

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

NATIONAL ENDOWMENT FOR
DEMOCRACY,

Plaintiff,

V.

UNITED STATES, et al.,

Defendants.

No. 1:25-cv-00648-DLF

PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION

Plaintiff National Endowment for Democracy (“the Endowment”) respectfully moves pursuant to Federal Rule of Civil Procedure 65 for a preliminary injunction. For the reasons presented in the memorandum in support of this motion, the Court should enter an order that would stop Defendants and those they supervise from withholding or otherwise interfering with the Endowment’s congressionally mandated funding. The precise contours of the order the Endowment seeks are provided in the proposed order attached to this motion.

Pursuant to Local Rule 7(m), counsel for the Endowment conferred with counsel for Defendants regarding this motion. Defendants oppose the motion.

Dated: July 21, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 21, 2025, I filed the foregoing document with the Clerk of Court for the United States District Court for the District of Columbia using the court's CM/ECF system, which will send notification of such filing to all registered participants.

/s/ Donald B. Verrilli, Jr.

Donald B. Verrilli, Jr.

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PLAINTIFF’S MEMORANDUM IN SUPPORT OF ITS
MOTION FOR A PRELIMINARY INJUNCTION

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INTRODUCTION

The National Endowment for Democracy is an independent, nonpartisan, nonprofit organization devoted to supporting freedom worldwide. The Endowment was created against the backdrop of the Cold War at President Reagan’s urging and with overwhelming bipartisan support in Congress. Its mission was and remains to bolster the “global campaign for democracy” that was then “gathering force.” To ensure that the Endowment could carry out its vital work without interruption, in 1983 Congress enacted the National Endowment for Democracy Act (the NED Act), which directs that the Endowment “shall” receive an annual grant of federal funding. 22 U.S.C. §§ 4411 *et seq.* Every year, Congress mandates in appropriations statutes that the Endowment receive a sum certain, to be available to the Endowment until expended.

In every appropriations statute relevant here and in every one in recent memory, Congress has used the same mandatory language directing the Executive Branch to provide the full amount of appropriated funding to the Endowment. Critically, Congress has also provided that the Executive may not impose or enforce any conditions on the use of the appropriated funds beyond those that Congress itself has imposed—making clear that the Executive has not been delegated any discretion to override or alter Congress’s policy judgment that the Endowment’s defined mission serves the national interest. 22 U.S.C. § 4412(a). Since its inception, the Endowment has carried out its assigned responsibilities by making grants to private entities that foster democracy, human rights, and freedom, with great success even in some of the world’s most repressive countries.

Until now, every Administration since President Reagan has faithfully executed its constitutional responsibility to ensure that the Endowment receives the full funding Congress has appropriated to it. No more. The current Administration has evidently decided that it need not respect the laws that recognize the Endowment, define its mission, and provide it with mandatory funding to carry out that mission. In blatant defiance of unambiguous statutory commands and

fundamental constitutional precepts, the Executive Branch has embarked on a sustained campaign to eliminate the Endowment. The first broadside was fired in January 2025, when, without warning or explanation, the Executive peremptorily cut off the Endowment’s ability to draw on funds already obligated for the Endowment’s use. That initial lawless step—which forced the Endowment to furlough much of its staff and to suspend funding of vital ongoing projects—ceased only after the Endowment brought this lawsuit and sought a temporary restraining order.

Unfortunately, the Executive’s campaign did not end there. Stymied in their direct effort to withhold all funding, the Administration shifted to bureaucratic subterfuge. It has manufactured one spurious rationale after another to diminish or delay the funding that the Endowment needs to carry out its work, only to back off after the Endowment’s counsel apprised the Department of Justice of the unlawfulness of each action and threatened to return to this Court. The Administration even went so far as to threaten a takeover by the Department of Government Efficiency (DOGE), which was abandoned only after the Endowment’s counsel pointed out that DOGE lacked any authority over the Endowment because the Endowment is not an executive agency.

With all of its prior bureaucratic machinations having fallen flat, the Executive has now declared that it will withhold all of the Endowment’s remaining unobligated fiscal year 2025 funds—about \$95 million, almost a third of the Endowment’s annual appropriation—on the ground that disbursing the money this fiscal year does not align with “Administration priorities.” That action is just as unlawful, and just as threatening to the separation of powers, as every prior attack. But efforts to persuade the Administration to abandon its most recent gambit have not succeeded, so the Endowment has no choice but to seek this Court’s intervention. A preliminary injunction is fully warranted.

The Endowment is very likely to succeed in establishing that the Executive’s decision to

withhold all remaining fiscal year 2025 funding lacks any conceivable legal basis, is the very definition of arbitrary agency action, and offends the separation of powers. Congress has specified in the NED Act itself, and in the controlling appropriations statutes, that the Endowment “shall” receive its funds and “shall” spend them to advance the purposes Congress has identified. In fact, Congress has gone further and directed that the Endowment’s leadership shall determine how to spend those funds to carry out Congress’s instructions, and has forbidden the Executive from imposing any additional conditions on the funds. 22 U.S.C. § 4412(a). Given those unambiguous statutory directives, the Executive simply has no authority to decide that the funds Congress has appropriated should not be spent for the purposes that Congress appropriated them for. Indeed, by nonetheless asserting such authority, the Executive is violating the most fundamental precepts of the constitutional separation of powers.

The Executive’s recent rabbit-out-of-a-hat invocation of the arcane budgeting provisions in 31 U.S.C. § 1512 changes none of that. The authority conferred by that provision is extremely limited in scope. It gives the Office of Management and Budget (OMB) the power to reserve appropriated funds under particular narrow conditions that are not remotely present here. The provision does not delegate to the Executive the power to override Congress’s policy determinations based on the Executive’s disagreement with the choices Congress has made in the legitimate exercise of its legislative powers. Indeed, it is inconceivable that Congress would have delegated to the Executive the sweeping power to override Congress’s policy determinations any time the Executive decided that the money would not be well spent in furthering the choices Congress made—much less that it would do so by using the obscure and elliptical language of 31 U.S.C. § 1512. History confirms as much: the one time a President sought to use this statutory authority to supplant Congress’s policy choices (President Nixon in the 1970s), Congress swiftly amended

the statute to eliminate the language the President relied on. *See infra* at p. 22. No President since has even suggested that this narrow statutory authority could be used in the expansive manner in which OMB now seeks to use it. In all events, Defendants’ barebones post hoc justification for the exercise of authority does not come close to satisfying the basic Administrative Procedure Act requirement of reasoned decision-making.

Defendants’ lawlessness is irreparably harming the Endowment. It is driving away critical employees, including those with specialized technical and language skills that are necessary for the Endowment’s success and nearly impossible to replace. The Endowment’s mission suffers every single day, as the withholding prevents the Endowment from fully funding hundreds of time-sensitive projects. The grantees that rely on Endowment funding face imminent security risks because a funding pause could expose them as Endowment grantees, inviting harsh reprisal from authoritarian regimes. The core institutes that carry out some of the Endowment’s most important work are at grave risk, as the primary source of their funding has run dry and critical projects will go unfunded. And the Endowment’s reputation as a trusted partner is on the line. This Court’s immediate intervention is needed to avert these irreparable harms.

BACKGROUND

A. The National Endowment for Democracy

In 1983, Congress enacted the NED Act, which formally recognized the Endowment’s establishment as a private nonprofit corporation entitled to receive mandatory annual grants of congressionally appropriated funds to fulfill its congressionally ratified purposes. *See* 22 U.S.C. §§ 4411 *et seq.* The Endowment was established in 1982, to fulfill President Reagan’s call for a new initiative to “foster the infrastructure of democracy” and fight authoritarianism through private-sector initiatives around the world. Am. Compl. ¶¶ 24-25.

The Endowment was created as—and remains—a nonpartisan, nonprofit,

nongovernmental corporation with bipartisan origins and support. Appendix A to Declaration of Damon Wilson in Support of Mot. for TRO ¶¶ 2-3 (“TRO Decl.”) (attached as Exhibit A to Motion for TRO, ECF No. 5-2). The Endowment has always been governed by a bipartisan Board of Directors that includes Members of Congress, foreign policy experts, former diplomats and policymakers, business and labor representatives, and nonprofit leaders. *Id.* ¶ 4. Their expertise enables them to effectively carry out their oversight of the Endowment’s strategy and activities. *Id.*

In the NED Act, Congress recognized that the Endowment’s mission is to “encourage free and democratic institutions throughout the world through private sector initiatives, including activities which promote the individual rights and freedoms (including internationally recognized human rights) which are essential to the functioning of democratic institutions.” 22 U.S.C. § 4411(b). The Endowment also promotes “democratic training programs and democratic institution-building abroad” and “strengthen[ing] democratic electoral processes abroad.” *Id.*

The NED Act envisioned that the Endowment would advance its mission by operating as a grantmaking organization. *Id.* § 4413(b); *see id.* §§ 4412(d), (f), 4413(j); 4414(a), 4416. It funds four “core institutes”: the International Republican Institute, the National Democratic Institute, the Center for International Private Enterprise, and the Solidarity Center. TRO Decl. ¶ 9. In addition to working to advance democracy, the institutes help ensure that the Endowment’s grantmaking is grounded in local knowledge and priorities and that the Endowment maintains the networks and expertise to properly vet and monitor the projects it funds. *Id.* The Endowment also funds nearly 2,000 democracy-supporting projects each year across the world. *Id.* ¶ 3. Because some grantees operate under repressive regimes, they do so at great personal risk, and many must keep their relationship to the Endowment quiet for safety reasons. *Id.* ¶¶ 11, 47.

The Endowment’s work pays outsized dividends to the United States’ interests, including

by advancing freedom and democracy across the world. For instance, Endowment-supported efforts helped solidify the end of communist rule in Eastern Europe after the fall of the Soviet Union. *Id.* ¶ 12. And the Endowment’s cooperation with political, business, labor, civic, and faith leaders around the world fosters future collaboration with the United States. *Id.* ¶ 10. The Endowment’s work contributes to “environments in which American businesses and workers can better compete, . . . less migration driven by hardship and violence,” and reductions in “the emergence of violent non-state actors,” like terrorist organizations. *Id.* ¶ 13.

B. Congress’s Direct Appropriations to the Endowment

1. From its inception, the Endowment was structured to ensure continuity of funding and independent decision-making authority.

The NED Act provides that the Department of State “*shall make an annual grant* to the Endowment to enable the Endowment to carry out its purposes as specified in section 4411(b) of this title” and that “[s]uch grants *shall be made* with funds specifically appropriated for grants to the Endowment.” 22 U.S.C. § 4412(a) (emphasis added).¹ To fund that grant, Congress has directly appropriated money for the Endowment’s use every year since the Endowment’s founding. For fiscal year 2024, for instance, Congress provided in the Further Consolidated Appropriations Act: “For grants made by the Department of State to the National Endowment for Democracy, as authorized by the National Endowment for Democracy Act (22 U.S.C. 4412), \$315,000,000, to remain available until expended, of which \$210,316,000 shall be allocated in the traditional and customary manner, including for the core institutes, and \$104,684,000 shall be for democracy programs.” Pub. L. No. 118-47, 138 Stat. 460, 737 (2024). Although the amount of the appropriation

¹ The NED Act’s references to the United States Information Agency now apply to the State Department. See Federal Register, *United States Information Agency*, <https://www.federalregister.gov/agencies/united-states-information-agency>.

has changed over time, its terms have long remained consistent. Congress has consistently directed that the full appropriated amount “shall be allocated” by the Endowment: a portion is set aside for the Endowment’s core institutes and “shall be allocated in the traditional and customary manner,” and a portion “shall be for” the Endowment’s democracy programs. Congress has directed that these funds be obligated “as authorized by the” NED Act, which includes a requirement that the funds are obligated on an “annual” basis. And the appropriated amount is to “remain available” to the Endowment “until expended,” meaning that the appropriation consists of so-called “no-year” funds, which do not expire at the end of the fiscal year.

The Endowment’s fiscal year 2025 appropriation is no different. In three continuing resolutions, Congress has appropriated the same \$315,000,000 sum as in 2024, under the same terms. *See* Pub. L. No. 118-83, 138 Stat. 1524 (2024); Pub. L. No. 118-158, 138 Stat. 1722 (2024); Full-Year Continuing Appropriations and Extensions Act, 2025, Pub. L. No. 119-4, 139 Stat. 9.

2. When funds are appropriated for the Endowment, OMB must apportion those funds. 31 U.S.C. § 1513(b). In the apportionment process, OMB sets a schedule governing when appropriated funds will become available for the relevant executive agency (here, the State Department) to spend or obligate (i.e., legally commit to pay). GAO, *A Glossary of Terms Used in the Federal Budget Process*, GAO-05-734SP at 12-13, 70 (Sept. 2005) (“Federal Budget Glossary”). In recent years, OMB has made the Endowment’s full annual appropriation available for obligation upon enactment of a full-year appropriations law.²

3. After apportionment, the State Department must transfer the funding to the Endowment.

² *See* Pub. L. No. 118-47 (Mar. 23, 2024) and https://openomb.org/file/11334500#tafs_11334500-019-0210--3--2024 (apportioned on Apr. 3, 2024); Pub. L. No. 117-328 (Dec. 29, 2022) and https://openomb.org/file/11256635#tafs_11256635--019-0210--3--2023 (apportioned on Jan. 24, 2023); Pub. L. No. 117-103 (Mar. 15, 2022) and https://openomb.org/file/11214141#tafs_11214141--019-0210--3--2022 (apportioned on Mar. 24, 2022).

TRO Decl. ¶ 15. The NED Act directs that the State Department use an “annual grant” agreement, but that “grant agreement may not require the Endowment to comply with requirements other than those specified” in the Act. 22 U.S.C. § 4412(a). The obligated funds are set aside for the Endowment at the Treasury, and the Endowment requests disbursements. TRO Decl. ¶¶ 16-18.

C. The Executive Branch’s Policy Objections to the Endowment

Even before the current administration began, incoming executive officials publicly disagreed with Congress’s longstanding support for the Endowment and promised to eliminate its funding. In December 2024, *The New Criterion* reported that DOGE intended to “cut or severely reduce[] [the] scale” of the Endowment.³

The criticism intensified after Inauguration Day. On February 2, 2025, Elon Musk argued that the Endowment “needs to be dissolved.”⁴ The Center for Renewing America, a think tank founded by Defendant and OMB Director Russell Vought, published two pieces criticizing the Endowment’s funding decisions and enumerating policy objections to its mission.⁵

Under Vought’s direction, OMB has continued to object to the Endowment’s work, relying on false and misleading allegations. On May 2, OMB submitted to the Senate the President’s

³ James Piereson, *The DOGE versus the NED*, New Criterion (Dec. 3, 2024), <https://newcriterion.com/dispatch/the-doge-versus-the-ned/>.

⁴ Elon Musk (@elonmusk), X.com (Feb. 2, 2025, 11:55 A.M.), <https://x.com/elonmusk/status/1886096100353818930>; *see also* Elon Musk (@elonmusk), X.com (Feb. 2, 2025, 12:08 P.M.), <https://x.com/elonmusk/status/1886099259646173695>; Karen Piper (@PiperK), X.com (Feb. 2, 2025, 5:21 P.M.), <https://x.com/PiperK/status/1886176006819696940>; *see* Phelim Kine, *Elon Musk’s attacks on a group long backed by the GOP prompt Republican shrugs*, Politico (Feb. 13, 2025), <https://www.politico.com/news/2025/02/13/national-endowment-democracy-musk-funding-017146>.

⁵ CRA Staff, *Primer: The National Endowment for Democracy and an NGO Ecosystem Actively Undermining America*, Ctr. for Renewing Am. (Feb. 7, 2025), <https://americarenewing.com/primer-the-national-endowment-for-democracy-and-an-ngo-ecosystem-actively-undermining-america/>; Wade Miller, *Policy Brief: Dismantle Entities Actively Censoring Americans*, Ctr. for Renewing Am. (Feb. 7, 2025), <https://americarenewing.com/policy-brief-dismantle-entities-actively-censoring-americans/>.

budget request for fiscal year 2026, calling for eliminating the Endowment’s funding. OMB justified this proposal on the ground that the Endowment “blocked public access to its grant details,” “funded [a] Ukraine disinformation organization,” and “funded the now-infamous Disinformation Index Foundation that targeted and blacklisted conservative [American] media outlets.”⁶ As the Endowment has detailed, these claims are misleading at best and patently false at worst.⁷

OMB’s false criticisms of the Endowment have been levied against the backdrop of OMB’s broader effort to seize more power over spending. Vought has long argued for an expansive (and unconstitutional, *see infra* at pp. 35-39) vision of the Executive’s prerogative to refuse to spend appropriated funds where the Executive disagrees with the policy objectives for which the funds were appropriated.⁸ The Executive has already “stalled” a “wide spectrum of government spending,” and federal employees recently have reported that the administration intends to assert even broader authority to “unilaterally overturn[] spending decisions made by Congress.”⁹

D. The First Halt on the Endowment’s Funds

By the end of January 2025, through two continuing resolutions, Congress had

⁶ Memorandum from Russell T. Vought, Dir., Off. of Mgmt. & Budget, to Sen. Susan Collins, Chair, Comm. on Appropriations (May 2, 2025), <https://www.whitehouse.gov/wp-content/uploads/2025/05/Fiscal-Year-2026-Discretionary-Budget-Request.pdf>.

⁷ *See Fact-Sheet: NED and the 2026 Discretionary Budget Request*, Nat’l Endowment for Democracy (May 2, 2025), <https://www.ned.org/fact-sheet-ned-and-the-2026-discretionary-budget-request/>. The Endowment *never* provided funding to the Ukrainian organization that OMB seemingly referenced. Similarly, the Endowment *never* funded, supported, or authorized any work by the Disinformation Index Foundation or its affiliates to target U.S. media outlets. The Endowment has *fully complied* with all legal disclosure requirements and provides regular briefings to Members of Congress and congressional staff, while taking necessary precautions to safeguard grantees in high-risk environments. *See id.*; Damon Wilson, *2024 Grants Listings*, Nat’l Endowment for Democracy (Apr. 28, 2025), <https://www.ned.org/2024-grant-listings/>.

⁸ Damon Linker, *Who Is Russell Vought?*, N.Y. Times (Jan. 23, 2025), <https://www.nytimes.com/2025/01/23/opinion/russell-vought-trump-second-term.html>.

⁹ Jeff Stein, et al., *Trump administration is preparing to challenge budget law, U.S. officials say*, Wash. Post (June 25, 2025), <https://www.washingtonpost.com/business/2025/06/25/trump-budget-law-challenge/>.

appropriated roughly \$142 million to the Endowment for fiscal year 2025. TRO Decl. ¶¶ 30-31. A little under half of that sat in the Endowment’s Treasury account. *Id.* ¶ 30. The remainder, from the second continuing resolution, was awaiting obligation to the Endowment. *Id.* ¶ 31.

That is when the Endowment first began to encounter problems accessing its money. It was suddenly unable to draw down from its Treasury account. *Id.* ¶ 28. For weeks, the State Department refused to obligate the funds from the second continuing resolution. *Id.* ¶ 31. The Endowment was forced to furlough staff. *Id.* ¶ 35. It defaulted on grant obligations for the first time. *Id.* ¶ 40. And it found itself at risk of a data breach, and of suffering irreparable harm to its reputation and its relationships with partners around the world. *Id.* ¶¶ 35-56.

With its very existence in jeopardy, the Endowment filed this lawsuit and moved for a temporary restraining order. ECF Nos. 1, 5. Just days later, Defendants stopped blocking the Treasury account funds. ECF No. 14 at 2. Defendants also represented that the State Department was finalizing the obligation of the remaining funds. *Id.* The Court therefore paused the TRO proceedings at the parties’ urging. Minute Order of Mar. 11, 2025. The obligation of the funds from the second continuing resolution went through just over one week later. ECF No. 15 at 1.

E. The Continued Assault on the Endowment

Although Defendants changed tactics in response to this litigation, they were not done. The next few months saw numerous attempts to interfere with the Endowment’s funds. First, Defendants delayed approval of one of the Endowment’s drawdown requests, incorrectly claiming the Endowment needed some kind of “waiver” to access the money. ECF No. 16 at 1-2. Ultimately, after outreach from counsel, Defendants acknowledged no waiver was needed. *Id.* at 2.

Next, on March 31, the Endowment learned that OMB had only apportioned a subset of the remainder of the Endowment’s full-year appropriation—\$26 million out of \$172 million, or one month’s worth. That was highly unusual; in recent years, OMB has apportioned the *entirety*

of the Endowment’s annual funding within 30 days. *See supra* at p. 7 & n.2. In response to inquiries, Defendants indicated that OMB would apportion funds in 30-day increments until the State Department submitted a full-year spending plan to Congress. ECF No. 17.

On April 24, while the Endowment was still receiving funding month-to-month, the Executive Branch tried another line of attack: DOGE. Endowment executives received an email from Marshall Wood, who identified himself as a “member of the DOGE team.” Supplemental Declaration of Damon Wilson (“Decl.”) ¶ 21 (attached as Exhibit A to this Motion). Mr. Wood informed the Endowment that DOGE “would like to have a call” the next day “to discuss onboarding [the] Endowment’s team.” *Id.* He threatened that if he did not hear back, he would “assume [the Endowment did] not plan to comply with the President’s Executive Order.” *Id.* He made this threat notwithstanding that it would be unlawful for DOGE to forcibly onboard a team at the Endowment. DOGE’s authority extends only to government agencies. *See* Exec. Order No. 14158, § 3(c), 90 Fed. Reg. 8441, 8441 (Jan. 20, 2025). The Endowment is a private corporation, not a government entity. 22 U.S.C. §§ 4411(a), 4412(c). Ultimately, the Endowment proceeded to have a call with DOGE and voluntarily answered a list of questions. Decl. ¶¶ 25-26. DOGE has yet to acknowledge to the Endowment that it is barred from onboarding a team there. *Id.* ¶ 26.

F. The Current Impoundment

Meanwhile, OMB continued to withhold a full apportionment of the Endowment’s funds pending the State Department’s submission of a full-year spending plan. In both April and May, OMB made apportionments that each accounted for 30 days’ worth of funds.

On May 29, the State Department submitted a full-year spending plan to Congress. Although OMB had only apportioned—and the State Department had only obligated—roughly \$220 million of the Endowment’s \$315 million appropriation, the plan did not account for any additional apportionments or obligations to the Endowment in fiscal year 2025. AR000003, ¶ 3. Instead, it

specified that “[r]emaining resources may be made available for obligation in FY 2025 subject to review for alignment with Administration priorities.” AR000060.

On June 11, counsel for Defendants informed counsel for the Endowment that the Executive Branch had decided to withhold the ~\$95 million balance of the funding appropriated for the Endowment in fiscal year 2025. Defendants’ counsel stated that the State Department’s spending plan “contemplates reserving funds from State’s no-year FY25 appropriation for grants to NED for FY 2026.” Am. Compl. Ex. 2 (DOJ E-Mail). In a Joint Status Report submitted the following day, Defendants confirmed that the Executive Branch was “reserving” the remainder of the Endowment’s funding. ECF No. 33 at 2. According to Defendants, “[i]n the past it may have been the case that NED received its funds as a lump sum once a full-year appropriations Act was enacted; however, that is not required by the authorizing statute nor the appropriation for NED. In fact, because these are no-year funds, Congress specifically permits State to obligate these funds for the relevant purposes in this fiscal year and any subsequent fiscal year ‘until expended.’ OMB is required to apportion no-year funds ‘to achieve the most effective and economical use.’” *Id.* (citing 31 U.S.C. § 1512(a)). Defendants concluded: “[F]unding in this case requires apportionment for FY 2026 rather than additional obligations for FY 2025.” *Id.* Defendants did not, however, articulate any reason why the remaining funds should be apportioned for fiscal year 2026, rather than for the current fiscal year (as had been OMB’s consistent practice before this year).

On July 10, Defendants filed the administrative record, which consisted only of the State Department’s Spending Plan and a three-page declaration from a State Department official, signed on July 10—weeks *after* the apportionment decision. The declaration confirmed that Defendants are withholding the remaining \$95 million from the Endowment’s fiscal year 2025 appropriation and repeated the legal arguments just described. The declaration added that the “State Department

in consultation with OMB determined that disbursing the funds in Fiscal Year 2026 would achieve the most effective and economical use of the remaining funds because sufficient funds had already been disbursed to NED for FY2025.” AR000004, ¶ 7. It also asserted that “[r]eserving the unobligated \$94,941,000 of FY 2025 funds ensures that NED will retain at least that level of funding in the coming fiscal year.” AR000004, ¶ 8. Again, no further explanation was provided.

G. The Consequences of the Halt on Funds for the Endowment and Its Grantees

In recent months, the Endowment has been forced to make difficult decisions. Lacking any certainty that full funding was forthcoming, and committed to honoring its obligations to grantees, the Endowment cut its workforce by 35% and terminated several important democracy support initiatives. Decl. ¶¶ 33-34.

Despite those steps, the current impoundment of \$95 million—almost one third of the Endowment’s annual appropriation—has proven too great for the organization to bear. The very grantmaking activities that the staffing cuts were designed to protect are now in grave jeopardy. *Id.* ¶ 35. The Endowment will not be able to fully support over 500 grants and 53 core institute projects. *Id.* ¶ 48. Those projects directly further the Endowment’s mission; they would advance reforms to level the playing field for American businesses and workers, support election monitoring, and fight censorship. *Id.* ¶ 52.

Defendants’ actions have also threatened the core institutes and direct grantees that rely on the Endowment. Without access to the full appropriated amount, the core institutes will need to delay, suspend, or cancel critical activities. *Id.* ¶ 66. They will also need to make further operational cuts, including staff and offices. *Id.* Grantees typically cannot maintain significant reserves, meaning that disruptions in their funding could imperil their existence and jeopardize staff who rely on their employment to maintain legal status in third countries and avoid returning to authoritarian regimes. *Id.* ¶¶ 55, 58. Even a temporary lack of resources also compromises time-sensitive

projects, such as promoting free-and-fair elections in upcoming cycles. *Id.* ¶ 52.

In short, just as it did in March, the Endowment faces devastating consequences from Defendants’ unreasonable and lawless withholding of its appropriated funds. Unless this Court steps in, Defendants’ unlawful impoundment threatens immediate and irreparable harm to the Endowment’s ability to fulfill the mission that Congress expects it to pursue.

LEGAL STANDARD

To obtain a preliminary injunction, a movant must make a “clear showing that four factors, taken together, warrant relief: likely success on the merits, likely irreparable harm in the absence of preliminary relief, a balance of the equities in its favor, and accord with the public interest.” *League of Women Voters v. Newby*, 838 F.3d 1, 6 (D.C. Cir. 2016); *Huisha-Huisha v. Mayorkas*, 27 F.4th 718, 733-34 (D.C. Cir. 2022) (preliminary injunction preserves the “last uncontested status which preceded the pending controversy” (citation and alterations omitted)).

ARGUMENT

I. THE ENDOWMENT IS LIKELY TO SUCCEED ON THE MERITS

In the NED Act, Congress acknowledged the Endowment’s establishment; directed it to pursue a congressionally recognized democracy-support mission; and directed that the Executive Branch “shall make an annual grant” to the Endowment with funds specifically appropriated to the Endowment each year. Congress further directed that the Executive may not impose additional requirements on the Endowment’s funding. Congress could not have been clearer that it expects the Endowment to fulfill its statutory purposes using appropriated funds, and it expects the Executive to execute congressional direction by disbursing the Endowment’s appropriated funds to it.

From even before January 2025, however, incoming Administration officials expressed vehement disagreement with Congress’s policy judgments regarding the Endowment. Unsurprisingly, as soon as they assumed office, those very same officials sought ways to cut off the

Endowment’s appropriated funding. Defendants began with the brazenly illegal tactic of freezing the Endowment’s funds; then after the Endowment filed this lawsuit, Defendants shifted to subtler methods, finally settling on their current invocation of arcane administrative OMB apportionment procedures to refuse to disburse the remaining \$95 million in 2025 funding. Though the tactics have evolved, the intent has not: Defendants have been quite explicit that they are withholding the balance of the Endowment’s full-year appropriation because they disagree with Congress’s funding decision. That is a brazen violation of the NED Act and a usurpation of Congress’s constitutional prerogatives to set policy and determine spending. And Defendants’ recent invocation of OMB apportionment procedures cannot justify their actions: Defendants’ overt abuse of the Executive’s apportionment authority violates the Antideficiency Act. It is also textbook arbitrary and capricious decisionmaking.

A. Defendants Are Violating the NED Act by Withholding the Endowment’s Funds for Impermissible Policy Reasons.

Under the APA, a court must set aside agency action that is “not in accordance with law” or “in excess of statutory . . . authority.” 5 U.S.C. § 706(2)(A)-(C). That provision requires a court to invalidate agency action that conflicts with a federal statute. *NextWave Personal Cmmc’ns, Inc. v. FCC*, 254 F.3d 130, 149 (D.C. Cir. 2001). Here, Defendants are violating the NED Act by withholding the Endowment’s funds because they object to its work on policy grounds.¹⁰

1. Defendants’ actions leave no doubt that Defendants are attempting to eliminate the Endowment’s funding because Defendants disagree with that funding on policy grounds.

¹⁰ The denial of funding is reviewable “final agency action.” 5 U.S.C. § 704. “[A]gency action” includes an agency’s “denial” or “withholding” of a “grant of money,” 5 U.S.C. § 551(10), (11), (13), and here, the Executive is withholding the balance of the Endowment’s appropriated funds. That refusal to make the money available is final. It is both definitive, *see* Am. Compl. Ex. 2 (DOJ Email) at 1; AR000004, ¶ 6 (State Dept. Declaration), and dictates when the Endowment’s funding becomes legally eligible for obligation by the State Department, 31 U.S.C. § 1517(a). *See Bennett v. Spear*, 520 U.S. 154, 177-78 (1997).

a. Defendants have been remarkably explicit about their desire to eliminate the Endowment. They announced that goal even before this administration took office. Elon Musk called for the Endowment to be “dissolved.” And the think tank founded by OMB Director Vought argued that the Endowment should be eliminated because it allegedly “is operating a rogue foreign policy independent of the Executive Branch (i.e. President).” CRA Staff, Primer, *supra* note 5. Of course, the Endowment’s independence from the Executive Branch is by *congressional design*: Congress purposely recognized the Endowment as a private, nongovernmental entity so that it could pursue democracy-support activities in areas where those same activities would be less effective if pursued directly by the Executive. 22 U.S.C. § 4411. And Congress decided the appropriate level of Executive oversight, establishing limited consultation requirements and providing for extensive *congressional* oversight of the Endowment’s activities. *Id.* §§ 4413(e), 4414(b).

Given the Endowment’s status as a private entity, Defendants could not simply eliminate the Endowment—or “dissolve” it, in Elon Musk’s parlance—once they took office. So instead they attempted to cut off the Endowment’s funding. Their first gambit—simply freezing NED’s funding, some of it already obligated and sitting in NED’s Treasury account—was blatantly illegal, so much so that when the Endowment filed this lawsuit, Defendants quickly agreed to release the Endowment’s funds. Next, Defendants attempted to slow walk NED’s funding, first asserting that the Endowment required a waiver to receive appropriated funding (a position that Defendants abandoned after the Endowment pointed out its unlawfulness), and then parceling out the funds in 30-day apportionments—a sharp departure from past practice. *See supra* at p. 7. For months, OMB delayed a full-year apportionment to the Endowment while waiting for the State Department to submit a spending plan. *See, e.g.*, ECF No. 17. During that period, OMB proposed zeroing out the Endowment’s funding for 2026 based on spurious accusations in a public transmission to

Congress signed by Vought. In particular, OMB baselessly alleged in a fact sheet entitled “Ending Weaponization of the Federal Government” that the Endowment had funded a Ukrainian “disinformation organization” that “called for prosecutions of Trump world” and “smeared” Vice President Vance.¹¹ None of that is even remotely close to the truth. *See supra* at p. 9 & n.7.

Meanwhile, Defendants’ attacks on the Endowment’s fiscal year 2025 funding continued apace. Any doubt that policy disagreements are the motivation for Defendants’ actions is eliminated by the State Department’s Spending Plan, submitted May 29. That plan—for the first time in the history of the State Department’s relationship with the Endowment—did not contemplate disbursing the remainder of the Endowment’s fiscal year 2025 funds in fiscal year 2025. Instead, State declared that “[r]emaining resources may be made available for obligation in FY 2025 *subject to review for alignment with Administration priorities.*” Am. Compl. Ex. 1 at 54 (emphasis added); AR000060. Then on June 11, in connection with this litigation, Defendants informed counsel for the Endowment that they have declined to make those “remaining resources” available for obligation in fiscal year 2025. That sequence of events, and Defendants’ own stated intention in the Spending Plan, allow only one possible conclusion: Defendants have decided that providing the Endowment’s remaining appropriated funding does not align with Administration priorities.

b. Defendants have attempted to paper over their policy-based motivations through made-for-litigation assertions. But that effort cannot overcome the incontrovertible evidence.

In a declaration signed and inserted into the record on July 10—a document that, unlike the State Spending Plan, was created for purposes of litigation well *after* Defendants had decided to withhold the Endowment’s funds—Defendants state that they are withholding additional funds

¹¹ *Ending Weaponization of the Federal Government*, <https://www.whitehouse.gov/wp-content/uploads/2025/05/Ending-Weaponization-of-the-Federal-Government-Fact-Sheet.pdf> (last visited July 18, 2025).

this year “because sufficient funds had already been disbursed to NED for FY2025,” and because reserving the balance “ensures that NED will retain at least that level of funding in the coming fiscal year.” AR000004, ¶¶ 7-8. Neither purported basis withstands scrutiny.

As to the first, Defendants’ assertion that the Endowment has received “sufficient funds” this year is nothing more than a rearticulation of their policy disagreement with Congress. Every year since the Endowment’s inception, Congress has appropriated a sum certain to the Endowment (recently, \$315 million)—which means that *Congress* has determined what level of annual funding is “sufficient.” Defendants’ determination that \$95 million less than that amount is “sufficient” is simply a disagreement with Congress’s policy determination that the Endowment should receive \$315 million. And, after all, Defendants were explicit that they assessed the sufficiency of the Endowment’s funding based on a “review for alignment with Administration priorities”—not based on any conclusion that additional funding was unnecessary to carry out Congress’s priorities. AR000060. The only possible conclusion is that Defendants are denying the remaining funding because the Endowment does not serve Administration priorities as Defendants understand them.

The second purported justification strains credulity. Defendants’ professed concern with “ensur[ing] that NED will retain at least that level of funding in the coming fiscal year,” AR000004, ¶ 8, is at minimum implausible, given that Defendants themselves have urged Congress to *eliminate* the Endowment’s funding in 2026. And that point only highlights the larger problem with Defendants’ assertion: the proper level of funding in 2026 is for *Congress* to decide, not the Executive. The possibility that Congress will reduce or eliminate the Endowment’s funding in the future is no justification for suddenly withholding the balance of the Endowment’s *already*-appropriated funding for 2025. Thus, this justification too collapses.

More fundamentally, this Court is under no obligation to credit Defendants’ late-breaking,

conclusory explanations for their withholding. Defendants’ explicit admission that their withholding is based on a “review for alignment with Administration priorities,” AR000060, combined with the blatant unlawfulness of the preceding monthslong campaign against the Endowment, makes crystal clear that Defendants are driven by policy objections pure and simple. Courts “are ‘not required to exhibit a naiveté from which ordinary citizens are free.’” *Dep’t of Com. v. New York*, 588 U.S. 752, 785 (2019) (citation omitted). That adage is especially apt here, considering that Defendants’ alternative explanations appear in a post hoc July 10 declaration—signed after the State Department Spending Plan (May 29), after the apportionment decision (reported to this Court on June 12), and after the filing of the amended complaint (June 30). *See Am. Horse Prot. Ass’n, Inc. v. Lyng*, 812 F.2d 1, 6 (D.C. Cir. 1987) (“We are adjured to take a critical view of an agency’s ‘post hoc rationalization.’” (citation omitted)). Having already stated that they would decide whether to withhold the Endowment’s remaining funding based on “Administration priorities,” and then in fact deciding to withhold that funding, Defendants should not be permitted to obscure their obvious motivation through litigation submissions.

2. Defendants’ denial of the Endowment’s remaining funding for policy reasons is a blatant violation of the NED Act.

The NED Act unequivocally denies the Executive Branch any authority to interfere with the Endowment’s funding for policy reasons. The Act first declares that the Endowment will fulfill a number of congressionally recognized purposes, including “encourag[ing] free and democratic institutions throughout the world through private sector initiatives.” 22 U.S.C. § 4411(b). The Act then provides in unusually clear mandatory language that the State Department “*shall make* an annual grant to the Endowment to enable the Endowment to carry out its purposes as specified in section 4411(b) of this title.” 22 U.S.C. § 4412(a) (emphasis added). As relevant here, “[s]uch grants *shall be made* with funds specifically appropriated for grants to the Endowment.” *Id.*

(emphasis added). Congress’s repeated use of “shall” imposes a mandatory duty to obligate the money appropriated to the Endowment to fulfill the purposes that *Congress* has defined. *See Maine Cmty. Health Options v. United States*, 590 U.S. 296, 310 (2020).

Reinforcing that point, the Act directs that the “grant agreement” between State and the Endowment shall “require[]” that appropriated funds shall “only be used for activities which the *Board of Directors of the Endowment* determines are consistent with the purposes described in section 4411(b) of this title”—in other words, Congress specified that the Endowment itself, not the Executive, would determine what activities would be consistent with its statutory purposes. 22 U.S.C. § 4412(a) (emphasis added). The statute further provides that the grant agreement must require the Endowment to “otherwise comply with the requirements *of this subchapter*,” and it prohibits the Executive from “requir[ing] the Endowment to comply with requirements other than those specified *in this subchapter*.” *Id.* § 4412(a) (emphasis added). Thus, Congress expressly denied the Executive any discretion to require the Endowment to comply with requirements beyond those specified in the statute—including additional conditions reflecting the Executive’s own policies or priorities. And it has no authority to determine that the Endowment’s projects do not further statutory purposes or withhold funding on that basis. At every turn, Congress directed that the Executive may not interfere with the Endowment’s activities or its funding for policy reasons.

Against that backdrop, it is crystal clear that Defendants’ “review” of the Endowment’s remaining 2025 funding “for alignment with Administration priorities,” AR000060, and its withholding of the remainder on that ground, violate the NED Act. The Executive has no authority to evaluate whether providing the Endowment with its funding is consistent with “Administration priorities,” much less to deny funding on that basis. To require consistency with “Administration priorities” is to impose a “requirement[] other than those specified in this subchapter”—and

Congress has expressly prohibited the Executive from doing just that. 22 U.S.C. § 4412(a).

B. Defendants’ Denial of Funding Violates the Antideficiency Act

Having cast about for months seeking a statutory pretext for denying the Endowment’s funding that would withstand legal scrutiny, Defendants appear to have settled on the Antideficiency Act, and in particular, OMB’s apportionment authority under 31 U.S.C. § 1512. But the Antideficiency Act does not confer on the Executive the authority that the NED Act expressly denies—that is, the authority to withhold appropriated funding because the Executive disagrees with Congress’s decision to appropriate the funds. In all events, Defendants’ action violates the Antideficiency Act just as clearly as it violates the NED Act because the statutory preconditions for OMB’s apportionment actions are unquestionably not satisfied here.

In post hoc litigation filings made well after the State Department announced that it would review the Endowment’s funding for compliance with “Administration priorities,” Defendants appear to invoke two distinct—and mutually exclusive—Antideficiency Act provisions. On the one hand, Defendants assert that they are “[r]eserving” the Endowment’s funds, an apparent reference to OMB’s authority to create a reserve in limited circumstances under 31 U.S.C. § 1512(c). AR0000004, ¶ 8; *see* Am. Compl. Ex. 2 (DOJ Email) (asserting Executive could “reserv[e]” Endowment’s “funds”); ECF No. 33 (Joint Status Report of June 12) (same). On the other hand, Defendants assert that “OMB is required to apportion no-year funds ‘to achieve the most effective and economical use,’” an apparent reference to 31 U.S.C. § 1512(a). AR0000004, ¶ 6. Neither provides the Executive with the peremptory authority to deny appropriated funding that Defendants assert here.

1. Section 1512(c)’s reserve provision does not permit Defendants’ denial of funding.

Defendants first appear to invoke OMB’s limited authority to create a budgetary

“reserve”—that is, to withhold funds from the spending agency altogether instead of setting an apportionment timetable. 31 U.S.C. § 1512(c)(1); Federal Budget Glossary 11, 25-26. OMB may establish a reserve only in three narrow circumstances: to “provide for contingencies”; to “achieve savings made possible by or through changes in requirements or greater efficiency of operations”; or “as specifically provided by law.” 31 U.S.C. § 1512(c)(1).

a. Notably, none of the statutory bases authorizes OMB to create a reserve based on Executive Branch policy preferences. That is by congressional design. Before 1974, § 1512(c)’s predecessor authorized the Executive to reserve funds on the grounds listed above, and also to effect savings based on “*other developments subsequent to the date on which such appropriation was made available.*” 31 U.S.C. § 665(c) (1964) (emphasis added). The prevailing view was that this language did not “authorize[] the President to withhold funds for general economic, fiscal, or policy reasons.” GAO, *Letter to Hon. Sam J. Ervin, Jr.*, B-135564 (July 26, 1973); *see also, e.g., State Highway Comm’n of Mo. v. Volpe*, 479 F.2d 1099, 1118 (8th Cir. 1973). Yet President Nixon invoked the “other developments” clause to defend his prolific efforts to impound funds based on policy disputes with Congress. *See City of New Haven v. United States*, 809 F.2d 900, 906 n.18 (D.C. Cir. 1987); Louis Fisher, *Congressional Budget Reform: The First Two Years*, 14 Harv. J. Legis. 413, 445-46 (1977).

In response, Congress made emphatically clear that the Executive lacks authority to create reserves for policy reasons: it removed the “other developments” language, leaving only the limited bases for reserves found in the Antideficiency Act today. *Compare* Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, § 1002, 88 Stat. 297, 332, *with* 31 U.S.C. § 1512(c). That change was intended to clarify that the “apportionment process is to be used only for routine administrative purposes” and to ensure that “the practice of reserving funds d[id] not

become a vehicle for furthering Administration policies and priorities at the expense of those decided by Congress.” S. Rep. No. 93-688, at 3573, 3575 (1974); *see New Haven*, 809 F.2d at 906 & n.18, 909. The Executive is thus “foreclose[d]” from relying on the Antideficiency Act “for *policy* deferrals”—that is, delays “intended to *negate* the will of Congress by substituting the fiscal policies of the Executive Branch for those established by the enactment of budget legislation.” *New Haven*, 809 F.2d at 901, 909; *see* GAO, *Office of Management and Budget—Withholding of Ukraine Security Assistance*, B-331564, at 6 (Jan. 16, 2020) (finding that Executive acted unlawfully in withholding funds from obligation to “ensure” compliance “with the President’s foreign policy” (citation omitted)); GAO, *Principles of Federal Appropriations Law* (“Red Book”), 2-27, 6-122 to 6-125; *see also Volpe*, 479 F.2d at 1118. But that is precisely what Defendants have purported to do here.

b. Any doubt on that score is eliminated by the fact that none of the permissible statutory bases for a reserve is present here—and Defendants have not attempted to suggest otherwise. No realistic “contingencies” could justify suddenly withholding \$95 million. 31 U.S.C. § 1512(c)(1)(A). Nor is there any reasonable “possib[ility]” that “changes in requirements or greater efficiency of operations” could yield \$95 million in “savings.” *Id.* § 1512(c)(1)(B). The Endowment disburses the vast majority of its funding to grantees and core institutes; having already planned its disbursements based on the full-year funding amount, there are no “changes in requirements” or potential savings to be had at this point in the fiscal year. And certainly this reserve is not “specifically provided by law.” *Id.* § 1512(c)(1)(C). Defendants’ silence on these statutory preconditions speaks volumes. Defendants have created an unlawful policy reserve; but even if Defendants’ motivations were not so obvious, any reserve would exceed OMB’s authority.

2. Section 1512(a)’s apportionment provision does not permit Defendants’ denial of funding.

Defendants alternatively appear to invoke § 1512(a)’s instruction to OMB that “[a]n appropriation for an indefinite period . . . shall be apportioned to achieve the most effective and economical use.” 31 U.S.C. § 1512(a). But that provision does not authorize OMB to use apportionment as a pretext for exercising policy control over Congress’s appropriations. And Defendants’ sudden, unexplained withholding of 30% of the Endowment’s yearly funding is *antithetical* to “achiev[ing] the most effective and economical use” of funding.

a. Section 1512(a) does not give OMB authority to delay apportionment for policy reasons under the guise of apportioning “to achieve the most effective and economical use.” The provision allows OMB to calibrate the apportionment schedule (ordinarily, by time period or project), but only to ensure efficient and orderly spending of the amounts Congress appropriated. *See* Red Book 2-27. GAO has long defined the phrase “achieve the most effective and economical use” to *exclude* any policy control over how the funds are used. GAO has explained that “the apportionment power may not lawfully be used as a *form of executive control or influence over agency functions*. Rather, it may *only* be exercised by OMB in the manner and for the purposes prescribed in 31 U.S.C. § [1512]—i.e., to . . . achieve the most effective and economical use of appropriations.” GAO, *Letter to Hon. William Proxmire*, B-163628, at 2 (Jan. 4, 1974) (obtained from GAO; attached as Ex. B) (emphasis added). In other words, apportionment for “effective and economical use” is an “administrative control[]” only, and cannot be used to “affect the operation of statutory requirements concerning the availability or use of appropriated funds.” Red Book 6-122. Until now, *OMB itself* has agreed that apportionment is not substantive. *See, e.g.*, OMB Circular No. A-11 at § 120.8 (2024) (“apportionment of funds is not a means for resolving any question dealing with . . . the legality of using funds for the purpose for which they are apportioned”).

Any other conclusion would violate bedrock principles of statutory construction. For one

thing, construing § 1512(a) to permit OMB to withhold or delay appropriations based on “Administration priorities” would confer on OMB the very authority that Congress expressly denied the Executive Branch in the NED Act. *See supra* at pp. 19-21. Congress could not have intended, by generally authorizing OMB to apportion for the administrative purpose of effectiveness and economy, to nullify the NED Act’s specific unequivocal direction that the Executive must convey the Endowment’s funding without imposing additional requirements on that funding. Congress does not “hide elephants in mouseholes.” *Whitman v. Am. Trucking Ass’n*s, 531 U.S. 457, 468 (2001).

It is equally implausible that Congress would have intended § 1512(a) to allow the Executive to use apportionment delays to “substitut[e] the fiscal policies of the Executive Branch” for those established by Congress, when Congress amended neighboring § 1512(c)(1) to *forbid* the Executive from using reserves to accomplish that very same purpose. *New Haven*, 809 F.2d at 901. Indeed, a provision requiring the “most effective and economical” apportionment of funds has been the law for 75 years. *See* General Appropriations Act, 1951, ch. 896, 64 Stat. 595, 765. And yet there has long been consensus that this language does not authorize policy impoundments. *See supra* at p. 24. When President Nixon invoked language in the reserve provision to achieve policy-based deferrals, Congress removed that language. *New Haven*, 809 F.2d at 906. That statutory history forecloses construing § 1512(a) to permit the Executive to use the “most effective and economical” provision to effectuate its own policy preferences at the expense of Congress’s.

Defendants will doubtless deny that they are using § 1512(a)’s “most effective and economical” language to override Congress’s policy decisions. But even taking their own made-for-litigation assertions at face value, Defendants are unquestionably asserting sweeping authority to withhold apportionment—authority that is so broad that it inevitably would permit the Executive to effect policy-based deferrals. Defendants have made no effort whatsoever to explain why

withholding \$95 million of the Endowment’s 2025 funds—most of the way through the fiscal year, and without advance warning—could conceivably achieve the “most effective and economical” use under § 1512(a). They have simply declared that the Endowment has already received “sufficient” funds in 2025—which does not even purport to explain why it would be *more* effective and economical for the Endowment to receive the \$95 million in 2026 than in 2025. Nor can OMB simply declare existing funding “sufficient” and withhold further funding in the name of being “economical”—§ 1512(a) requires the apportionment to be both the “*most effective* and economical.” The conclusory declaration that existing funding is “sufficient” does not begin to explain how withholding funding achieves the most “*effective*” use of that funding. If that bald assertion were adequate, the Executive’s authority to withhold apportionment would be limitless. OMB could decide that it disagrees with any no-year appropriation and indefinitely withhold apportionment on the ground that the agency has already received “sufficient” funding.

The Court should view Defendants’ sudden discovery of such sweeping authority in § 1512(a) with extreme “skepticism.” *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014). The “most effective and economical” apportionment language has long been viewed as a narrow and ancillary administrative timing provision. *See supra* at p. 24. But Defendants are now invoking it to nullify congressional appropriations based on nothing more than a conclusory assertion of “sufficiency.” When an agency claims to unearth this kind of “transformative” authority in a “long-extant statute” never thought to confer such power, courts should “hesitate” before adopting the agency’s interpretation. *West Virginia v. EPA*, 597 U.S. 697, 724-25 (2022) (citations omitted). It is simply “not plausible” that Congress buried such a powerful tool, especially one that gravely undermines its own power of the purse, in the “vague language” of an “ancillary provision” calling for effective and economical apportionments. *Id.* at 724, 735; *UARG*, 573 U.S. at 324.

b. Section 1512(a) therefore permits OMB to adjust apportionment timing only if doing so is in fact calibrated to “achieve the most effective and economical use” of the funding. That language, properly understood, requires the apportionment to achieve the most economical use, *and also* the use that is the most effective, in that it furthers Congress’s expressed purposes for the funding. Defendants’ peremptory withholding is neither effective nor economical—nor could it be, given the nature of the Endowment’s activities and unbroken historical practice.

Most glaringly, § 1512(a) directs that any apportionment of the Endowment’s funding “*shall*” achieve “the most effective and economical use.” 31 U.S.C. § 1512(a) (emphasis added). Every year since the Endowment’s inception, OMB has interpreted that directive in the same way: OMB has apportioned the *full* appropriated amount for that fiscal year, without withholding or delaying any portion. See Decl. ¶ 32. OMB has thus recognized, every year until now, that apportioning the full amount *does* achieve the “most effective and economical use.”

Now, however, OMB has reversed course—without a word of explanation as to how suddenly withholding 30% of the Endowment’s annual funding is the “most effective” or “economical” use of those funds. If withholding the funds mid-year were effective or economical, one would expect Defendants to be able to explain why that is. But they have not. Defendants’ unsupported assertion that “sufficient” funds have been disbursed cannot suffice. *See supra* at p. 18.

Denying 30% of the Endowment’s funding without warning, midstream, in no way promotes economy and efficiency. To the contrary, Defendants’ action has wreaked havoc on the Endowment’s grantmaking activities, *undermining* efficiency and economy. Indeed, that is the evident point of withholding funds—as everything Defendants have said and done leading up to the withholding vividly confirms. Defendants know perfectly well that the Endowment depends on the certainty provided by its yearly upfront, lump-sum appropriation to carry out its statutorily

mandated grantmaking activities. 22 U.S.C. § 4413(b)(1); *see* Decl. ¶ 12. The Endowment cannot make commitments to partners and grantees if it does not know when (or if) it will actually receive its funding, and it cannot fulfill its statutory mission if it is unable to serve as a reliable and trusted partner for the organizations that depend on its grants. The Endowment’s ability to effectively and efficiently use its funding therefore depends on advance certainty about how much funding it has to disburse and when that funding will be available.¹² Pursuant to direction by the House Appropriations Committee, the Endowment provided Congress with a report that was premised on reliable access to all of the \$315 million total appropriated to the Endowment and that described how each dollar will be spent this fiscal year. Decl. ¶ 47.¹³ The sudden withholding of 30% of that funding will prevent the Endowment from executing its plans and force it to walk back the commitments it made to Congress. *Id.* That is not remotely an “effective” use of the Endowment’s funding. Nor is it “economical” to deprive the Endowment of 30% of its funding without warning, well into the fiscal year, thus forcing the Endowment to scramble to address the ensuing disruption.

In sum, any argument that Defendants’ denial of the Endowment’s \$95 million achieves the most effective and economical use of the funding, as required if Defendants are to invoke §1512(a), is not even colorable. That only confirms that Defendants are withholding the Endowment’s funding for policy reasons, plain and simple.

C. Delaying the Endowment’s Funding to Future Fiscal Years Violates the NED Act and the Appropriations Laws

¹² Indeed, OMB has implicitly acknowledged that grantmaking requires upfront planning, as it typically apportions all or most of a grantmaking entity’s funds upon appropriation, instead of intermittently, because those entities’ financial needs “differ [from] that where, for example, an appropriation is primarily available for salaries and administrative expenses.” GAO, *Issues Raised by the Apportionment and Obligation of Certain Funds Under the Fiscal Year 1994 Continuing Resolution*, B-255529, at 6 (Jan. 10, 1994) (citation omitted); *see* Red Book 6-126 to 6-127.

¹³ Each year, the House Appropriations Committee requires the Endowment to explain how it will use its entire full-year appropriation. *See, e.g.*, H.R. Rep. No. 118-554, at 33 (2024).

Defendants’ impoundment must be set aside for an independent reason: the NED Act and Congress’s consistent appropriation of sums certain to the Endowment foreclose OMB from withholding any portion of the Endowment’s full-year appropriation for provision in a future fiscal year. OMB’s apportionment discretion is always subject to control by other statutes. *See* Red Book 6-126. The NED Act and the appropriations laws have precisely that effect: they leave the Executive with no policy discretion to withhold funds at any stage between appropriation by Congress and payment to the Endowment, including apportionment. Accordingly, whatever Defendants’ reasons for refusing to make funds available for obligation, the Endowment is likely to succeed in showing they have exceeded their statutory authority.

1. In the NED Act and appropriations acts, Congress directed the Executive Branch to convey the Endowment’s annual appropriation to it. The NED Act *requires* the State Department to make an “*annual* grant to the Endowment” with “specifically appropriated” funds earmarked for the Endowment. 22 U.S.C. § 4412(a) (emphasis added); *see supra* at pp. 19-20. Because the State Department cannot obligate funds until OMB apportions them, *see* 31 U.S.C. § 1517(a), the same provisions require OMB to apportion the Endowment’s appropriated funds. The NED Act also deprives the Executive of any discretion to interfere with the Endowment’s funding, *see supra* at p. 20—making clear that Congress has sole control over the amounts the Endowment receives.

Congress’s appropriation of a sum certain to the Endowment each year, combined with those provisions, indicates that Congress intends the Endowment to receive the full appropriated amount in that fiscal year. The 2024 appropriations acts, as in previous years, specified the exact amount the Endowment must receive “as authorized by the [NED] Act”—i.e., through an “annual” grant—and instructed that the Endowment must direct a portion “in the traditional and customary manner” to the core institutes, and use the remainder “for democracy programs.” Pub. L. No. 118-

47, 138 Stat. 460, 737. That acknowledged unbroken practice demonstrates that Congress intends the Endowment to receive its full appropriation and to make the directed allocation each year.

That conclusion is reinforced by the Endowment’s status as a grantmaking organization. The Endowment passes through virtually all of its programmatic funding to core institutes and grantees, and it needs a reliable, concrete annual financial commitment in making decisions about disbursements each year. Congress is well aware of that fact, and so its practice of appropriating a definite annual amount reflects its intent that the Endowment should be able to plan around that amount each year. In addition, the NED Act requires the Endowment to carry out and report on its efforts in an annual funding cycle. 22 U.S.C. § 4413(e), (i). And, as noted above, the House has annually directed the Endowment to report on how it will use the full-year amount in *that* fiscal year. *E.g.*, H.R. Rep. No. 118-554, at 33. In those ways, the NED Act unmistakably conveys that Congress meant for the Endowment to receive the full appropriated amount in that same year.

2. It is true that Congress’s annual appropriation takes the form of a no-year appropriation and that OMB therefore must apportion for the most “effective and economical use” under § 1512(a). But that does not give the Executive Branch the authority to use § 1512(a) to interfere in the Endowment’s funding that Congress has otherwise denied at every turn. Congress uses no-year appropriations when it wishes to provide discretion to the entity responsible for spending the appropriated funds to disburse the money over multiple years. *See* Red Book 5-7 to 5-9. Here, that is the Endowment—not the passthrough agency that disburses its funds pursuant to Congress’s mandatory instruction. The flexibility afforded to the Endowment by Congress’s no-year appropriation is essential because it enables the Endowment to fund multi-year projects that may incur expenses over several years. *See* Decl. ¶ 7.

In granting that flexibility to the Endowment, Congress could not have intended to confer

on the Executive authority to interfere in the Endowment’s funding by indefinitely delaying apportionment of no-year funding. Under Defendants’ apparent view, OMB could refuse to apportion *most or all* of the Endowment’s congressionally defined annual appropriation through the expedient of invoking § 1512(a)’s “most effective and economical use” provision. And OMB could do that year after year—thus starving the Endowment of its appropriated funding—simply by asserting that the funds will be disbursed in some future fiscal year. That would be irreconcilable with the NED Act’s requirement that the State Department “shall” make an “annual” grant to the Endowment; that such grant “shall be made with funds specifically appropriated” for that end; and that the Executive shall not impose additional requirements or interfere with Congress’s expressed priorities. 22 U.S.C. § 4412(a).

Congress could not possibly have intended to permit OMB to use § 1512(a) to effect that sort of end run around the NED Act. And, indeed, OMB’s apportionment discretion only holds in the “[a]bsen[ce of] some statutory provision to the contrary.” Red Book 6-126; *see also Md. Dep’t of Hum. Res. v. HHS*, 854 F.2d 40, 42 (4th Cir. 1988) (examining OMB apportionment schedule for consistency with substantive statute). Thus, § 1512(a) must be construed together with the NED Act and Congress’s unbroken practice in annual appropriations acts of directing specified sums to the Endowment. Those substantive statutes must control the scope of OMB’s discretion in the apportionment process—and § 1512(a) therefore must be construed not to grant OMB free-ranging authority to refuse to apportion to the Endowment amounts of OMB’s choosing.

D. The Executive Branch’s Withholding of the Endowment’s Funds Is Arbitrary and Capricious

The APA requires a reviewing court to set aside agency action that is “arbitrary [and] capricious.” 5 U.S.C. § 706(2)(A). The Endowment is likely to succeed in showing that Defendants’ impoundment meets that threshold.

1. The decision to create a reserve is arbitrary and capricious.

To the extent Defendants are purporting to create a reserve under § 1512(c), that decision is not only contrary to law, it is also arbitrary and capricious. Agency action is arbitrary and capricious when the agency “has relied on factors which Congress has not intended it to consider.” *Sinclair Wyo. Refining Co. v. EPA*, 114 F.4th 693, 711 (D.C. Cir. 2024). Defendants’ effort to create a reserve is based on policy disagreement with the Endowment’s funding—manifestly a factor that Congress did not intend for the Executive Branch to consider. *See supra* at pp. 21-23.

Even apart from that, the action is arbitrary and capricious because Defendants have not offered any explanation as to how any reserve would satisfy the statutory prerequisites—that is, that it “provide[s] for contingencies” or “achieve[s] savings” related to “changes in requirements or greater efficiency.” 31 U.S.C. § 1512(c)(1)(A), (B). The APA requires an agency to provide a “satisfactory explanation for its action.” *Motor Vehicle Mfrs. Ass’n of U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). Defendants have offered none whatsoever. Such a failure to give an “indication of the basis” of their decision cannot withstand APA review. *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 167 (1962).

Compounding the problem, Defendants have not identified *any* facts that could substantiate some feared contingency or that create a hypothetical opportunity for savings. True, Defendants profess they are withholding the rest of the Endowment’s fiscal year 2025 appropriation “because sufficient funds had already been disbursed to NED for FY2025” and because a reserve “ensures that NED will retain at least that level of funding in the coming fiscal year.” AR000004, ¶¶ 7-8. But an agency’s explanation for its action must include the “findings” and “analysis” that “justify the choice” made. *Burlington Truck Lines*, 371 U.S. at 167. Defendants do not explain what led them to conclude that sufficient funds have already been disbursed. They do not articulate why they are concerned that the Endowment’s funding for fiscal year 2026 might require supplementing

(and, for all the reasons discussed above, the level at which the Endowment is funded in future years is a *congressional* decision, not an Executive one). Nor do they expound a “rational connection” between those vague assertions and the statutory requirements for a reserve. *State Farm*, 463 U.S. at 43 (citation omitted). The Endowment and this Court are left to guess as to the basis for Defendants’ decision, rendering it arbitrary and capricious. *See Point Park Univ. v. NLRB*, 457 F.3d 42, 50 (D.C. Cir. 2006).

2. Any determination that withholding the Endowment’s funds is “effective and economical” is arbitrary and capricious.

Any purported apportionment withholding under § 1512(a) is also arbitrary and capricious.

a. As above, any apportionment based on “Administration priorities” is arbitrary and capricious because Congress did not intend for the Executive Branch to consider that factor. *See supra* at p. 32; *State Farm*, 463 U.S. at 43. And even if Defendants *also* had legitimate reasons to withhold the Endowment’s funds (which they do not), the apportionment decision would still be arbitrary. When “at least one of the rationales” undergirding agency action “is deficient,” the action must be set aside unless the court is “certain” that the agency “would have adopted it even absent the flawed rationale.” *Nat’l Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831, 839 (D.C. Cir. 2006). Here, there is absolutely no evidence to indicate that Defendants would have taken the same course absent their disdain for the Endowment’s work. As a result, their impermissible consideration of the Executive’s policy priorities taints the entire decision. *See Consolidated Edison Co. of N.Y. v. FERC*, 823 F.2d 630, 641-42 (D.C. Cir. 1987).

In addition, any purported assertion that withholding funds achieves their most effective and economical use “runs counter” to all evidence. *State Farm*, 463 U.S. at 43. As explained above, the Endowment depends on an upfront annual appropriation of a definite amount to plan its grantmaking activities. It should be obvious that the sudden denial of 30% of the Endowment’s

funding, most of the way through the fiscal year, fosters neither “effective” nor “economical” use of the funds. *See supra* at pp. 27-28. To the contrary, it will only hamstring the Endowment’s operations, directly contrary to congressional intent. As against that undeniable reality, Defendants’ conclusory assertion that the Endowment has received “sufficient” funds in 2025 cannot sustain Defendants’ decision. *AT&T Wireless Servs. v. FCC*, 270 F.3d 959, 968 (D.C. Cir. 2001) (“Conclusory explanations for matters involving a central factual dispute where there is considerable evidence in conflict do not suffice to meet the deferential standards of [judicial] review.”).

b. “Sudden and unexplained change or change that does not take account of legitimate reliance on prior interpretation” may also be arbitrary and capricious. *Smiley v. Citibank (S.D.), N.A.*, 517 U.S. 735, 742 (1996). Indeed, when an agency changes its position, it must “display awareness” that it is doing so and establish that “there are good reasons” for the switch. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

As discussed above, Defendants’ decision to withhold a share of the Endowment’s funding past the end of the fiscal year reflects a stark deviation from unbroken past practice. For every year in the Endowment’s forty-two year history, the Executive Branch has apportioned the Endowment’s entire full-year appropriation in the fiscal year in which it was appropriated, Decl. ¶ 32, reflecting the determination that such an apportionment “achieve[s] *the most* effective and economical use” of the Endowment’s appropriation. 31 U.S.C. § 1512(a) (emphasis added). Defendants have offered no explanation whatsoever for their abandonment of that settled position. Their statement that withholding the unobligated funds “ensures that [the Endowment] will retain at least that level of funding in the coming fiscal year” is no explanation at all. AR000004, ¶ 8. For a no-year appropriation, that statement would *always* be true. And, in all events, the Endowment’s fiscal year 2026 funding level is for *Congress* to decide.

Defendants also have entirely failed to account for the substantial reliance interests of the Endowment, its core institutes, and its grantees in promptly receiving a dependable, known full-year appropriation every year. As noted, the Endowment has without fail detailed to Congress how it would spend every dollar appropriated that year, and the Endowment's partners likewise expected the Endowment's funds would be available during this fiscal year. When an agency departs from a longstanding policy or practice, it is "required to assess whether there were reliance interests, determine whether they were significant, and weigh any such interests against competing policy concerns." *Dep't of Homeland Sec. v. Regents of the Univ of Cal.*, 591 U.S. 1, 33 (2020); *see CSL Plasma Inc. v. CBP*, 628 F. Supp. 3d 243, 259 (D.D.C. 2022) (a "new practice" can be arbitrary and capricious "even if there [was] no previous formal policy" (citing *Am. Wild Horse Preservation Campaign v. Perdue*, 873 F.3d 914, 927 (D.C. Cir. 2017))). It is "arbitrary and capricious to ignore such matters." *Regents*, 591 U.S. at 30 (citation omitted). Here, Defendants did not address or even acknowledge any of the ways in which the Endowment and its grantees have organized their affairs in expectation of the Endowment receiving its full appropriation this year. *E.g.*, Decl. ¶¶ 40, 54. In light of the significance of the reliance interests at stake, the APA required Defendants to provide a reasoned and adequate explanation before changing course. They did not.

E. The Endowment is Likely to Succeed on Its Constitutional Claims

Defendants' actions violate the Appropriations Clause, the Spending Clause, the Presentment Clause, and the Take Care Clause. The Endowment raises these claims both as implied constitutional causes of action, *see Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 491 n.2 (2010), and through the APA, 5 U.S.C. § 706(2)(B). Each of these clauses acts in service of the Constitution's fundamental principle of separation of powers between the three branches of government. Taken together, they reinforce that this is a *Youngstown* "category 3" situation. *See Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 637-38 (1952) (Jackson, J.,

concurring). Congress has expressly appropriated funds specifically for the Endowment and denied the Executive authority to interfere with that funding because it disagrees with Congress's policy judgments. Yet the Executive has done exactly what Congress has forbidden.

1. The Appropriations and Spending Clauses

The Executive's refusal to apportion the Endowment's funds infringes Congress's "exclusive power over the federal purse." *U.S. Dep't of Navy v. FLRA*, 665 F.3d 1339, 1346 (D.C. Cir. 2012).

a. The Appropriations Clause gives Congress "plenary power" to define the terms of appropriations. *Harrington v. Bush*, 553 F.2d 190, 194 (D.C. Cir. 1977); *CFPB v. Cmty. Fin. Servs. Ass'n of Am., Ltd.*, 601 U.S. 416, 425-32 (2024); U.S. Const. art. I, § 9, cl. 7 (Appropriations Clause). The Clause gives Congress extensive authority to "circumscribe agency discretion to [spend]" through statutory restrictions. *Lincoln v. Vigil*, 508 U.S. 182, 193 (1993).

The Executive Branch lacks any independent constitutional authority to contravene Congress's direction about how appropriated funds will be disbursed and spent. *Id.* For two centuries, courts have repeatedly affirmed that the Executive Branch "does not have unilateral authority to refuse to spend" congressionally-appropriated funds. *In re Aiken Cnty.*, 725 F.3d 255, 261 n.1 (D.C. Cir. 2013); *Kendall v. United States*, 37 U.S. (12 Pet.) 524, 610-11 (1838) (granting writ of mandamus to compel Executive to pay congressionally mandated award; Executive's "right to resist the performance, must depend upon the act of congress"); *Train v. City of New York*, 420 U.S. 35, 42 (1975) (similar). Those precedents are consistent with the Executive Branch's own longstanding view that it lacks any constitutional authority to impede mandatory appropriations. William H. Rehnquist, *Presidential Authority to Impound Funds Appropriated for Assistance to Federally Impacted Schools*, Office of Legal Counsel, 1 Op. O.L.C. Supp. 303, 310 (1969) (the Executive has no "power to refuse to spend appropriations *other than such power as may be found*

or implied in the legislation itself” (emphasis added)). Indeed, OLC found no historical instance in which the Executive had refused to comply with a mandatory appropriations law. *Id.* at 309.

b. The Spending Clause similarly empowers Congress and limits the President’s authority over federal spending. “[T]he ability to place conditions on federal grants ultimately comes from the Spending Clause, which empowers Congress, *not the Executive*, to spend for the general welfare.” *Tex. Educ. Agency v. U.S. Dep’t of Educ.*, 992 F.3d 350, 362 (5th Cir. 2021) (emphasis added); *see* U.S. Const. art. I, § 8, cl. 1. Thus, “[a]llowing an executive agency to impose a condition that is not otherwise ascertainable in the law Congress enacted ‘would be inconsistent with the Constitution’s meticulous separation of powers.’” *West Virginia v. U.S. Dep’t of the Treasury*, 59 F.4th 1124, 1147 (11th Cir. 2023) (quoting *Tex. Educ. Agency*, 992 F.3d at 362).

c. In the NED Act, Congress made particularly clear that it was exercising the full extent of its constitutional appropriations and spending authority. The Act expressly denies the Executive Branch any discretion to impose additional conditions on Endowment funding, and nothing in the Antideficiency Act gives the Executive authority to circumvent that clear provision. Defendants’ attempt to do so directly contravenes Congress’s express appropriations and spending determinations, thereby violating Appropriations and Spending Clauses. *See Aiken County*, 725 F.3d at 261.

2. The Presentment Clause

By denying the Endowment’s remaining funding for policy reasons—and without any statutory authority—the Executive’s actions have the effect of partially repealing both the appropriations laws mandating that the Endowment receive \$315 million in 2025 and the NED Act itself. But “[t]here is no provision in the Constitution that authorizes the President to enact, to amend, or to repeal statutes”—let alone unilaterally. *Clinton v. City of New York*, 524 U.S. 417, 438 (1998).

In *Clinton*, the Supreme Court held that the line-item veto violated the Presentment Clause because “[i]n both legal and practical effect,” it gave the President the authority to “amend[] . . .

Acts of Congress by repealing . . . portion[s]” thereof *after* they became law. *Id.* at 438. Withholding funding for the Endowment that Congress has specifically provided is simply a line-item veto by another name. The Executive’s refusal to pay the Endowment effectively strikes Congress’s appropriation of \$315 million and replaces it with the \$220 million the Executive prefers.

3. The Take Care Clause

The Executive’s refusal to comply with the direction contained in the NED Act and associated appropriations laws also violates the Take Care Clause. That Clause imposes on the President, and by extension his subordinates, the duty to “take Care that the Laws be faithfully executed.” U.S. Const. art. II, § 3; *Youngstown*, 343 U.S. at 587. The Supreme Court has expressly rejected the idea that the Take Care Clause’s obligation “to see the laws faithfully executed, implies a power to forbid their execution.” *Kendall*, 37 U.S. (12 Pet.) at 612-13. It is “settled, bed-rock” law that “[u]nder Article II of the Constitution . . . the President must follow statutory mandates,” and that “the President may not decline to follow a statutory mandate or prohibition simply because of policy objections.” *Aiken County*, 725 F.3d at 259 (emphasis omitted). Here, the refusal to comply with Congress’s mandates violates the Take Care Clause.

4. The Separation of Powers

The Executive’s violation of statutory commands in the NED Act, the appropriations acts, and the Antideficiency Act also violates the Constitution’s structural separation of powers. *See supra* at pp. 15-31. Where the Executive violates a statute, its “power is at its lowest ebb,” *Youngstown*, 343 U.S. at 637 (Jackson, J., concurring), and the Executive’s action is permissible only if it is based “on powers the Constitution grants to [it] alone,” *Zivotofsky ex rel. Zivotofsky v. Kerry*, 576 U.S. 1, 10 (2015) (citation omitted). Here, as explained above, the Executive lacks any constitutional authority over appropriations or spending—let alone any exclusive authority. Rather, the Executive is purporting to exercise powers assigned to Congress—in some cases, solely so—

in effectively rewriting both the NED Act and the appropriations laws. *See supra* at pp. 36-37.

Defendants cannot justify their defiance of Congress by relying on the fact that the Endowment’s work involves foreign affairs. The Executive’s foreign-affairs authority is not exclusive, but shared with Congress, including through Congress’s Appropriations Clause power. *Zivotofsky*, 576 U.S. at 10, 16. The Endowment’s work does not implicate any of the narrow foreign-affairs powers that are exclusive to the President alone, such as recognition or treaty negotiation. *Id.* Nor is the Endowment’s work something on which “the Nation must ‘speak . . . with one voice.’” *Id.* at 14. By congressional design, the Endowment’s efforts are *nongovernmental*, done by private parties who do not speak for the Executive.

II. THE ENDOWMENT WILL SUFFER IRREPARABLE HARM WITHOUT A PRELIMINARY INJUNCTION

The Endowment is suffering irreparable harm. The uncertainty surrounding Defendants’ campaign to interfere with the Endowment’s funding has already forced the Endowment to make significant cuts in order to devote as many resources as possible to grantmaking activities. But a \$95 million cut—30% of the Endowment’s annual appropriation—is not a cost that the Endowment can internalize. That funding halt is irreparably hamstringing the Endowment’s ability to pursue its congressionally endorsed objectives and compromising its reputation as a reliable partner around the globe. Those injuries become more acute with each passing day. *See Drs. for Am. v. OPM*, 766 F. Supp. 3d 39, 53-54 (D.D.C. 2025).

A. The \$95 Million Funding Cut Will Severely Damage the Endowment’s Ability to Fulfill Its Congressionally Recognized Mission

Even before Defendants’ current impoundment, their campaign to cut off the Endowment’s funding drove the Endowment to cut back until it was operating on a shoestring budget. Those cuts included laying off 100 of the Endowment’s staff members—35% of its workforce—and suspending important democracy support initiatives. Decl. ¶¶ 33-34. The Endowment lost employees

with critical skills and institutional knowledge, and grantees lost access to important services that help them build organizational capacity and learn from one another. *Id.* ¶¶ 36-39. But the Endowment made as many operational reductions as it could withstand so that it could maximize the funding available for its grantmaking activities, even while receiving funding in short-term increments. *Id.* ¶ 34. But the \$95 million shortfall that the Administration has now imposed is far more extreme—and far more damaging—than anything the Endowment could have planned for. *Id.* ¶ 35. It will cripple the Endowment’s ability to support its partners, including the core institutes. *Id.* ¶ 45-95. These financial pressures directly impede the Endowment’s ability to efficiently and effectively carry out its mission. *See id.* ¶ 45. That is irreparable harm. *See League of Women Voters of the U.S. v. Newby*, 838 F.3d 1, 9 (D.C. Cir. 2016).

1. Defendants’ withholding of \$95 million is taking a tremendous toll on the Endowment’s essential operations. It is losing critical staffing, beyond the extensive cuts already made, because the funding uncertainty has accelerated attrition among key personnel—including employees who possess specialized technical, language, and strategic expertise that is not easily replaceable. Decl. ¶ 41. The longer the Endowment goes without full funding, the more the uncertainty grows, driving more employees to seek out more stable employment elsewhere. *Id.* ¶ 42. The magnitude of the departures is devastating to the Endowment’s effectiveness. And because the funding withholding has forced the Endowment to offer primarily short-term employment opportunities, it cannot backfill some of the most critical roles, including two open vice president positions. *Id.* Even if the Endowment could hire at full force, the ongoing financial instability and Defendants’ active interference with the Endowment’s funding discourages qualified candidates from applying. *Id.* The resulting talent drain also demoralizes those who remain. Many employees are stretched thin, performing multiple functions to cover for those who have left. *Id.*

The ongoing uncertainty about when and if the Endowment will receive the balance of its fiscal year 2025 funds has also severely hampered its strategic planning. *Id.* ¶ 40. The Endowment's operations depend significantly on consistent and predictable access to funds. *Id.* To be maximally effective, it needs to be able to prioritize projects, make long-term funding commitments, and fulfill contractual and fiduciary obligations. *Id.* The unpredictability generated by even short-term interference with the Endowment's access to its appropriation compromises that work and makes the Endowment less efficient and productive.

2. Defendants' refusal to apportion and obligate the remainder of the Endowment's appropriation also jeopardizes its mission of advancing democracy and freedom. If the halt in funds continues, it will severely undercut the Endowment's ability to maintain relationships with its grantees—substantially compromising the Endowment's ability to accomplish its mission.

In a typical year, NED funds approximately 1,900 projects. Decl. ¶ 12. If Defendants' actions are allowed to stand, however, it will fall well short of that figure this year. Defendants' withholding of \$95 million has forced the Endowment to scale back its grant commitments. There are currently over 500 direct grants that qualify for support but that cannot be fully funded unless the funds are restored. *Id.* ¶ 48. Those grantees do critical work. They engage in election monitoring activities, work to overcome authoritarian censorship, strive to preserve access to independent news sources, and advance reforms to protect labor rights. *Id.* ¶ 52. The withholding of the Endowment's funds has made fully supporting these efforts impossible. *Id.* ¶ 50.

Such delays or reductions in funding would inflict substantial harm on the Endowment's partners. Many grantees rely on uninterrupted access to Endowment funding. *Id.* ¶ 54. As grass-roots nonprofit organizations, they often cannot build up significant reserves. *Id.* ¶ 55. Indeed, given the funding uncertainty, most grantees have already downsized staff, eliminated nonessential

(but important) expenses, and reduced activities. If the remainder of the 2025 funds do not arrive promptly, grantees will be forced to curtail important and time-sensitive work, such as election monitoring, voter education, and other support for free-and-fair elections in countries with upcoming elections. *Id.* ¶ 61. Grantees will also be unable to provide critical independent reporting on topics including the frontlines of the war in Ukraine and human rights violations in Iran. *Id.* ¶ 62. And even a short delay will likely force some grantees to close down entirely. *Id.* ¶ 56.

If funding is not restored, the consequences for the Endowment's partners working in challenging environments will be particularly severe. For example, the director of one grantee fostering peace and religious tolerance in Pakistan has recently returned there after being forced to relocate temporarily out of safety concerns. *Id.* ¶ 64. The Endowment intends to approve additional funds for heightened security, but Defendants' actions have jeopardized that grant. *Id.* Additionally, the Endowment supports Afghan media and civil society organizations that require consistent funding to meet basic obligations and maintain broadcast and publication schedules. *Id.* A disruption risks compromising the organizations' credibility with their audiences and could lead to insolvency, forced closure, and heightened exposure to retaliation by the Taliban. *Id.*

Indeed, a lack of funding poses special risks to grantee partners who operate in authoritarian environments, because the sudden interruption might expose them as Endowment grantees, inviting reprisals from those in power. *Id.* ¶ 57. A funding interruption could expose an Iranian grantee that documents human rights abuses and amplifies civic activists, particularly at this moment of heightened tension in Iran. *Id.* An independent media grantee in Cuba faces similar risks. *Id.* Several Venezuelan media outlets likewise rely heavily on Endowment funding and could see their staff and operations face harsh retaliation if their funding is interrupted. *Id.*

3. Further, the funding crisis threatens the operations of the Endowment's core institutes.

The Endowment’s core institutes “play[] a critical role in [the Endowment’s] ability to fulfill its mission.” TRO Decl. ¶ 9; *see also id.* ¶ 41. These institutes ensure that Endowment initiatives “represent the full breadth of American political life.” *Id.* ¶ 9. But the funding halt has prevented the Endowment from disbursing approximately \$39 million in funding specifically allocated by Congress *for the core institutes*. Decl. ¶ 65. Those cuts are especially harmful given the institutes’ loss of other funding streams. Today, the Endowment’s funding constitutes the vast majority of each institute’s funding. *Id.* ¶¶ 67, 72, 76, 88.

Each core institute faces the prospect of severe harm. The International Republican Institute will be forced to reduce critical staff and eliminate programming, including programs aimed at countering economic coercion by the Chinese Communist Party and supporting dissidents struggling in North Korea, Burma, and Iran. *Id.* ¶¶ 68-69. The National Democratic Institute (NDI) would have to suspend numerous projects, such as work supporting pro-democracy efforts in Cuba and Afghanistan and efforts to improve public accountability around China’s public debt management practices. *Id.* ¶ 74. NDI may be forced to make additional operational and staffing reductions that could prevent it from realizing the full potential of already-funded work. *Id.* ¶ 75. The Center for International Private Enterprise (CIPE) likewise faces severe harm. Funding disruptions earlier this year forced CIPE to lay off 90% of its field-based staff and close 11 of 15 country offices. *Id.* ¶ 78. After its funding was restored, CIPE restarted programming, but the withholding of 2025 funds will prevent CIPE from carrying out crucial work, including efforts to shore up democratic governance and improve economic stability in countries like Yemen, Lebanon, and Iraq. *Id.* ¶ 84. Finally, the Solidarity Center could be forced to lay off one-third of its staff, reduce its program budget by one third, and cut its global infrastructure by the same margin. *Id.* ¶ 89. In short, the institutes that have been “central to the Endowment’s success and impact,” TRO Decl. ¶ 41, face

the risk of decimation. Absent relief, they will be forced to abandon critical work.

B. The Halt in Funding Threatens Irreparable Damage to the Endowment’s Reputation as a Trusted Partner

The funding crisis goes beyond the immediate work of the Endowment; it reaches the Endowment’s long-term reputation. *See Armour & Co. v. Freeman*, 304 F.2d 404, 406 (D.C. Cir. 1962). Nongovernmental organizations “around the world, particularly in the most dangerous and difficult environments, seek out” the Endowment for its reputation as a reliable partner. TRO Decl. ¶ 54. Each grantee expects “that [the Endowment] will honor its financial and operational obligations to partners, as [the Endowment] has done for 42 years.” *Id.* This reputation is “critical to [the Endowment’s] ability to engage productively with partners worldwide.” *Id.* But this reputation would be imperiled if the Endowment is forced to deny full funding to grantees midstream. Even if the Endowment’s funding is later restored, grantees are unlikely to soon forget the disruption. Decl. ¶ 97. The reputational harms cascade to the grantees as well. Abruptly “ceasing their activities will destroy the trust, credibility, relationships, and networks these organizations have built up over decades.” TRO Decl. ¶ 55. Accordingly, absent prompt relief, some Endowment grantees “may simply not be around to continue their important work,” even if Endowment funding were to resume. *Id.* That is irreparable harm.

III. THE BALANCE OF EQUITIES AND PUBLIC INTEREST WEIGH IN FAVOR OF GRANTING THE PRELIMINARY INJUNCTION

The balance of equities and public interest “merge when the Government is the opposing party.” *Am. Ass’n of Political Consultants v. SBA*, 613 F. Supp. 3d 360, 365 (D.D.C. 2020) (quoting *Nken v. Holder*, 556 U.S. 418, 435 (2009)). Those factors both counsel in favor of relief—to halt the Executive Branch’s unlawful failure to follow clear congressional directions, and to ensure access to funds that are critical for the Endowment, its core institutes, and its grantees.

Here, the Endowment’s likelihood of success on the merits, *see supra* pp. 14-39, establishes

both factors. “[T]here is a substantial public interest ‘in having governmental agencies abide by . . . federal laws,’” *Newby*, 838 F.3d at 12 (citation omitted), and “[t]here is generally no public interest in the perpetuation of unlawful agency action,” *Shawnee Tribe v. Mnuchin*, 984 F.3d 94, 102 (D.C. Cir. 2021). “[A]ny hardship” the government “might claim is not legally relevant because as a legal matter ‘[t]he Government “cannot suffer harm from an injunction that merely ends an unlawful practice.”’” *Ramirez v. ICE*, 568 F. Supp. 3d 10, 34 (D.D.C. 2021) (citation omitted).

Beyond the conclusive public interest in having the Executive follow the law, there is a strong public interest in the Endowment’s functioning. President Reagan inspired Congress to recognize the Endowment when he called for a global effort to support democracy worldwide. TRO Decl. ¶ 3. For over forty years, the Endowment, led by a bipartisan Board, has contributed directly to our national interest by fostering a “more prosperous, safer, and democratic world” and building a “deep reservoir” of world leaders “predisposed to working collaboratively with the United States in pursuit of shared interests.” *Id.* ¶ 10. It is not in the public interest for this important institution to be thrust into financial jeopardy and hamstrung from pursuing its mission.

Nor is there an equitable justification for withholding a preliminary injunction. Since its inception, the Endowment has received a consistent source of funds from Congress, and it has used those funds to meet its grant obligations to its core institutes and grantees. *See id.* ¶ 39. An injunction would restore that forty-plus-year status quo and avert the substantial and irreparable injuries that the Endowment is facing. *See supra* pp. 39-44. It would also restore the appropriate balance between Congress, with its power of the purse, and the Executive Branch, which must take care that Congress’s instructions are followed. Conversely, allowing the freeze on the Endowment’s funds to persist would not serve any articulated interest of the Defendants.

CONCLUSION

This Court should grant the motion for a preliminary injunction.

Dated: July 21, 2025

Respectfully submitted,

/s/ Donald B. Verrilli, Jr.

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Exhibit A

SUPPLEMENTAL DECLARATION OF DAMON M. WILSON

I, Damon M. Wilson, declare as follows:

1. I am the President and CEO of the National Endowment for Democracy (NED). The statements made in this declaration are based on my personal knowledge and the information made available to me pursuant to my duties as President and CEO of the National Endowment for Democracy.

2. I previously submitted a declaration in support of NED's Motion for a Temporary Restraining Order. I offer this supplemental declaration in support of NED's Motion for a Preliminary Injunction.

3. NED is a private, nonprofit foundation dedicated to advancing freedom and democracy. We support people around the world who are working to protect their basic freedoms—freedom of speech, belief, assembly, and opportunity. NED was founded on the belief that a private foundation grounded in America's civic traditions—political pluralism, entrepreneurial spirit, and a strong labor heritage—could serve as a powerful catalyst for democratic progress around the world. Since 1983, NED has stood with frontline democracy advocates in more than 90 countries—in places where advancing these values also supports long-term U.S. interests by fostering stability, countering authoritarian influence, and reducing the drivers of extremism and migration. Our mission and work is consistent with the mandate of the organization recognized by Congress in the National Endowment for Democracy Act of 1983, including a board and staff, independent of the U.S. government.

4. We support the democratic aspirations of people around the world working to advance fundamental freedoms, justice, and human rights. We envision a world in which people are free to determine their own future, endowed with equal rights, and participate in society with dignity. We envision a world without tyranny.

5. Our work is premised on the belief that the desire for freedom is universal. Across every region, every culture, and every generation, people strive for the right to govern themselves and determine their own destiny. This is also a core American value—one that has defined our identity, shaped our influence, and powered the United States' prosperity. Since its founding in 1983, NED has advanced America's fundamental ideals—freedom, human dignity, and the rule of law. From entrepreneurs across Latin America to labor unions behind the Iron Curtain, to activist networks across Nigeria and Yemen, to faith-based leaders across China and Pakistan, to civic movements navigating fragile democratic transitions, NED empowers courageous individuals who are advancing freedom on their terms in fragile and transitional democracies, and in the world's most repressive environments.

I. NED's Customary Access to Funding

6. Approximately 95% of NED's total funding comes from its annual congressional appropriation. The remaining 5% of NED's funds are comprised primarily of foreign assistance funds from the Department of State, and some private funds.

7. Based on the National Endowment for Democracy Act and annual congressional appropriations bills signed into public law, NED's annual appropriation (AA) funds are granted by Congress. Congress typically appropriates "no-year" funds to the Endowment, which means that the money does not expire, affording the Endowment vital flexibility to fund long-term projects that incur expenses over multiple years. Once the congressional appropriation is passed and signed into law, the Bureau for Democracy, Human Rights, and Labor (DRL) at the Department of State (DOS) serves as the passthrough bureau that administers NED's annual appropriation award. Together with the Bureau for Administration (which serves as DRL's grants office), DOS issues the award to NED for the appropriated amount, obligating the funds to NED via a grant award.

8. The total annual appropriation obligated to NED in the grant agreement is set aside for NED at Treasury. As is standard with federal awards, NED can only access the obligated funds by regularly requesting payment drawdowns based on spending (which comprises NED's operational spending, core institutes' spending against their apportioned amounts, and direct grantee payment requests).

9. Typically, NED makes approximately twice-a-week payment requests via the online Payment Management System (PMS) portal, which is managed by the Department of Health and Human Services (HHS).

10. Of NED's total annual appropriation, around 83% goes to grantmaking (the core institutes' share combined with NED direct grantmaking), 2% goes to support NED's Democracy Support Activities, and the remaining 15% goes towards NED's institutional operational costs.

11. NED obligates funds to the core institutes incrementally, after submission, review, and approval of individual project proposals. NED normally obligates to each of the core institutes the cumulative amount of funding to support the proposals approved by NED's board of directors during each grant review cycle, with a cumulative obligated total by the end of the fiscal year equal to the apportioned amount. The core institutes access their funds from NED with periodic payment requests based on their short-term spending needs across the approved projects. See below for a discussion of our core institutes.

12. For core and direct grants, applicants submit proposals directly to NED for review and final consideration by NED's board of directors. NED has always planned its grant activities based on its expectation that it will have access each year to the full amount appropriated by Congress that year. Once a grant proposal makes it through the review process and is approved by NED's board, NED obligates the approved project amount through a grant agreement to the grantee. NED typically makes grants to support approximately 1,900 projects each year.

13. For both core institute and direct grants, when NED obligates the approved grants, the grantee does not receive the full amount of the grant up front upon signing the grant agreement. For direct grantees, NED advances the first payment upon full execution of the grant agreement, and all subsequent payments are tied to submission of scheduled progress reports and other deliverables. NED core institutes must request payment drawdowns against their cash needs as they implement the project and incur costs. NED then regularly bundles those core and

direct payment requests together with NED's own operational payment requests, typically twice a week, to submit consolidated drawdown requests against each of its active annual appropriations grants, as applicable. The requests are submitted via PMS (the Payment Management System operated by the Department of Health and Human Services) and approved for payment by Department of State officials.

II. Defendants' Actions Following this Lawsuit

14. As of March 5, there was a total of \$167,190,622 remaining of the funding appropriated for NED by Congress and obligated to NED by the State Department, but not yet disbursed to NED from its Treasury account. This included available funds from prior-year annual appropriation awards and \$69,898,500 from the first FY2025 continuing resolution.

15. In addition, as of March 5, NED had yet to receive its second FY2025 continuing resolution (CR2) obligation of \$72,481,500.

16. Following substantial efforts to address this funding freeze without litigation, including extensive engagement with officials working at the State Department and numerous meetings with Members of Congress and their staff, NED was left with no choice but to file this lawsuit. Five days later, on March 10, NED received approximately \$97 million in our bank account—the total amount we had previously sought to drawdown. Less than two weeks after that, the State Department obligated to NED the approximately \$72 million that Congress had appropriated in CR2.

17. On March 13, NED submitted a drawdown request of \$450,000. Typically, if we request a payment before 1:00 p.m., we receive the requested funds the following business day. But that did not happen here. Instead, State Department officials asked us whether the drawdown was for expenses incurred prior to January 24, 2025, which they indicated was necessary to support a “waiver.” That inquiry did not make sense to us, as we do not need a “waiver” to access our obligated funds. We are statutorily entitled to reimbursement for expenses incurred both prior to and after January 24. Ultimately, NED received the requested funds after eight days.

18. On March 15, President Trump signed a third continuing resolution (CR3), which appropriated funds for the remainder of FY2025. Like the first and second continuing resolutions, NED's appropriation was based on the funding we received in FY2024. This third sum amounted to an additional \$172,620,000, bringing NED's total appropriation for FY2025 to \$315 million.

19. On March 31, NED learned that the Office of Management and Budget (OMB) had apportioned to the State Department only a subset of the funds appropriated for NED in the full-year appropriations act—\$26 million (or 30 days' worth) out of NED's \$172 million appropriation.

20. This was a deviation from the normal course. In all prior years, after Congress has passed and the President has signed an appropriations act, OMB has apportioned and the State Department has obligated the entirety of the amount appropriated to NED, and always within the same fiscal year of the appropriation.

21. On April 24, at just before 3:00 p.m., we received an email from Marshall Wood, who identified himself as a “member of the DOGE team working at the General Services Administration,” informing us that DOGE “would like to have a call” at 11:00 a.m. the following day “to discuss onboarding [the] Endowment’s team in accordance with” one of the President’s executive orders, *Establishing and Implementing the President’s “Department of Government Efficiency.”* Mr. Wood told us that if we did not respond, he would “assume [we] do not plan to comply with the President’s Executive Order.”

22. Later that day, counsel for NED forwarded Mr. Wood’s email to counsel for Defendants, explaining that NED is not an agency subject to DOGE’s authority and we would be forced to seek a TRO if DOGE made further attempts to infiltrate NED.

23. The next morning, counsel for Defendants responded that NED “should be receiving a clarifying communication soon.”

24. Within the hour, Mr. Wood sent another email to “clarify” that DOGE was “not seeking to onboard at this time.”

25. Later that morning, we spoke to representatives from DOGE and explained our mission and status as a private, nongovernmental organization not subject to DOGE’s authority and requested that any questions be submitted to NED in writing. The DOGE representatives refused to acknowledge NED’s status as a private, nongovernmental entity.

26. Following this call, Mr. Wood sent NED a list of 12 questions regarding NED, its operations, and its compliance with the law. We voluntarily provided a written response to each question. DOGE has yet to acknowledge to us that it is barred from onboarding a team here.

III. The Administration Withholds the Remainder of NED’s FY2025 Funding

27. Throughout April and May, OMB continued to withhold a full apportionment of our funds pending the State Department’s submission of a full-year spending plan. OMB made apportionments in April and May that each accounted for 30 days’ worth of NED’s appropriated funds.

28. OMB still has not apportioned the full amount that Congress appropriated in CR3 for FY2025.

29. On June 11, counsel for Defendants informed NED counsel that they had decided to withhold the approximately \$95 million remaining balance of the NED funding appropriated in FY2025.

30. Outside of this communication through counsel, NED received no direct notification from the Administration that our funding was being withheld.

31. In addition, no official from the State Department, the Office of Management and Budget, or any other Executive Branch entity has consulted with NED regarding our need for the remaining funds that Congress appropriated for FY2025 or the harms that withholding those funds would produce.

32. If this apportionment decision stands, it would be the first time in NED's 42-year history that we did not receive access to the full amount that Congress appropriated during the fiscal year in which Congress appropriated the funds.

IV. The Withholding of NED's FY25 Funds Is Impairing NED's Operational Effectiveness

33. As OMB refused this Spring and Summer to apportion the full amount that Congress appropriated, and we lacked any certainty that a full apportionment was forthcoming, we were forced to undertake significant operational reductions, including workforce cuts to 100 staff members—approximately 35 percent of the team.

34. These were difficult decisions. As described below, we terminated the employment of critical staff and suspended impactful democracy support initiatives. We did all this so that the Endowment would be able to devote as many resources as possible to its grantmaking activities and remain as effective and efficient as possible. Faced with a challenging situation, we implemented the maximum operational reductions that the Endowment could sustain.

35. However, the continued withholding of \$95 million in funding presents an extraordinary challenge the Endowment cannot absorb without serious consequences. The very grantmaking activities that we sought to protect through earlier cost-cutting measures, including painful staffing reductions, are now in jeopardy. Without consistent and full funding, many of the functions we scaled back—particularly those requiring specialized expertise—cannot be restored. The prospect of additional reductions, including to staff, remains a real and deeply concerning possibility. Equally troubling, we remain unable to resume critical democracy support initiatives that were suspended. This uncertainty is taking a toll across the organization, as remaining staff face difficult choices about their professional futures. In short, the withholding of these funds is inflicting sustained and widespread harm to the Endowment's programs, personnel, and mission.

36. The democracy support initiatives that we suspended were central to NED's ability to act as a catalytic center of ideas, learning, and action serving democracy groups around the world. In addition to NED grantmaking, these initiatives were a key means by which NED advanced its mission to support freedom. We have suspended and laid off staff of the World Movement for Democracy, a global network of civic leaders, activists, scholars, parliamentarians, thought leaders, journalists, and funders who are committed to advancing democracy. We have also suspended the Center for International Media Assistance, a Congressionally backed initiative to document and disseminate best practices and solutions for improving media environments. We also significantly scaled back the Reagan-Fascell Democracy Fellows Program, reducing the number of fellows we host from an average of 8-10 per cohort to currently two, as well as reduced significantly the staff and activities of the International Forum for Democratic Studies—both essential to NED's role as a hub of knowledge and thought leadership for the global democracy community. These cuts have limited our ability to offer wrap-around services to our partners such as timely research and peer convenings that help partners build their organizational capacity, learn from each other, and adapt successful strategies across borders.

37. Full and consistent funding would allow the Endowment to begin addressing gaps in institutional capacity that have resulted from recent reductions and resource constraints. This would include efforts to strengthen functions that rely on specialized expertise in areas such as language proficiency, regional knowledge, and technical skillsets. These capabilities play a vital role in maintaining trusted relationships with grantees, facilitating secure communication, supporting program monitoring and evaluation, and navigating complex political and cultural landscapes—particularly in restrictive environments such as Iran, China, Venezuela, Russia, and North Korea.

38. The Endowment's effectiveness also depends on professional competencies in grant compliance, program management, and risk mitigation, which were impacted by prior workforce reductions.

39. Nearly every function and team within NED has lost important staff capacity. For example:

- a. The Finance department lost its Procurement Officer, who had nine years of experience with NED, deep institutional knowledge, and critical supplier relationships.
- b. The Information Technology department lost capacity in cybersecurity and user support.
- c. The Human Resources (HR) department was cut by more than half and is down to just three staff members. HR no longer has any recruiters or access to external recruiting resources and lost critical capacity in compensation and benefits, training, and leave management.
- d. The Grant Operations department was reduced by approximately 40% and resulted in the loss of critical language skills of Arabic and Russian, as well as the loss of a combined 100+ years of technical and institutional knowledge.
- e. Our Democracy Support Activities that focused on research, analysis, and thought leadership were reduced by 50%. We had to move away from or significantly reduce longstanding initiatives that supported grantees, including our Fellows programs, the World Movement for Democracy and the Center for International Media Assistance. Additionally, as the financial uncertainty continues, NED has lost a globally renowned scholar who led cutting-edge research on authoritarian states and how they project their power to undermine freedom.
- f. The Africa team lost staff with the expertise, connections, and local Fulani and Pidgin language skills necessary to support programming in Guinea and Cameroon, and another with fluency in Swahili and extensive experience working on Uganda.

- g. The East Asia team lost staff with valuable knowledge about programs related to North Korea.
- h. The Eurasia team lost six staff members, including two specialists on Central Asia with a combined 30 years of experience, a specialized regional expert on kleptocracy, and a specialized regional expert on Russia's authoritarian influence.
- i. The Europe team lost a Senior Program Officer for Ukraine and Belarus, who had deep regional and country knowledge; technical expertise in judicial reforms, anti-corruption, decentralization, civil society and political party building; and relationships with key stakeholders that had been developed over the years. This team member's specialized expertise, language fluency in Russian and Ukrainian, and deep institutional knowledge will be difficult to replace. The Europe team also has lost one program officer for Albania and Kosovo, which means the loss of critical Albanian language skills and country-specific expertise.
- j. The Middle East and North Africa (MENA) team lost four staff members, including three program officers with critical language skills in Arabic and Kurdish, a combined total of more than 20 years of experience at NED, and expertise on Iraq, Yemen, Syria, and Lebanon. It is difficult for the MENA team to recruit fluent Arabic speakers who also have the other skills necessary for program positions at NED; on average, it takes about a year to fill program officer-level positions. Multilingual staff, like the Senior Program Officer who spoke English, Arabic, and Kurdish and just left the team, are even more difficult to recruit.
- k. The South and Southeast Asia team was forced to lay off the only staff member with the combined expertise and language skills to follow developments in Cambodia, Vietnam, Indonesia, and Timor-Leste.

40. Our operations depend significantly on consistent and predictable funding to enable strategic planning, effective prioritization, long-term grantmaking commitments, staffing stability, and the fulfillment of contractual and fiduciary obligations. We make decisions about funding levels and commitments to our grantees and core institutes in reliance on our expectation that NED will have consistent access to the funds that Congress appropriates for us. The current uncertainty about when, if at all, we will receive the remainder of our fiscal year 2025 funding severely hampers our ability to strategically plan, prioritize, and execute our work effectively.

41. Beyond the loss of critical skills due to layoffs, ongoing financial instability has accelerated attrition among key personnel possessing specialized technical, language, and strategic expertise, including procurement and disbursement specialists, senior grant administrators, and subject matter experts. These departures represent a depletion of institutional knowledge and operational capacity that is neither quickly nor easily replaceable, severely compromising organizational stability, business continuity, and strategic effectiveness.

42. In addition, the layoffs and high degree of funding uncertainty, including fears of additional layoffs, have profoundly impacted staff morale and risk eroding our reputation as a reliable partner and employer. The remaining staff are stretched thin and performing multiple roles to fill the gaps left by their departing team members. These factors have impacted our ability to manage our attrition and to backfill critical roles, including two open vice president positions, as we are currently able to offer primarily short-term, non-permanent opportunities. The ongoing financial instability and associated harm to our reputation will no doubt continue to impact our ability to hire qualified and experienced people for future roles at NED.

43. Funding cuts also have made NED more vulnerable to cyberattacks. NED is a constant target of cyber threats due to the sensitive nature of our work. We have lost key personnel responsible for protecting grantee data, preventing cyberattacks, and safeguarding our digital infrastructure. Any security breach could expose democratic activists and civil society organizations in authoritarian states, putting their safety—and potentially their lives—at risk. While we continue to prioritize strong cybersecurity protocols, actively adapting to evolving threats, the recent funding cuts have constrained resources essential for maintaining optimal protection, leaving our systems more vulnerable and the probability of a successful cyber-attack more likely. We remain committed to managing cybersecurity risks responsibly, and adequate funding is critical to effectively defend against sophisticated cyber threats.

44. These harms are ongoing and are devastating to NED's operations. Staff morale, attrition, and an inability to plan are detrimental to an efficient and effective operation. If the situation continues and we remain unable to access our full funds for FY2025, we will be compelled to consider additional steps, including more staff reductions.

V. NED Faces Short-Term and Long-Term Irreparable Harm to Our Ability to Pursue Our Mission

45. In addition to significant harm to our internal organization and operations, the impoundment of our funding is severely undercutting our ability to maintain grantee relationships and support our core institutes, thereby undermining our ability to fulfill our mandate.

46. NED does not carry out programs directly; instead, we provide funding to nongovernmental organizations globally. Without these partners, we cannot carry out our mission. NED's worldwide grants program is the principal means through which we carry out our mission. Harm to grantees, whether through staff layoffs, security vulnerabilities, or disruption of their programs, directly compromises NED's ability to fulfill our congressionally recognized mission.

47. NED traditionally makes long-term funding commitments, and the current financial uncertainty has hampered our ability to make strategic investments to long-standing partners. As a result of the current withholding, we have been forced to scale back our support, both in terms of duration and amount, support for priority projects including in countries such as Cuba and China, delay consideration of others, as well as simply pass on a wide range of initiatives that require longer term investment. We are also unable to carry out our carefully constructed plans for the expenditure of the funds Congress appropriated. Each year, the

Committees on Appropriations direct us to provide a report within 45 days of enactment of an appropriations act on the proposed uses of funds provided to the Endowment in the appropriation. The report must include a description of programmatic goals for each region and country and how the planned use of funds will meet such goals. We provided Congress with that report this year, as we do every year, based on the premise that we will have reliable access to all of the funds that Congress appropriated for us this fiscal year. We described our plan for how every appropriated dollar would be spent. The withholding of our FY 2025 funds prevents us from executing on that plan and meeting the commitments we made to Congress.

48. The withholding of 30% of NED's FY 2025 budget has forced us to substantially scale back our grantmaking activities, despite continuing demand for NED support from democratic partners around the world. In an average year, NED receives more than 6,000 proposals for funding. As a direct result of the withholding, NED has had to reduce its FY 2025 grantmaking budget accordingly, impacting support to direct grantees and all four core institutes. NED continues to receive and review proposals for funding, but due to the withholding we are unable to fully support more than 500 direct grants and approximately 53 core projects.

49. With respect to direct grants, we have 226 grant projects that were approved by our Board during our January or May grant cycles, but have not yet been obligated. Those projects cannot be fully funded without the \$95 million that is being withheld. In addition, there are 124 grant projects that have been recommended for approval by our Board in July. These projects have been fully vetted by Endowment staff and relevant experts on our Board, and we expect all of them to be approved. However, they cannot be fully funded without the \$95 million that is being withheld. Finally, based on past experience and demand, we expect approximately 300 projects to be approved during our September grant cycle. But again, those projects cannot be fully funded without the \$95 million that is being withheld.

50. If we had full funding, we would be able to provide full funding for all approved grant projects. However, in light of the withholding of 30% of our FY2025 funds, we will need to dramatically reduce funding for these projects, many of which will not be funded at all.

51. With respect to core institute projects, we initially expected that 67 projects would go unfunded as a result of the withholding of our FY2025 funds. Through our work to prioritize funding over the last three weeks and revised planning by the core institutes, we now expect that 53 projects would be fully funded this Fall, but now will not receive such funding due to the withholding of our FY2025 funds.

52. The projects and activities that we would fund, but cannot due to the withholding of our FY2025 funds, would support important and time-sensitive activities including critical election monitoring, helping democracy activists overcome authoritarian censorship, maintain access to independent news and information across many media environments, and advance reforms to level the playing field for American businesses and protect labor rights.

A. Consequences for Direct Grantees

53. NED recognizes that enduring democratic change must come from within. Hence, NED supports locally driven visions for democracy through a direct grants program. We

treat activists, journalists, and civic, faith-based, and political leaders as genuine partners, not implementers of externally designed programs. We do not prescribe solutions. Instead, we back those with deep roots in their communities and the legitimacy to lead lasting change. We respond to on-the-ground demand. Local actors come to NED, seeking support for initiatives they have defined themselves. While we ensure alignment with universal democratic values, we do not impose outside blueprints or assumptions. The organizations we support often face extraordinary risks defending rights and freedoms. They need partners who trust their leadership, honor their courage, and invest in their vision. That's what NED provides—support grounded in respect and partnership. This current withholding of appropriations and resulting uncertainty in NED's consistency and reliability undermines NED's fundamental approach to its mission, grantmaking, and partners.

54. If the withholding of our funds continues, we anticipate harm to longstanding partners that have come to rely on consistent access to NED funding for projects that further our mission.

55. As grassroots nonprofit organizations, most grantees do not have the ability to build up significant reserves and therefore do not have institutional reserves upon which to draw and cannot withstand more funding delays or disruptions.

56. Most grantee organizations have already downsized staff, eliminated important but nonessential expenses (such as physical offices), and reduced activities. Any additional delays in funding could force grantees to shut down their operations entirely.

57. Across projects worldwide, a lack of funding poses special risks to grantee partners operating in authoritarian contexts, as the sudden interruption in support may expose their operations and staff as NED grantees, thereby inviting legal or other more dangerous reprisals from authoritarian governments that oppose their work. For example, an Iranian grantee that documents rights abuses and amplifies civic activists plays a critical role, particularly as the Iranian regime intensifies repression amid growing domestic and regional tensions. A funding interruption could force the organization to scale back or cease operations entirely, increasing risks to its in-country networks. Similarly, an independent media grantee in Cuba, with limited external support, could face legal or other reprisals from the Cuban regime if its funding is interrupted. Several Venezuelan media outlets also rely heavily on NED funding for core operations. Without it, their work will be severely impacted, and their potential identification as NED grantees may expose their staff and operations to retaliation from authoritarian governments, including the possibility of imprisonment.

58. For organizations operating from exile, lack of financial stability puts staff's legal status in third countries at risk. Without a work permit or secure income, many will be forced to return to their authoritarian home countries where they face persecution. This includes many staff members working from exile in Europe who must reach a minimum salary threshold in order to remain there on work visas. If NED does not receive the remainder of its fiscal year 2025 appropriation, it will not be able to provide the planned level of funding on a timely basis, which could lead to journalists, scholars, and activists being forced to return to countries where they face potential politically motivated charges for their NED-funded activities, such as Russia, Azerbaijan, and Kyrgyzstan.

59. In countries with strict labor laws, grantee partners may face steep financial penalties, tax burdens, and legal implications if they run out of funding and are forced to lay off staff. For example, the labor code in Tunisia makes it easy for terminated employees to sue for breach of contract, and courts can then impose penalties in addition to the damages that employees seek, which can effectively destroy a nonprofit organization. Grantees in countries around the world face similar concerns.

60. In addition to experiencing organizational harms, grantees are likely to be severely hampered in their ability to engage in important and time-sensitive work in the absence of additional FY2025 funding from NED this fiscal year.

61. A further delay in funding will curtail the ongoing efforts of grantees to provide election monitoring, voter education, and other support for free-and-fair elections in countries with upcoming election cycles, including Iraq, Lebanon, Armenia, Bangladesh, Malawi, Tanzania, Bolivia, and Honduras.

62. NED funds media organizations across the world that provide critical independent investigation of and reporting on important and timely local issues, including human rights violations in China and Iran, developments on the frontlines of the war in Ukraine including in occupied areas, electoral integrity and corruption in Bosnia and Herzegovina, and Chinese-backed rare earth mining in Burma. Without additional funding from NED, most of these organizations will be unable to maintain their publication schedules or adequately pay contributors, and will need to reduce the amount of content they can produce, which in turn will affect audience retention. In countries with repressive regimes like North Korea, China, Cuba, Burma, Yemen, and Venezuela, independent local news is critical, and the sudden interruption in support may expose their operations and staff as NED grantees, thereby inviting legal or other reprisals from authoritarian governments that oppose their work.

63. Elsewhere in the world, NED-funded organizations provide time-sensitive legal support to individuals, causes, and organizations that face significant harm in the absence of further funding from NED. For example, this includes support for journalists in Turkey amidst the ongoing protests and recent surge in arrests of journalists; whistleblowers in Tunisia; and many human rights defenders in a number of countries in the region amidst increasing crackdowns. One regional media grantee is currently facing a lawsuit to silence its work exposing corruption. A loss or delay in funding would require them to reduce their staff and make them more vulnerable and limited in their ability to defend themselves.

64. For NED-funded organizations operating in challenging environments, the implications of a delay in funding will be especially acute:

- a. In Pakistan, a grantee supports one of the leading grassroots movements for peace and religious tolerance, which advocates for the protection of and rights of all minority religious groups, including Christians and Hindus, to practice their faith. A delay in funding will hamper the work of this organization and put frontline human rights defenders at risk. For example, the executive director of the organization just returned to Pakistan, after facing threats and being forced to relocate temporarily for

his safety. The organization's current grant expires in July and the proposal for consideration by our Board in July would include additional funds for heightened security measures for the organization, but that funding is in jeopardy because the Endowment does not have access to the remainder of its FY2025 funds. The loss of funding would impact the safety of individuals and also halt trainings and weaken the momentum of activities that support the next generation of human rights activists to strengthen democracy, religious freedom, and peace in the country.

- b. Without continued NED support, Afghan media outlets and civil society organizations will face severe operational disruptions. Many rely on NED to meet basic obligations such as salaries for in-country journalists. The sudden loss or delay of funding could lead to insolvency, forced closure, and heightened exposure to retaliation by the Taliban. Partners will have to cancel or significantly scale back broadcast and publication schedules, which will result in the loss of audiences, diminished credibility, and the abandonment of critical democratic initiatives, like civic engagement campaigns and efforts to document rights' violations.
- c. Within the Republika Srpska (RS) entity in Bosnia and Herzegovina, an independent media portal is at risk of shutting down completely by September 2025 without sustained NED funding. The organization is one of the few remaining independent media outlets available to citizens of the RS entity. This partner continues to report on important civic and political topics, such as electoral accountability and corruption, despite facing a difficult operating environment, which includes restrictive media laws, a contracting civic space, and digital and physical harassment. The outlet is critical to smaller communities, which often lack any other local media coverage. With the cancellation of other funds, the Endowment remains the organization's only source of funding. With Kremlin support, the ruling party in the RS entity is escalating its secessionist actions and suppressing democratic voices. The further disappearance of independent voices in Bosnia and Herzegovina will add to the deteriorating political and security situation in the country and undermine freedom of expression at a time of constitutional crisis and elevated security concerns.

B. Consequences for Core Institutes

65. As a result of the withheld funds, NED is not able to provide approximately \$39 million allocated by Congress for the four core institutes which would be awarded by NED to support at least 50 projects. This directly impacts the effectiveness of NED's comprehensive strategy of democracy support based on economic freedom, human rights, and political participation. IRI and NDI strengthen democratic institutions and political processes by equipping civic groups and political parties with the tools to represent citizens effectively and govern democratically. CIPE works to advance economic freedoms and support local independent business associations and organizations to build fair and stable markets based on transparency, accountability, and rule of law. The Solidarity Center empowers workers and

labor movements to organize, advocate for rights, and hold governments accountable—ensuring democracy delivers for working people.

66. Alongside NED support to local direct partners, these investments reflect our view that democratic gains are more likely as part of fostering local democratic ecosystems. NED’s approach leverages direct grants and the core institutes to build interdependent communities of legal defenders, tech innovators, faith-based leaders, investigative journalists, labor organizers, civic educators, and reform-minded political leaders. This ecosystem approach ensures that democracy advocates are backed by a network of allies who can provide protection, amplify their voice, and coordinate strategy. In turn, the possibility of positive democratic developments in any one country grows. In environments where repression is acute and civic space is closing, these connections become a lifeline—helping activists survive authoritarian crackdowns, sustain momentum in dark times, and reemerge stronger when the opportunity for change returns. This approach helps avoid the curse of good work in silos having limited impact. Rather, one smart investment becomes a force multiplier of another. Withholding of NED’s funds negatively impacts this strategy. As I explain in more detail below, the shortfall will force the core institutes to delay, suspend, or cancel critical activities. They will also be forced to make further operational cuts, including reductions to staff and offices.

1. *International Republican Institute (IRI)*

67. In recent years, NED’s funding to IRI has comprised approximately 30% of IRI’s annual funding. As of today, however, as a result of actions by the government freezing or canceling U.S. foreign assistance, NED’s funding comprises approximately 85% of IRI’s funding.

68. If NED cannot access the remainder of its congressionally appropriated funds, IRI will need to make critical staff reductions and reduce programming.

69. The FY2025 funds that were allocated for IRI but cannot now be disbursed due to the withholding of funds amount to approximately 30% of IRI’s NED funding this year. IRI’s inability to access those funds significantly impairs its ability to carry out its democracy mission in countries critical to U.S. strategic interests. Activities at risk include those aimed at countering the Chinese Communist Party’s economic coercion and elite capture efforts in countries such as Ecuador, Panama, Nigeria, and the Philippines. Moreover, the reduced funding would diminish critical support to dissidents in their struggle under authoritarian regimes in North Korea, Burma, and Iran—countries that IRI has prioritized for NED support. This would place longstanding IRI partners at serious risk and severely undermine NED and IRI credibility globally.

70. In addition, the proposed reduction would end IRI support for moderate democratic actors navigating fragile transitions in countries such as Syria. It would also terminate ongoing initiatives designed to equip democratically elected officials and civil society leaders with tools to expose and counter kleptocratic networks linked to authoritarian regimes in China, Russia, and Iran.

71. The cumulative effect of these cuts would be to substantially impair IRI's ability to advance U.S. foreign policy interests and uphold international democratic values at a time of rising authoritarian influence.

2. *National Democratic Institute (NDI)*

72. In recent years, NED's funding to NDI has comprised approximately 20% of NDI's annual funding. Today, however, as a result of actions by the government freezing or canceling U.S. foreign assistance, NED's funding would comprise 65% of NDI's funding

73. Withholding the remaining NED FY2025 funds would result in a 30% reduction in NDI's anticipated funding from NED, interrupting planned programs that address near-term democratic turning points and undermining NDI's ability to sustain key partnerships and operations in countries around the world. This would impair the Institute's ability to support democracy activists and actors globally in their efforts to have a say in how they are governed and to hold their governments accountable. This funding cut would significantly diminish NDI's ability to implement programs focused on U.S. strategic interests and could result in NDI withdrawing critical support to democracy partners at a time when authoritarians are poised to exploit such opportunities.

74. NDI programs that would be severely impacted or could be eliminated include:

- a. Support to democratic activists from Cuba, Nicaragua, and Venezuela as they adapt and plan the next steps in their movements to counter the authoritarian regimes in their countries.
- b. Support to pro-democracy groups from Burma, Cambodia, and Afghanistan, working to challenge some of the most repressive authoritarian governments in Asia.
- c. Strengthening the capacity of civic organizations and the media to identify, analyze, monitor, and expose the Chinese Communist Party's influence operations in South and Southeast Asia.
- d. Work with parliaments and civil society to strengthen transparency and accountability in public debt management and expose opaque debt practices, such as those used by China in Ecuador, Kenya, Malawi, and Zambia.
- e. Work with a network of trusted interlocutors in Iran and abroad to heighten public pressure on the Iranian regime by highlighting government diversion of funds to opaque security and defense channels that reward the Islamic Revolutionary Guard Corps (IRGC), fund regional instability, and support terrorism.
- f. As the Syrian transitional authorities begin reconstruction and plan for a successor government to the brutal Assad regime, lack of these funds would prevent support to emerging political parties and civic groups that

will ensure transparent recovery and help shape the trajectory of rights, freedoms, and stability in the country.

- g. Critical elections are planned and/or anticipated in Ukraine, Côte d'Ivoire, Ethiopia, Honduras, Kenya, and Moldova; without these funds, NDI will be unable to work with local partners to protect the fairness, credibility, and inclusivity of the elections.

75. In addition to curtailing programs, without access to funding representing such a significant proportion of NDI's planned budget, NDI may be left with no choice but to make additional operational and staffing reductions that would further imperil its ability to deliver on programs that have already been funded. Taken together, these impacts would severely damage NDI's reliability as a partner and employer. As it is, the uncertainty over funding has resulted in the attrition of experienced staff and reluctance of former staff to rejoin NDI. Furthermore, other donors have questioned NDI's ability to deliver programming while it continues to manage funding volatility and operational change, which has limited NDI's ability to raise additional funds.

3. *Center for International Private Enterprise (CIPE)*

76. In recent years, NED's funding to CIPE has comprised approximately 55-60% of CIPE's annual funding. Today, however, as a result of actions by the government freezing or canceling U.S. foreign assistance, NED's funding would comprise 90% of CIPE's funding.

77. The continuous uncertainty surrounding FY2025 funding is harming CIPE's ability to deliver on its mandate and undermining partners' confidence in CIPE.

78. Prior funding disruptions earlier this year forced CIPE to lay off 90% of its field-based staff to remain in compliance with local labor laws that do not allow staff furloughs or extended unpaid leave. They also caused CIPE to close 11 of its 15 local country offices.

79. Faced with serious operational constraints, CIPE has been working diligently to restart programming around the world with a smaller, more efficient footprint through a reorganization plan. If NED does not receive the remaining FY2025 funds, it will limit CIPE's ability to implement this reorganization plan to transition program management to its field hub offices in each of the five key subregions (Latin America and the Caribbean, Africa, Middle East and North Africa, Europe and Eurasia, and Asia and the Pacific). These offices will serve as the key implementation centers for programmatic activities. With the closure of so many offices due to the withholding of previous funding, the hub approach is essential to CIPE's ability to deliver NED programming on the scale it has done in the previous 41 years. This organizational transition is designed to generate efficiencies and lower CIPE's overhead and operational costs. It will also allow CIPE to respond with more agility to evolving situations and to identify and initiate timely interventions on the ground.

80. A pause in CIPE programming would have a significant negative impact on the organization's ability to recruit staff and to maintain partnerships with trusted allies in the business community and would damage the overall brand and reputation of CIPE. CIPE has already witnessed reputational damage from its pause on operations and its personnel changes

from earlier this year. Another series of furloughs and pause in program activities and operations would worsen this impact.

81. Funding uncertainty is already driving up administrative costs, making CIPE less competitive with other donors. This is preventing CIPE from raising additional funds to fill gaps caused by the unpredictable funding environment that has been imposed on the sector since January 2025.

82. Continuous funding disruptions are negatively impacting CIPE's ability to manage local partnerships, causing further harm to CIPE's reputation. Local partners are now more reluctant to partner with CIPE because of the uncertainty in funding. Because many of these partners operate in some of the most restrictive and unfavorable environments around the world, their organizations are at risk, and so too is their overall safety when funding is stopped abruptly. Local government leaders in authoritarian countries have approached our partners, noticing the lack in activities since the public withdrawal of U.S. government funding, and have put them under additional scrutiny, creating added risk for partners' personal safety.

83. The funding disruptions and uncertainty over the last several months have slowed CIPE's ability to deliver programming, and additional delays will force CIPE to scale down or eliminate more programming at a time when CIPE work is critical.

84. The Middle East and North Africa (MENA) region is becoming increasingly unstable, with the potential for widening conflict rising. Without full FY2025 funds, CIPE will be forced to suspend its entire portfolio of MENA projects. This includes work in authoritarian countries that are key to America's national security, and efforts in countries like Yemen, Lebanon, and Iraq to help shore up democratic governance and economic stability before Iran's proxies can regain their footing. CIPE also planned to significantly increase the size and scope of its program in Iran—a crucially important country for U.S. national security. Any delay in continued NED funding would prevent CIPE from carrying out these planned activities.

85. CIPE's programs in emerging markets, which promote the rule of law and fair competition, align closely with the transparency and stability sought by U.S. and allied businesses. Disruption to CIPE's programs weakens the foundations of supply-chain integrity and increases risks for U.S. businesses operating in high-risk countries. When American businesses lose access to essential manufacturing components—like critical minerals—the economic and national security of the United States suffers.

86. A decrease in CIPE's FY2025 funding would significantly reduce CIPE's ability to galvanize the private sector across Africa in the fight against corruption and the promotion of a more transparent, rules-based business environment. Without its expected funds, CIPE will be forced to cancel critical contracts and disengage key staff whose work is essential to sustaining momentum on reforms that protect accountable investors and support long-term stability. These cancellations would not only halt ongoing efforts to strengthen coalitions of reform-minded business leaders, civil society actors, and public sector partners, but also risk dismantling established networks of change agents that CIPE has painstakingly built across the continent. These networks are instrumental in shaping solution-oriented policy dialogues, advancing corporate governance standards, and driving demand for fair, transparent economic systems.

Moreover, the disruption would come at a time when global interest in Africa's markets—particularly in sectors like energy transition, digital infrastructure, and critical minerals—is at a high point. Weakening CIPE's footprint now would inadvertently create space for opaque or corrosive capital flows from China that undermine democratic values, erode trust in institutions, and increase long-term risk for responsible investors.

87. Without the full disbursement of funding appropriated to NED for FY2025, CIPE's ability to fulfill its mission or support NED's critical work of advancing democracy and market-driven reforms will be crippled at a time when authoritarian influence is clearly on the rise. CIPE will be forced to abandon more frontline partners who have just returned to the work and cede ground to authoritarian influence, particularly China. This will impact U.S. national security and U.S. business interests around the world. It will also provide a foothold for U.S. adversaries who will no longer have to contend with local partners who advocate in support of the values that align with U.S. interests.

4. *Solidarity Center*

88. In recent years, NED's funding to the Solidarity Center has comprised approximately 48% of the Solidarity Center's annual funding. Today, however, as a result of actions by the government freezing or canceling U.S. foreign assistance, NED's funding would comprise 74% of the Solidarity Center's projected 2025 funding.

89. The remaining FY2025 NED appropriation currently withheld by OMB constitutes 30% of the Solidarity Center's total NED funding for FY2025. If these funds are not received in a timely manner, the loss of cash flow to the organization will give the Solidarity Center no choice but to make drastic cuts by October 1, 2025: lay off one-third of its current staff, reduce its program budget by one third, and cut its global presence and infrastructure by one third.

90. In order to meet legal notification requirements in countries where Solidarity Center employs staff, and both legal and collectively negotiated notification requirements for staff employed by Solidarity Center headquarters, layoff notifications to affected staff must be issued no later than August 31, 2025.

91. Losing such a significant segment of its experienced talent pool, developed over decades, will cause significant harm to the Solidarity Center's ability to achieve its mission as a global labor rights and democracy organization. Solidarity Center staff are uniquely qualified labor rights and democracy experts, including program implementation officers, labor rights and standards specialists, human rights and democracy experts, labor lawyers, grant management officers, monitoring and evaluation specialists, and finance professionals. Solidarity Center program positions require extensive knowledge and expertise in organization building – administration, member recruitment, collective bargaining skills, and legal advocacy. Laying off an additional one-third (approximately 57 employees) of staff in October 2025 would have a devastating impact on the Solidarity Center's ability to implement programs around the globe and would require massive human and financial resources to recruit qualified staff and rebuild.

92. Of its remaining 22 offices, the Solidarity Center will have to demobilize and close seven of its offices. Closing field offices abruptly is extremely expensive and legally precarious. The Solidarity Center estimates that the average cost of closing down a long-time field office is between \$100,000 and \$500,000. Shut-down costs are significant and include the high costs of repatriating expatriate staff, severance payments, early termination of both office and housing leases, breaking agreements with vendors and, in some countries, audit costs required when closing an organization. In addition, complete office closures normally result in the loss of existing office registrations in those countries, which require large human and financial resources to reinstate, and in some cases will not be regranted by governments in those locations once discontinued, thus eliminating the Solidarity Center's ability to employ staff and implement programs in these countries for the foreseeable future. In addition, the Solidarity Center would have to significantly scale down offices and country presence in 13 countries across the Americas, Africa, Asia, Europe, and Middle East and North Africa.

93. The impact to Solidarity Center programs caused by the withholding of remaining FY2025 funds will be extreme. Solidarity Center management will be forced to reallocate among programs the FY2025 funds already received in an attempt to continue activities where possible, but programs in every region would be severely impacted. Until funds can be reallocated, those programs which are not yet approved but planned for later this year would be directly impacted. For example, five of six planned projects in the MENA region, four of seven in Europe and Eurasia, three of seven in Asia, three of six in the Americas, one of four in Africa, and two of four global (multi-regional) projects are not yet funded. These programs will suffer immediately due to the withholding of funds, but any program worldwide could be reduced or eliminated after internal reallocation.

94. For example, programs that strengthen worker rights in Venezuela, which reduce pressures on workers to migrate, are not yet funded. Programs to raise labor standards in Bangladesh, which provides 7% of U.S. clothing imports, are not yet funded. And projects across the Europe and Eurasia region to protect partners who expose kleptocracy and corruption in their countries are not yet funded.

95. Failure to transmit the withheld funds to NED will result in reputational harm to the Solidarity Center. Scheduled payments on subawards and subcontracts, lease payments, and even services already rendered, such as to training and conference venues, will have to be withheld during the hiatus, resulting in subaward partners, contractors, and service providers questioning whether the Solidarity Center is reliable in meeting its financial obligations. Businesses that the Solidarity Center relies upon for a variety of services will implement stricter terms and conditions, including requiring payment in advance. Most importantly, the suspension or loss of these funds would damage the Solidarity Center's ability to achieve its mission. The loss of cooperation with hundreds of partners will mean the end of progress to improve pay and working conditions, labor rights, and workers' ability to shape the future of their democracies.

C. Harm to NED Weakens U.S. Interests

96. The current withholding harms NED's mission and our reputation as a trusted, reliable U.S. partner. Groups around the world, particularly in the most dangerous and difficult environments, seek out NED due to our well-established reputation for reliability, transparency,

consistency, security-consciousness, and partnership as well as our capacity to adapt our grantmaking to dynamic political scenarios and engage in crisis response. Our reputation is critical to our ability to engage productively with partners worldwide, who see us as trusted partners.

97. A critical harm that may result from the current withholding is that some NED grantees may simply not be around to continue their important work if funds were to flow at a later date. And even those that are able to weather the storm are not likely to forget a failure to follow through on our obligations to provide timely and consistent funding, even if we are later able to make good on our commitments. Further, many NED grantees operate in closed, unstable, and/or conflict-torn environments. It takes time and hard work for NED to build trust and credibility with these at-risk partners. Lastly, many organizations may choose to refrain from engaging with NED in the future if we are perceived as an unreliable partner. If NED is seen as an unreliable partner, the United States loses a trusted channel to support local democratic actors who often advance policies and values that align with American interests and global stability.

98. The current withholding also severely undermines NED's unique, independent contribution to democracy and freedom around the world, consistent with long-term U.S. interests. Advancing freedom is a defining American value and profoundly in American interests. NED supports America's core ideals—freedom, human dignity, and the rule of law—by empowering individuals who advance accountable governance, free expression, and peaceful civic engagement. This work underscores both the universality of democratic values and America's solidarity with those who seek liberty. NED invests in local communities that take initiative and have the courage to solve problems in their own societies. When they succeed, their nations succeed, becoming better partners of the American people.

99. Defending democratic values abroad also means confronting the authoritarian threats that undermine global stability and harm American interests. NED strengthens pro-freedom organizations around the world to counter threats from authoritarian regimes that are also U.S. adversaries—including China, Iran, North Korea, Cuba, Russia, and Venezuela. By supporting local citizens who challenge repression and corruption, NED helps address the root causes of instability that fuel migration crises, terrorism, organized crime, and drug trafficking—issues that directly affect American communities. At the same time, NED's work promotes fairer global competition by advancing the rule of law, combating corruption, and fighting forced and child labor practices that distort markets and undercut American businesses and workers.

100. As authoritarianism rises and democratic backsliding deepens, NED is an essential pillar of support for those working to advance freedom and democratic values around the world. This strategy reflects a commitment to empowering democratic actors and a recognition that investing in freedom around the world contributes to a more stable, secure, and just world that also supports U.S. national security, strategic interests, and influence.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 21, 2025, in Washington, D.C.

A handwritten signature in blue ink, appearing to read "Damon M. Wilson", is written over a horizontal line.

Damon M. Wilson
President and CEO
National Endowment for Democracy

Exhibit B

DIGEST - NO CIRCULATION - C-E-M



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

Released
2/7/83
P.K.

B-163628

January 4, 1974

The Honorable William Proxmire, Chairman
Subcommittee on Housing and Urban Development,
Space, Science, and Veterans
Committee on Appropriations
United States Senate

Dear Mr. Chairman:

This refers to your request, dated October 12, 1973, for our views on the power of the Office of Management and Budget (OMB) to apportion the funds of independent regulatory agencies such as the Securities and Exchange Commission (SEC). You advise that this year the SEC requested an appropriation of \$34,027,000; that OMB reduced that request to \$31,210,000; that the Congress restored the original request; but that the Chairman of the SEC nevertheless told your Subcommittee that his agency was "proceeding cautiously" to use the restored funds for their intended purpose--the hiring of 204 additional personnel--because of his fear that OMB "would not apportion the additional funds Congress approved." You question whether, in view of such circumstances, the power of OMB to apportion the funds of the independent regulatory agencies is not inconsistent with the intended independence of those agencies.

The authority of OMB to apportion agency funds and the purposes of doing so are set forth in 31 U.S.C. 665 (the Antideficiency Act) which provides in part as follows:

"(c)(1) Except as otherwise provided in this section, all appropriations or funds available for obligation for a definite period of time shall be so apportioned as to prevent obligation or expenditure thereof in a manner which would indicate a necessity for deficiency or supplemental appropriations for such period; and all appropriations or funds not limited to a definite period of time, and all authorizations to create obligations by contract in advance of appropriations, shall be so apportioned as to achieve the most effective and economical use thereof. * * *

"(2) In apportioning any appropriation, reserves may be established to provide for contingencies, or to effect savings whenever savings are made possible by or through changes in requirements, greater efficiency of operations, or other developments subsequent to the date on which such appropriation was made available. * * *"

B-163628

Subsection (d)(2) provides that appropriations required to be apportioned under subsection (c) of section 665 shall be apportioned or reappropriated by the Director of OMB within certain time periods.

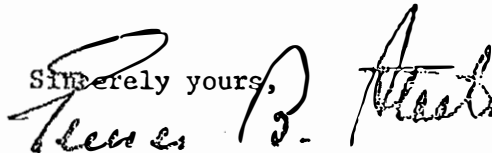
Certainly the independent agencies are intended to be free of executive control or interference. Humphrey Executor v. U.S., 295 U.S. 602 (1935); Weiner v. U.S., 357 U.S. 349 (1958). But it is our position that the apportionment power may not lawfully be used as a form of executive control or influence over agency functions. Rather, it may only be exercised by OMB in the manner and for the purposes prescribed in 31 U.S.C. 665--i.e., to prevent obligation or expenditure in a manner which would give rise to a need for deficiency or supplemental appropriations, to achieve the most effective and economical use of appropriations and to establish reserves either to provide for contingencies or to effect savings which are in furtherance of or at least consistent with, the purposes of an appropriation.

As thus limited, the apportionment process serves a necessary purpose--the promotion of economy and efficiency in the use of appropriations. Moreover, with respect to this purpose, we see no valid basis for distinguishing the independent regulatory agencies from other Executive agencies with or without regulatory functions. In our opinion there is still a basic need for apportionment of the funds of all Executive departments and independent agencies by OMB in accordance with the provisions of the Antideficiency Act.

As indicated above, we believe OMB may not lawfully use its power to apportion funds to compromise the independence of regulatory agencies. Thus, in the context of the statement made by the Chairman of SEC, we believe that the apportionment of funds by OMB in such a way as to prevent the hiring of the 204 personnel authorized by Congress, and to do so solely for that purpose, would be in violation of the Antideficiency Act.

The mere existence of the apportionment power in OMB and its proper exercise with respect to the independent regulatory agencies are therefore not inconsistent with the independence of those agencies. A problem arises only when the apportionment procedure is employed by OMB in derogation of the purposes of a particular appropriation. But since a useful purpose is served by OMB's proper exercise of the apportionment power, we do not believe that the potential for abuse of the power is sufficient to justify removing it from OMB.

Sincerely yours,



Comptroller General
of the United States

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NATIONAL ENDOWMENT FOR
DEMOCRACY,

Plaintiff,

v.

UNITED STATES, et al.,

Defendants.

No. 1:25-cv-00648-DLF

**[PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION
FOR A PRELIMINARY INJUNCTION**

This matter came before the Court on Plaintiff's Motion for a Preliminary Injunction. After consideration of that motion and all related filings, it is hereby ORDERED that Plaintiff's motion is GRANTED for substantially the same reasons stated in Plaintiff's memorandum in support of its motion. The Court therefore ORDERS:

1. That all Defendants and their agents are enjoined from impounding, blocking, reserving, or otherwise interfering with payment of appropriated funds to the Endowment, including by interfering with the apportionment, obligation, and ultimate disbursement of such funds; and
2. That Defendants shall file a status report with the Court within 24 hours of this order, and at regular intervals thereafter, confirming the regular apportionment, obligation, and disbursement of the Endowment's appropriated funds and reporting all steps that Defendants and their agents have taken to comply with the Court's preliminary injunction.

SO ORDERED.

Date

DABNEY L. FRIEDRICH
United States District Judge

**Names of Persons to be Served
With Proposed Order Upon Entry**

Pursuant to Local Civil Rule 7(k), below are the names and addresses of persons entitled to be notified of entry of the above Proposed Order.

Donald B. Verrilli, Jr.
Munger, Tolles & Olson LLP
601 Massachusetts Avenue NW, Suite 500E
Washington, DC 20001

Julia A. Heiman
Joshua N. Schopf
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street NW
Washington, DC 20530