irreparable harm. The Supreme Court applies a heightened standard that requires Plaintiffs to show a genuinely extraordinary situation before a government agency can be enjoined from terminating employees. Plaintiffs have failed to make this showing. For example, Plaintiffs speculate about no longer receiving weather

1 data and complain about not continuing to censor American speech.

2 Finally, the balance of the equities favors Defendants. The President will suffer  
3 irreparable harm by being unable to exercise his Article II powers. The public is interested  
4 in a more efficient executive branch. And the public is interested in the branches staying  
5 within their lanes.

6 For these reasons, the Court should deny Plaintiffs’ request for a preliminary  
7 injunction.

## 8 ARGUMENT

### 9 I. The Separation of Powers Supports Defendants, Not Plaintiffs.

10 Plaintiffs’ challenge to Executive Branch personnel actions seeks to upend the  
11 separation of powers by restricting a core executive power, ignoring a statutory scheme  
12 created by Congress, and inserting the judicial branch into executive branch decision-  
13 making. The Court should deny that relief, which would cause a severe breach of the  
14 separation of powers.

#### 15 A. The Article II Branch Manages the Government’s Workforce.

16 1. “Under our Constitution, the ‘executive Power’—all of it—is ‘vested in a  
17 President,’ who must ‘take Care that the Laws be faithfully executed.’” *Seila Law L.L.C.*  
18 *v. Consumer Fin. Prot. Bureau*, 591 U.S. 197, 203 (2020) (quoting U.S. Const. art. II, § 1,  
19 cl. 1, § 3). “[I]f any power whatsoever is in its nature Executive, it is the power of  
20 appointing, overseeing, and controlling those who execute the laws.” *Free Enter. Fund v.*  
21 *Pub. Co. Acctg. Oversight Bd.*, 561 U.S. 477, 492 (2010) (quoting 1 *Annals of Cong.* 463  
22 (1789) (J. Madison)). “Article II confers on the President the general administrative control  
23 of those executing the laws.” *Id.* (quotation omitted). “This grant of authority establishes  
24 the President as the chief constitutional officer of the Executive Branch, entrusted with  
25 supervisory and policy responsibilities of utmost discretion and sensitivity,” including the  
26 “management of the Executive Branch.” *Nixon v. Fitzgerald*, 457 U.S. 731, 750 (1982).

27 The President has supervised the federal workforce under Article II since the  
28 Founding. “Since 1789, the Constitution has been understood to empower the President to



1 keep these officers accountable—by removing them from office, if necessary.” *Free Enter.*  
 2 *Fund*, 561 U.S. at 483. “The President’s power to remove— and thus supervise—those  
 3 who wield executive power on his behalf follows from the text of Article II, was settled by  
 4 the First Congress, and was confirmed in the landmark decision *Myers v. United States*, . .  
 5 .” *Seila Law L.L.C.*, 591 U.S. at 204 (citation omitted). “The removal power helps the  
 6 President maintain a degree of control over the subordinates he needs to carry out his duties  
 7 as the head of the Executive Branch, and it works to ensure that these subordinates serve  
 8 the people effectively and in accordance with the policies that the people presumably elected  
 9 the President to promote.” *Collins v. Yellen*, 594 U.S. 220, 252 (2021).

10 The power to supervise and manage the federal workforce is a critical power and  
 11 responsibility entrusted to the President. “The President ‘occupies a unique position in the  
 12 constitutional scheme,’ as ‘the only person who alone composes a branch of government.’”  
 13 *Trump v. United States*, 603 U.S. 593, 610 (2024) (citations omitted). Indeed, “[t]he  
 14 President’s duties are of ‘unrivaled gravity and breadth.’” *Id.* at 607 (quoting *Trump v.*  
 15 *Vance*, 591 U.S. 786, 800 (2020)). The Founders believed that a “vigorous” and “energetic”  
 16 Executive was needed “to ensure ‘good government,’ for a ‘feeble executive implies a  
 17 feeble execution of the government.’” *Id.* at 610 (quoting *The Federalist No. 70* 471-72 (J.  
 18 Cooke ed., 1961)) (A. Hamilton).

19 Article II provides the President with broad authority to manage the federal  
 20 workforce. The Founders confirmed this authority, and the courts have recognized it for  
 21 more than two centuries except in limited circumstances not relevant here. *See Trump*, 603  
 22 U.S. at 608 (“noting only ‘two exceptions to the President’s unrestricted removal power’”)  
 23 (citation omitted). Restricting the President’s ability to delegate to his cabinet the authority  
 24 to implement reductions in force will cripple both the President and the ability to ensure  
 25 good government.

26 2. The President’s power to supervise also provides important accountability to the  
 27 people. The American people do not vote for individual federal employees, but “instead  
 28 look to the President to guide the ‘assistants or deputies ... subject to his superintendence.’”

1 *Free Enter. Fund*, 561 U.S. at 497–98 (quoting *The Federalist* No. 72 487 (J. Cooke ed.,  
 2 1961)) (A. Hamilton). “Because the President, unlike agency officials, is elected, this  
 3 control [over subordinates] is essential to subject Executive Branch actions to a degree of  
 4 electoral accountability.” *Collins*, 594 U.S. at 252 (citation omitted). “That is why the  
 5 Framers sought to ensure that ‘those who are employed in the execution of the law will be  
 6 in their proper situation, and the chain of dependence be preserved; the lowest officers, the  
 7 middle grade, and the highest, will depend, as they ought, on the President, and the  
 8 President on the community.’” *Free Enter. Fund*, 561 U.S. at 498 (quoting 1 *Annals of*  
 9 *Cong.*, at 499 (J. Madison)).

10 “The Constitution that makes the President accountable to the people for executing  
 11 the laws also gives him the power to do so,” *Free Enter. Fund*, 561 U.S. at 513, including  
 12 the power to make personnel decisions. “The President must be able to remove not just  
 13 officers who disobey his commands but also those he finds ‘negligent and inefficient,’  
 14 those who exercise their discretion in a way that is not ‘intelligen[t] or wis[e],’ those who  
 15 have ‘different views of policy,’ those who come ‘from a competing political party who is  
 16 dead set against [the President’s] agenda,’ and those in whom he has simply lost  
 17 confidence.” *Collins*, 594 U.S. at 256 (internal citations omitted). “Without such power,  
 18 the President could not be held fully accountable for discharging his own responsibilities;  
 19 the buck would stop somewhere else.” *Free Enter. Fund*, 561 U.S. at 514. Indeed, “[s]uch  
 20 diffusion of authority ‘would greatly diminish the intended and necessary responsibility of  
 21 the chief magistrate himself.’” *Id.* (quoting *The Federalist* No. 70, at 478).

22 Restricting the ability of the President and his cabinet to manage federal employees  
 23 “subverts the President’s ability to ensure that the laws are faithfully executed—as well as  
 24 the public’s ability to pass judgment on his efforts.” *Id.* at 498. By reducing the number of  
 25 government employees, President Trump and his cabinet are honoring commitments that  
 26 the President made to the American people on the campaign trail. *See, e.g.*, Jackie DeFusco,  
 27  
 28

1 *Federal employees on edge as Trump promises big changes*, WBAL TV (Nov. 16, 2024).<sup>1</sup>

2 \* \* \*

3 Plaintiffs seek to undermine the President’s Article II authority by injecting this  
4 Court into federal workforce decisions made by President Trump and his cabinet. “The  
5 federal court is not the appropriate forum in which to review the multitude of personnel  
6 decisions that are made daily by public agencies.” *Engquist v. Or. Dep’t of Agric.*, 553 U.S.  
7 591, 609 (2008) (citation omitted). The relief sought by Plaintiffs is thus “incompatible  
8 with the Constitution’s separation of powers.” *Free Enter. Fund*, 561 U.S. at 498. The  
9 Court can avoid infringing the separation of powers by leaving federal workforce  
10 management to the President and his cabinet.

11 **B. The Article I Branch Has Created a Separate Process for Federal**  
12 **Employment Issues.**

13 More than 40 years ago, Congress passed the Civil Service Reform Act of 1978  
14 (“CSRA”), which “comprehensively overhauled the civil service system.” *Lindahl v. Off.*  
15 *of Pers. Mgmt.*, 470 U.S. 768, 773 (1985). “A leading purpose of the CSRA was to replace  
16 the haphazard arrangements for administrative and judicial review of personnel action, part  
17 of the ‘outdated patchwork of statutes and rules built up over almost a century’ that was  
18 the civil service system.” *United States v. Fausto*, 484 U.S. 439, 444 (1988) (citation  
19 omitted). “Congress responded to this situation by enacting the CSRA, which replaced the  
20 patchwork system with an integrated scheme of administrative and judicial review,  
21 designed to balance the legitimate interests of the various categories of federal employees  
22 with the needs of sound and efficient administration.” *Id.* at 445.

23 “The CSRA provides a comprehensive scheme for administrative and judicial  
24 review of federal personnel actions and practices.” *Veit v. Heckler*, 746 F.2d 508, 510 (9th  
25 Cir. 1984); *see also Roth v. United States*, 952 F.2d 611, 616 (1st Cir. 1991) (“In general,  
26 a federal employee whose position comes within CSRA’s reach may seek redress for the

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27 <sup>1</sup> Available at <https://www.wbaltv.com/article/federal-employees-on-edge-trump-big-changes/62926509>.  
28

1 untoward effects of a prohibited personnel practice only through the panoply of remedies  
 2 that CSRA itself affords.”). For example, employee appeals of certain agency personnel  
 3 actions are heard by the Merit Systems Protection Board (“MSPB”) and the United States  
 4 Court of Appeals for the Federal Circuit, which “has ‘exclusive jurisdiction’ over appeals  
 5 from a final decision of the MSPB.” *Elgin v. Dep’t of Treasury*, 567 U.S. 1, 6 (2012)  
 6 (statutory citations omitted).

7 The CSRA’s comprehensive scheme prevents employees from pursuing statutory  
 8 claims in federal district court that arose from adverse employment actions. *See Fausto*,  
 9 484 U.S. at 455. In fact, with respect to employee claims under the Administrative  
 10 Procedure Act, circuit courts “have long held that federal employees may not use the  
 11 Administrative Procedure Act to challenge agency employment actions.” *Filebark v.*  
 12 *U.S. Dep’t of Transp.*, 555 F.3d 1009, 1010 (D.C. Cir. 2009) (citing cases); *see also*  
 13 *Grosdidier v. Chairman, Broad. Bd. of Governors*, 560 F.3d 495, 497 (D.C. Cir. 2009)  
 14 (Kavanaugh, J.). This view is shared across the circuits, including in the Ninth Circuit. *See*  
 15 *Veit*, 746 F.2d at 511; *see also Rodriguez v. United States*, 852 F.3d 67, 82 (1st Cir. 2017);  
 16 *Ass’n of Admin. L. Judges v. Colvin*, 777 F.3d 402, 405 (7th Cir. 2015); *Yu v. U.S. Dep’t*  
 17 *of Veterans Affairs*, 528 F. App’x 181, 184-85 (3d Cir. 2013); *Tiltti v. Weise*, 155 F.3d 596,  
 18 601 (2d Cir. 1998); *Ryon v. O’Neill*, 894 F.2d 199, 203 (6th Cir. 1990); *Stephens v. Dep’t*  
 19 *of Health & Hum. Servs.*, 901 F.2d 1571, 1575 (11th Cir. 1990); *Weatherford v. Dole*, 763  
 20 F.2d 392, 394 (10th Cir. 1985); *Pinar v. Dole*, 747 F.2d 899, 912-13 (4th Cir. 1984); *Billups*  
 21 *v. Dep’t of Air Force, Little Rock Air Force Base*, 725 F.2d 1160, 1163 (8th Cir. 1984);  
 22 *Broadway v. Block*, 694 F.2d 979, 986 (5th Cir. 1982). As the Ninth Circuit explained, “We  
 23 agree that the federal courts have no power to review federal personnel decisions and  
 24 procedures unless such review is expressly authorized by Congress in the CSRA or  
 25 elsewhere.” *Veit*, 746 F.2d at 511. Significantly, the CSRA “precludes suit under the  
 26 Administrative Procedure Act even when the claim concerns ‘a type of personnel action’  
 27 the [CSRA] does not cover—that is, even when the [CSRA] provides no relief for the  
 28 complained-of employment action.” *Mahoney v. Donovan*, 721 F.3d 633, 636 (D.C. Cir.

1 2013) (citation omitted).

2 Constitutional claims are no different. The CSRA’s comprehensive scheme prevents  
3 employees from pursuing constitutional claims in federal district court that arose from  
4 adverse employment actions. *See Elgin*, 567 U.S. at 23. The Ninth Circuit has “consistently  
5 held that the CSRA preempts *Bivens* actions and other suits for constitutional violations  
6 arising from governmental personnel actions.” *Russell v. U.S. Dep’t of the Army*, 191 F.3d  
7 1016, 1020 (9th Cir. 1999) (citing cases).

8 Requiring review pursuant to the CSRA, rather than through APA or constitutional  
9 claims in federal district court, advances Congress’ intent. “The CSRA’s objective of  
10 creating an integrated scheme of review would be seriously undermined if ... a covered  
11 employee could challenge a covered employment action first in a district court, and then  
12 again in one of the courts of appeals, simply by alleging that the statutory authorization for  
13 such action is unconstitutional.” *Elgin*, 567 U.S. at 14; *see also Grosdidier*, 560 F.3d at  
14 497 (“Allowing employees to end-run the CSRA would undermine Congress’s efforts to  
15 foster a ‘unitary and consistent Executive Branch position on matters involving personnel  
16 action.’”) (citation omitted). “Such suits would reintroduce the very potential for  
17 inconsistent decision making and duplicative judicial review that the CSRA was designed  
18 to avoid.” *Elgin*, 567 U.S. at 14. “In sum, so far as review of determinations under the  
19 CSRA is concerned, what you get under the CSRA is what you get.” *Fornaro v. James*,  
20 416 F.3d 63, 67 (D.C. Cir. 2005) (Roberts, J.).

21 Because any Department employee affected by the actions challenged by Plaintiffs  
22 would need to pursue relief in accordance with the CSRA, Plaintiffs cannot bring statutory  
23 and constitutional claims in federal district court in their stead. “Congress had no intention  
24 of providing claimants like these—unmentioned in the CSRA—with a level of access to  
25 the courts unavailable to almost any other federal employees, including those that the  
26 CSRA identifies as most worthy of procedural protection.” *Filebark v. U.S. DOT*, 555 F.3d  
27 1009, 1014 (D.C. Cir. 2009). Providing judicial review for Plaintiffs’ claims “would give  
28 [them] greater rights than the CSRA affords for major adverse actions.” *Graham v.*

1 *Ashcroft*, 358 F.3d 931, 935 (D.C. Cir. 2004) (Roberts, J.). In *Fausto*, the Supreme Court  
 2 recognized the “comprehensive nature of the CSRA.” 484 U.S. at 448. In doing so, the  
 3 Court stated that it was applying the “same type of analysis” as an earlier decision that  
 4 barred third-party claims when a statutory scheme provided the exclusive review  
 5 procedures for affected parties: “In [*Block v. Cmty. Nutrition Inst.*, 467 U.S. 340, 345-48  
 6 (1984),] we observed that, under the Agricultural Marketing Agreement Act of 1937, the  
 7 omission of review procedures for consumers affected by milk market orders, coupled with  
 8 the provision of such procedures for milk handlers so affected, was strong evidence that  
 9 Congress intended to preclude consumers from obtaining judicial review.” *Fausto*, 484  
 10 U.S. at 447-48.

11 Under well-settled law, federal employees who are affected by a reduction in force  
 12 decision must pursue any relief under the CSRA. As numerous courts have found,  
 13 Congress’ careful and comprehensive scheme in the CSRA would be disrupted if federal  
 14 employees could file statutory or constitutional claims directly in federal district court. And  
 15 if federal employees cannot directly file these claims, Plaintiffs cannot seek the same relief.  
 16 At bottom, Plaintiffs seek to block personnel actions by more than 20 different federal  
 17 agencies. The Court can avoid interfering with the separation of powers by leaving federal  
 18 employee appeals to the appropriate CSRA procedure.

### 19 **C. The Article III Branch Should Avoid Infringing the Separation of** 20 **Powers.**

21 Our Constitution carefully delineates power between the branches. As the Supreme  
 22 Court observed almost a century ago, it is “a general rule inherent in the American  
 23 constitutional system, that, unless otherwise expressly provided or incidental to the powers  
 24 conferred, the Legislature cannot exercise either executive or judicial power; the executive  
 25 cannot exercise either legislative or judicial power; the judiciary cannot exercise either  
 26 executive or legislative power.” *Springer v. Gov’t of Philippine Islands*, 277 U.S. 189,  
 27 201–02 (1928). “It is also essential to the successful working of this system that the persons  
 28 intrusted [*sic*] with power in any one of these branches shall not be permitted to encroach



1 upon the powers confided to the others, but that each shall by the law of its creation be  
 2 limited to the exercise of the powers appropriate to its own department and no other.”  
 3 *Kilbourn v. Thompson*, 103 U.S. 168, 191 (1880). “The hydraulic pressure inherent within  
 4 each of the separate Branches to exceed the outer limits of its power, even to accomplish  
 5 desirable objectives, must be resisted.” *INS v. Chadha*, 462 U.S. 919, 951 (1983).

6 The Founders “viewed the principle of separation of powers as the absolutely central  
 7 guarantee of a just Government.” *Morrison v. Olson*, 487 U.S. 654, 697 (1988) (Scalia, J.,  
 8 dissenting). They “considered it essential that ‘the judiciary remain[ ] truly distinct from  
 9 both the legislature and the executive.’” *Stern v. Marshall*, 564 U.S. 462, 483 (2011) (The  
 10 Federalist No. 78, p. 466 (C. Rossiter ed. 1961) (A. Hamilton)). “As Hamilton put it,  
 11 quoting Montesquieu, “‘there is no liberty if the power of judging be not separated from  
 12 the legislative and executive powers.’” *Id.*

13 The separation of powers is critical to the core constitutional values of liberty and  
 14 democratic accountability. “The Framers were particularly cognizant . . . of the link  
 15 between accountability of officials in the Legislative and Executive Branches and  
 16 individual liberty.” *In re Aiken Cnty.*, 645 F.3d 428, 440 (D.C. Cir. 2011) (Kavanaugh, J.,  
 17 concurring). “The Framers recognized that, in the long term, structural protections against  
 18 abuse of power were critical to preserving liberty.” *Bowsher v. Synar*, 478 U.S. 714, 730  
 19 (1986). For example, “[t]he President is dependent on the people for election and re-  
 20 election, but the officers of agencies in the Executive Branch are not.” *In re Aiken Cnty.*,  
 21 645 F.3d at 440 (Kavanaugh, J., concurring). “Presidential control of those agencies thus  
 22 helps maintain democratic accountability and thereby ensure the people’s liberty.” *Id.* For  
 23 this reason, any encroachment on the separation of powers necessarily implicates a threat  
 24 to individual liberty. “Liberty is always at stake when one or more of the branches seek to  
 25 transgress the separation of powers.” *Clinton v. City of N.Y.*, 524 U.S. 417, 450 (1998)  
 26 (Kennedy, J., concurring).

27 A court should act cautiously before invading the President’s well-settled authority  
 28 to supervise and manage the federal workforce. “Federal agencies must have a certain

latitude to make personnel decisions in order to enhance efficiency and discipline in the workplace.” *Weatherford*, 763 F.2d at 392 (citing *Arnett v. Kennedy*, 416 U.S. 134, 168 (1974) (Powell, J., concurring in part)). Indeed, “[a]n agency has wide discretion in conducting a reduction in force,” and the Federal Circuit—the proper judicial venue for review of such actions—“will not disturb a reduction in force absent a clear abuse of discretion or a substantial departure from applicable procedures.” *Gandola v. F.T.C.*, 773 F.2d 308, 313 (Fed. Cir. 1985) (citations omitted). An agency’s “decision on the composition and structure of the work force reflects the kind of managerial judgment that is the essence of agency discretion, and is not meet for judicial reevaluation.” *Id.* at 311.

Given these considerations, “if [agency] discretion is to be limited, such limitation is better suited for Congress than the courts, for it is Congress which is better able to evaluate the relevant concerns.” *Weatherford*, 763 F.2d at 394. Indeed, “Congress is better equipped than [the courts] to strike an appropriate balance between employees’ interests in remedying constitutional violations and the interests of the government and the public in maintaining the efficiency, morale and discipline of the federal workforce.” *Saul v. United States*, 928 F.2d 829, 840 (9th Cir. 1991). Congress created the CSRA to handle federal employee appeals of personnel decisions. The Court can avoid interfering with the separation of powers by leaving federal employee management to the Article II branch and employee appeals to the design by the Article I branch.

## **II. Plaintiffs Have Failed to Show Irreparable Harm.**

### **A. Plaintiffs Have Failed to Show a “Genuinely Extraordinary” Situation.**

Plaintiffs argue the traditional standard for irreparable harm. *See* Doc. 37-1, at 29 (citing *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). But Plaintiffs’ requested relief—to halt “execution of any existing RIF notices, issuance of any further RIF notices, and placement of employees on administrative leave,” *id.* at 6—requires the Court to apply a higher standard to federal employment actions. To obtain a preliminary injunction, Plaintiffs must demonstrate irreparable harm that is “genuinely extraordinary.”



1 *Sampson v. Murray*, 415 U.S. 61, 92 n.68 (1974).

2 The “genuinely extraordinary” standard is based on “the well-established rule that  
3 the Government has traditionally been granted the widest latitude in the ‘dispatch of its  
4 own internal affairs.” *Sampson*, 415 U.S. at 83. “Time and again” over the years, the  
5 Supreme Court has “recognized that the Government has a much freer hand in dealing  
6 ‘with citizen employees than it does when it brings its sovereign power to bear on citizens  
7 at large.’” *Nat’l Aeronautics & Space Admin. v. Nelson*, 562 U.S. 134, 148 (2011) (citations  
8 omitted). As already discussed, the Plaintiffs should be subject to the same legal  
9 requirements as the Department employees subject to the reduction in force decisions. *See*  
10 § I.B, *supra*. Plaintiffs have not presented evidence of “genuinely extraordinary” harm.

11 **B. Plaintiffs Have Failed to Present Sufficient Facts of Irreparable**  
12 **Harm.**

13 Plaintiffs have not made “a showing of irreparable injury sufficient in kind and  
14 degree to override these factors cutting against the general availability of preliminary  
15 injunctions in Government personnel cases.” *Sampson*, 415 U.S. at 84. Based on this fact  
16 alone, the Court can find that Plaintiffs have not shown irreparable injury and thus are not  
17 entitled to a preliminary injunction.

18 Plaintiffs claim that individual employees “who have been or will be terminated  
19 face irreparable injury from losing their wages and health benefits for themselves and their  
20 families and in many cases needing to relocate.” Generally, “the temporary loss of income,  
21 ultimately to be recovered, does not usually constitute irreparable injury.” *Sampson*, 415  
22 U.S. at 90. Unlike the decision cited in the Motion, *see* Doc. 37-1, at 49, Plaintiffs have not  
23 presented evidence of “economic hardship, suffering or even death” that would result from  
24 the challenged actions. *Golden Gate Rest. Ass’n v. City & Cnty. of San Francisco*, 512 F.3d  
25 1112, 1126 (9th Cir. 2008).

26 Plaintiffs assert many theories that do not demonstrate any harm that is irreparable.  
27 For example, based on a reduction in force of a fraction of its department and some facility  
28 lease terminations, Plaintiffs speculate that they may no longer receive real-time weather

1 information. Doc. 37-1, at 16. The City of Chicago reports that it relies on an on-site federal  
 2 worker to support large scale local events. Doc. 37-57, at ¶ 8. But in addition to not  
 3 providing any proof that weather services will be affected, Plaintiffs do not cite any  
 4 constitutional or statutory requirement that a federal agency provide Chicago or any other  
 5 locality with on-site weather support for large events.

6 As another example, Plaintiffs rely (at Doc. 37-1, at 27) on an attorney advisor in  
 7 the State Department who opines on matters well outside the employment law matters on  
 8 which she has largely worked during her four-year department tenure. *See* Doc. 37-20, at  
 9 ¶ 2. This individual worries that the elimination of the Counter Foreign Information  
 10 Manipulation and Interference office “leaves the State Department without a key tool to ...  
 11 counter the increasingly sophisticated disinformation campaigns from foreign governments  
 12 as Russia, Iran, and China.” *Id.* at ¶ 30. Of course, this is all second-hand speculation since  
 13 the individual identifies no expertise in foreign relations, disinformation campaigns, or the  
 14 State Department’s past programs. *See id.* It also is baseless speculation. Secretary of State  
 15 Marco Rubio reported that, under the past administration, the Counter Foreign Information  
 16 Manipulation and Interference program, “which cost taxpayers more than \$50 million per  
 17 year, spent millions of dollars to actively silence and censor the voices of Americans they  
 18 were supposed to be serving.” U.S. Dep’t of State, *Protecting and Championing Free*  
 19 *Speech at the State Department*, Apr. 16, 2025.<sup>2</sup> As Secretary Rubio rightly observed,  
 20 “[t]his is antithetical to the very principles we should be upholding and inconceivable it  
 21 was taking place in America.” *Id.* Plaintiffs present no proof of harm that will result from  
 22 the State Department stopping efforts to censor Americans.

23 None of Plaintiffs’ other irreparable harm arguments establish a genuinely  
 24 extraordinary situation. Instead, Plaintiffs speculate about levels of service and delays,  
 25 which do not establish irreparable harm, let alone harm that is genuinely extraordinary.  
 26 Plaintiffs’ request for a preliminary injunction should be denied because they have failed

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 28 <sup>2</sup> Available at <https://www.state.gov/protecting-and-championing-free-speech-at-the-state-department/>.

1 to establish irreparable harm.

### 2 **III. The Equities Favor the Defendants.**

3 To complete the preliminary injunction analysis, “[i]t is ultimately necessary... ‘to  
4 balance the equities—to explore the relative harms to applicant and respondent, as well as  
5 the interests of the public at large.’” *Barnes v. E-Sys., Inc. Grp. Hosp. Med. & Surgical Ins.*  
6 *Plan*, 501 U.S. 1301, 1305 (1991) (Scalia, J., in chambers) (citation and second quotation  
7 marks omitted). These factors merge when the government is the opposing party. *Nken v.*  
8 *Holder*, 556 U.S. 418, 435 (2009).

9 While the Plaintiffs will not suffer irreparable harm without an injunction, *see* § II,  
10 *supra*, the Defendants will suffer irreparable harm with an injunction. The President suffers  
11 harm when he is unable to exercise his Article II powers. As the Supreme Court observed  
12 a century ago, “[i]n all such cases, the discretion to be exercised is that of the President in  
13 determining the national public interest and in directing the action to be taken by his  
14 executive subordinates to protect it.” *Myers v. United States*, 272 U.S. 52, 134 (1926).  
15 Accordingly, “[t]he moment that he loses confidence in the intelligence, ability, judgment,  
16 or loyalty of any one of them, he must have the power to remove him *without delay*.” *Id.*  
17 (emphasis added). Granting Plaintiffs’ requested relief will irreparably harm the President  
18 by interfering with his Article II decisions and delaying his plans for the Department.  
19 “Dictat[ing] and restrict[ing] a separate branch of government ... truly is irreparable.” *Does*  
20 *1-26 v. Musk*, No. 25-1273, 2025 WL 1020995, at \*6 (4th Cir. Mar. 28, 2025)  
21 (Quattlebaum, J., concurring in stay). In addition, the government is unlikely to recover the  
22 salary to employees once it is paid. *Cf. Dep’t of Educ. v. California*, No. 24A910, 2025  
23 WL 1008354, at \*1 (U.S. Apr. 4, 2025) (granting stay pending appeal).

24 The public interest supports President Trump and his cabinet. According to recent  
25 public opinion surveys, Americans’ confidence in the federal government has reached  
26 depths not seen since the Vietnam War. Claudia Deane, *American’s Deepening Mistrust of*  
27  
28

1 *Institutions*, Pew (Oct. 17, 2024).<sup>3</sup> A majority of Americans believe the federal government  
 2 is too large, inefficient, and wasteful. Frank Newport, *Public Support for Making U.S.*  
 3 *Government More Efficient*, Gallup (Nov. 22, 2024).<sup>4</sup> President Trump and his cabinet  
 4 should not be stopped from being responsive to this public sentiment as they make the  
 5 federal government more efficient.

6 Finally, “the public also has an interest in judges wielding power only when so  
 7 authorized.” *Does 1-26*, 2025 WL 1020995, at \*6 (Quattlebaum, J., concurring in stay).  
 8 Indeed, “the public has an interest in the Judicial Branch’s respect for the jurisdictional  
 9 boundaries laid down by Congress.” *Middle East Broadcasting Networks, Inc. v. United*  
 10 *States*, No. 25-5150, at \*12 (D.C. Cir. May 3, 2025) (per curiam) (granting motion for a  
 11 stay pending appeal).

## 12 CONCLUSION

13 For these reasons, the Amici States respectfully request that the Court deny  
 14 Plaintiffs’ motion for a temporary restraining order.

15  
 16  
 17 Dated: May 8, 2025

Respectfully submitted,

18  
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25 <sup>3</sup> Available at [https://www.pewtrusts.org/en/trend/archive/fall-2024/americans-deepening-](https://www.pewtrusts.org/en/trend/archive/fall-2024/americans-deepening-mistrust-of-institutions)  
 26 [mistrust-of-institutions](https://www.pewtrusts.org/en/trend/archive/fall-2024/americans-deepening-mistrust-of-institutions).

27 <sup>4</sup> Available at [https://news.gallup.com/opinion/polling-matters/653657/public-support-](https://news.gallup.com/opinion/polling-matters/653657/public-support-making-government-efficient.aspx)  
 28 [making-government-efficient.aspx](https://news.gallup.com/opinion/polling-matters/653657/public-support-making-government-efficient.aspx).

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