



THE SUPREME COURT, THE LOWER FEDERAL COURTS, AND THE EXECUTIVE: *McMAHON V. NEW YORK*

Joshua D. Sarnoff*

Most of the federal government's executive branch is entirely a creation of the U.S. Congress.¹ Similarly, the lower federal courts are entirely creations of Congress.² The federal courts police whether executive branch agencies have acted legally by interpreting statutes to assess the limits of agencies' legislatively delegated statutory authority. However, the Trump Administration's relationship with lower federal courts has been more adversarial than any previous administration's in recent history. In many recent cases, federal district and appellate courts have preliminarily found the executive branch to have acted beyond its authority, or *ultra vires*, only to have the U.S. Supreme Court stay the relief that those courts granted. This is perhaps best illustrated by the lower court and Supreme Court decisions in *McMahon v. New York*,³ where various plaintiffs challenged the Trump Administration's firing of almost half of the U.S. Department of Education's staff and the subsequent transfer of many Education Department functions to other agencies. The Administration's and now legislative actions to disestablish the Education Department are continuing.⁴ But first, some context.

Two of the key points of conflict that arise when determining the legality of executive branch actions have to do with questions of judicial deference: first, deference to an agency's interpretations of its statutory authority and,

* Raymond P. Niro Professor of Intellectual Property Law, DePaul University College of Law. This article draws on a book chapter, Joshua D. Sarnoff, *The Supreme Court, the Lower Federal Courts, and the Executive: McMahon v. New York*, in SCOTUS 2025: MAJOR DECISIONS AND DEVELOPMENTS OF THE US SUPREME COURT (Howard Schweber ed. 2026) (hereinafter SCOTUS 2025). The author thanks Howard Schweber and others on the conlawprof listserv for valuable insights.

¹ See generally U.S. CONST. art. II.

² *Id.* art. III, § 1.

³ 145 S. Ct. 2643 (2025).

⁴ See, e.g., Ali Schalop, *The Plan to Abolish the Education Department—One Year Later*, NEA TODAY (Mar. 20, 2026), <https://www.nea.org/nea-today/all-news-articles/plan-abolish-education-department-one-year-later> [<https://perma.cc/DQS4-FG7Q>]; Tiana Headley, *GOP Panel Proposes Deeper Education Funding Cuts Than Trump (1)*, BLOOMBERG TAX (June 4, 2026), <https://news.bloombergtax.com/daily-tax-report/gop-panel-proposes-cutting-education-more-than-trump-request> [<https://perma.cc/CS93-526W>].

second, to the reasonableness of an agency's policies or actions. The first is a question of legal meaning; the second is a question of preventing arbitrary or unjustified administration. Federal courts must always determine whether to defer to an agency's interpretation of the scope of the agency's authority or instead determine those limits for themselves. Similarly, federal courts must always determine whether to defer to an agency's explanation of the basis for its policies or actions or instead to independently determine whether the agency has adequately justified them.

The conflicts between the Trump Administration and federal courts have involved these questions of deference.⁵ Unlike decisions of the lower courts, many of the recent Supreme Court rulings evidence, albeit implicitly, a high degree of deference to various agencies' interpretations of their statutory authority by overturning lower court orders that directed agencies to stop what they are doing. This is contrary to a major Supreme Court decision from just two years ago, when the Court restrained statutory interpretations of the Biden Administration in *Loper Bright Enterprises v. Raimondo*.⁶ There, the Court eliminated so-called *Chevron*⁷ deference, overruling a prior long-standing precedent that required lower courts to defer to reasonable agency interpretations of ambiguous statutes. In *Loper Bright*, the Supreme Court explained that in "an agency case as in any other ... even if some judges might (or might not) consider the statute ambiguous, there is a best reading all the same—the reading the court would have reached if no agency were involved."⁸ Given *Loper Bright*, one might reasonably have expected the Supreme Court to encourage lower courts to adopt a skeptical attitude toward executive branch interpretations of congressional statutes.

But what a difference a change in presidential administration can make. One would clearly have been wrong to think that the Supreme Court would be just as hostile to the second Trump Administration's statutory interpretations as it was to those of the Biden Administration. This is true even though lower federal courts, many of which are stocked with judges appointed by President Donald J. Trump during his first Administration, now appear to be increasingly hostile to executive branch interpretations,⁹ at least partly in response to the apparent lawlessness of the Trump Administration.¹⁰

⁵ See, e.g., Sarah Paoletti, *Access to Justice, Deferred and Denied*, REGUL. REV. (July 29, 2025), <https://www.theregreview.org/2025/07/29/paoletti-access-to-justice-deferred-and-denied/> (discussing recent immigration cases and noting that they represent "heightened deference to executive authority") [<https://perma.cc/D2VM-U9FW>].

⁶ 603 U.S. 369, 412 (2024).

⁷ *Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984).

⁸ *Loper Bright*, 603 U.S. at 400 (internal quotation marks omitted).

⁹ See, e.g., Robin Kundis Craig, *The Impact of Loper Bright v. Raimondo: An Empirical Review of the First Six Months*, 109 MINN. L. REV. 2671, 2732 (2025) (discussing the limited evidence to date showing that "agency rule-makings fare worse in judicial review than agency adjudications" under *Loper Bright*).

¹⁰ The lawlessness is apparent from the lower courts' issuance of numerous preliminary injunctions, which require a showing that the action is more likely than not unauthorized by law. See *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

Others will focus on the Supreme Court's use of its shadow docket—through which the Court has increasingly preliminarily resolved questions outside of its normal docket, without full briefing or oral argument—to stay or reverse lower court preliminary injunctions that prohibited the Trump Administration's ongoing illegal actions while litigation is pending.¹¹ Similarly, others will address the Court's restriction on the power of lower courts to issue nationwide injunctions to prevent such lawless actions, except when a court enters such an injunction on behalf of a certified class or when necessary to provide complete relief to the plaintiffs.¹² But I will focus more specifically on how the Court has *implicitly* accepted the Trump Administration's legal interpretations by allowing agency actions to remain in place without deciding their merits. In recent orders, the Supreme Court has directed lower courts to defer to the Administration's challenged legal interpretations and justifications, even when those courts had already found the challenged conduct likely illegal.

Furthermore, although the Supreme Court has indicated that lower courts are supposed to defer strongly to agency policy determinations and justifications,¹³ the Court appears to be deferring even more strongly to the Trump Administration's actions while conducting arbitrary and capricious review under the Administrative Procedure Act (APA)¹⁴ than it did to the actions of previous administrations.¹⁵ Of course, this analysis is preliminary. It is possible that the Court will become less deferential to the Trump Administration over time given the Administration's persistent lawlessness, or when the Court reaches the merits of the Trump Administration's actions.¹⁶

("A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.").

¹¹ See, e.g., Julie Novkov, *The Shadow Docket*, in *SCOTUS 2025*, *supra* note *; Steve Vladeck, 175: *Whose Judicial Overreach?*, ONE FIRST (July 31, 2025), <https://www.stevemvladeck.com/p/bonus-170-a-reply-to-professor-adler> ("[A]t least *some* of the Court's behavior in these cases has in fact been indefensible—on procedural grounds; on substantive grounds; and, no less importantly, on institutional grounds.") [<https://perma.cc/7F6Z-445R>].

¹² See Harry Pohlman, *Trump v. CASA (2025): Birthright Citizenship vs. Universal Injunctions*, in *SCOTUS 2025*, *supra* note *; see also *Trump v. CASA, Inc.*, 606 U.S. 831, 849–50 (2025).

¹³ See, e.g., *Ohio v. EPA*, 603 U.S. 279, 292 (2024) ("[A] court may not 'substitute its judgment for that of the agency.'" (internal quotation marks and citation omitted)).

¹⁴ 5 U.S.C. § 706(2)(A) ("The reviewing court shall hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.").

¹⁵ The APA is a "super-statute" that prohibits arbitrary and capricious action across all government agencies. Cf. Craig, *supra* note 9, at 2747 ("In the next few years, categories of agency expertise are likely to emerge, and the distinction between arbitrary and capricious review and statutory interpretation may become critical to whether individual agency regulatory decisions survive judicial review in certain federal courts.").

¹⁶ The Supreme Court subsequently did so in regard to President Trump's worldwide "retaliatory" tariffs based on balance of trade deficits. The President's tariffs were held to

But by then it may be too late to undo the effects of the Administration's challenged actions. By staying lower court injunctions, the Supreme Court in many cases has effectively rendered any remedy provided in a subsequent ruling that the Administration's actions were in fact illegal *practically* illusory to the parties and to the public.¹⁷

In *McMahon v. New York*,¹⁸ the Supreme Court, without any explanation, stayed a preliminary injunction issued by a federal district court in Massachusetts,¹⁹ which the U.S. Court of Appeals for the First Circuit had twice refused to stay.²⁰ The district court had ordered the reinstatement of terminated Education Department employees. The court further ordered restoration of Education Department offices that the Administration disbanded.²¹ The district court preliminarily held that these actions were likely *ultra vires* as beyond the Department's statutory authority and contrary to law, as well as likely arbitrary and capricious.²² The Education Department's

be *ultra vires* as beyond his statutory authority under the International Emergency Economic Powers Act of 1977 (IEEPA) by the U.S. Court of International Trade and, on appeal from that court's decision, by the U.S. Court of Appeals for the Federal Circuit. *V.O.S. Selections, Inc. v. Trump*, 772 F. Supp. 3d 1350, 1375–83 (Ct. Int'l Trade 2025), *aff'd in part, vacated in part, and remanded*, 149 F.4th 1312, 1338 (Fed. Cir. 2025) (en banc). Four judges on the Federal Circuit concurred separately to explain how the President's arguments were not textually justified for *any* tariffs—not just the expansive ones adopted—because the clear text overcomes any implication of legislative ratification of an earlier judicial precedent upholding President Richard Nixon's limited temporary tariff under similar language. These four judges also argued that if the broad power claimed by the federal government under IEEPA were statutorily authorized, the statute would be an unconstitutional delegation of legislative power. *See V.O.S. Selections*, 149 F.4th at 1345 (Cunningham, J., concurring). The Supreme Court affirmed the en banc Federal Circuit decision on the merits, with three justices applying the so-called “major questions” doctrine to deny deference to the Administration's interpretation of the statute's delegated power, three justices concurring that the statute did not give the President tariff power even without regard to that doctrine, and three justices dissenting that the statute granted such power even applying that doctrine. *Learning Resources, Inc. v. Trump*, 607 U.S. 229 (2026).

¹⁷ For example, it remains to be seen whether and how courts will ultimately undo the tariffs that were passed on to and paid by consumers and businesses, having been held to be illegally imposed. *See, e.g., Scott Lincicome et al., IEEPA Tariff Refunds Are Far From Ideal—and Could Get Farther*, CATO AT LIBERTY (Apr. 21, 2026), <https://www.cato.org/blog/ieepa-tariff-refunds-are-far-ideal-could-get-farther> (discussing inadequacies of refunds even to businesses that paid the government, without regard to passing on those costs to other businesses and consumers) [<https://perma.cc/U3YY-NVE4>]; Laura Curtis et al., *Companies Quietly Chase Billions in Trump Tariff Refunds as Lawsuits and Politics Mount*, L.A. TIMES (May 26, 2026), <https://www.latimes.com/business/story/2026-05-26/companies-quietly-chase-billions-in-trump-tariff-refunds-as-lawsuits-politics-mount> (discussing customer class actions against businesses directly receiving refunds from the U.S. government) [<https://perma.cc/7FJJ-7YTN>].

¹⁸ 145 S. Ct. 2643, 2643 (2025).

¹⁹ *New York v. McMahon*, 784 F. Supp. 3d 311, 374 (D. Mass. 2025).

²⁰ *New York v. McMahon*, No. 25-1495, 2025 WL 1503501, at *1 (1st Cir. May 27, 2025); *Somerville Pub. Schs. v. McMahon*, 139 F.4th 63, 67 (1st Cir. 2025).

²¹ *McMahon*, 784 F. Supp. 3d at 374.

²² *Id.* at 352, 356–61.

actions followed a Trump Administration executive order²³ and directive,²⁴ which the preliminary injunction also prohibited from being carried out or reinstated under a different name,²⁵ and had resulted in a reduction in force “that impacted approximately half” of the Education Department’s employees and that transferred “certain functions out of the Department.”²⁶ As the district court noted, “President Trump has made his intention to dismantle the [Education Department] publicly well-known, referring to the Department as a ‘big con job’ and saying he would ‘like to close it immediately.’”²⁷ And as the court also noted, “Defendants argue that the [reduction in force] was implemented to improve ‘efficiency’ and ‘accountability’ in the Department [and t]he record abundantly reveals that Defendants’ true intention is to effectively dismantle the Department without an authorizing statute” of Congress.²⁸

On statutory interpretation, the district court made short work of the Trump Administration’s arguments. The actions were likely *ultra vires* because, “[a]s *Amici* Members of Congress explain, no statute grants the Executive the authority to dismantle the Department because Congress has passed no statute that expressly authorizes the Executive to dissolve the Department or transfer its congressionally mandated responsibilities to other agencies.”²⁹ Furthermore, the district court noted that the “simple proposition that the President may not, *without Congress*, fundamentally reorganize the federal agencies is not controversial.”³⁰

On whether the statutes affirmatively prohibited the relevant actions—in addition to not granting the agency power to adopt them—the district court apparently provided no deference to the agency, concisely dismissing the Administration’s arguments and interpretations:

Defendants have not pointed to any case that indicates that the Secretary’s effective dismantling of the [Education] Department

²³ Exec. Order No. 14,242, 90 Fed. Reg. 13,679 (Mar. 20, 2025) (“The Secretary of Education shall, to the maximum extent appropriate and permitted by law, take all necessary steps to facilitate the closure of the Department of Education and return authority over education to the States and local communities while ensuring the effective and uninterrupted delivery of services, programs, and benefits on which Americans rely.”). Note that because the executive order is limited to what is permitted by law, it does not on its face require or authorize any actions that are not so permitted, thereby—in theory, if not in practice—avoiding any direct constitutional conflict.

²⁴ See *McMahon*, 784 F. Supp. 3d at 323 (“On March 21, 2025, President Trump further announced that the federal student loan portfolio as well as the special needs programs would be transferred out of the [Education] Department.”); Cory Turner, *Trump Says Education Department Will No Longer Oversee Student Loans, ‘Special Needs,’* NPR (Mar. 21, 2025, 7:16 PM), <https://www.npr.org/2025/03/21/nx-s1-5336330/trump-education-department-student-loans-special-education-fsa> [<https://perma.cc/G3B3-GRS6>].

²⁵ *McMahon*, 784 F. Supp. 3d at 374.

²⁶ *Somerville Pub. Schs.*, 139 F.4th at 67.

²⁷ *McMahon*, 784 F. Supp. 3d at 333.

²⁸ *Id.* at 323.

²⁹ *Id.* at 352–53 (internal quotation marks omitted).

³⁰ *Id.* at 353 (internal quotation marks and citation omitted).

is within her reorganization powers under [20 U.S.C.] § 3473. ... [T]o the extent that the Agency Defendants' actions are an effective dismantling of the Department, I find that those actions are contrary to the mandate [of the Department of Education Organization Act (DEOA)] that the Department itself must exist—not just in name only, but to carry out the functions outlined in the DEOA and other relevant operating federal statutes.³¹

Finally, regarding the APA's requirement of non-arbitrary decision-making, the district court found the government's articulated justifications entirely lacking:

None of these statements amount to a reasoned explanation, let alone an explanation at all. Indeed, the March 11 Directive contains two contradictory positions. It states that the goal of

³¹ *Id.* at 359–60. Similarly, but more narrowly, another district court preliminarily enjoined the reduction in force, holding that it adversely affected the ability of the Education Department's Office of Civil Rights (OCR) to perform its statutory duties and to "promptly" respond to complaints. *Victim Rights L. Ctr. v. U.S. Dep't of Educ.*, No. 25-11042-MJJ, 2025 WL 1704311, at *5, *11, *14–15 (D. Mass. June 18, 2025). As that court provided:

Overall, the [reduction in force] leaves OCR with the capacity to address only a small fraction of the complaints that it receives, making it impossible for OCR to comply with its statutory and regulatory obligations. ... Plaintiffs challenge a discrete decision by Defendants to terminate half of OCR's staff, as part of the [reduction in force], and shut down seven out of twelve of its offices. ... Plaintiffs have shown a likelihood of success on the merits on their claim that the [reduction in force] is arbitrary and capricious under the APA. ... Plaintiffs are likely to succeed on the merits of their claim that Defendants' actions are contrary to law under the APA. ... First, by reducing the staff necessary to fulfill OCR's obligations, Defendants have acted contrary to Title VI and Title IX's mandates requiring the OCR to enforce antidiscrimination provisions. ... Second, OCR's own regulations require it to "prompt[ly]" investigate complaints of alleged violations of those statutes, or of Section 504 or Title II. ... Plaintiffs are likely to succeed on their *ultra vires* claims.

Id. at *15. In contrast, another district court held that the plaintiffs' challenges to the reduction in force's effects and the closing of various OCR field offices did not adequately prove that the Education Department was no longer currently able to perform specific statutory functions, nor currently violating its duty to act "promptly," and thus could not be redressed under the APA. *See Carter v. U.S. Dep't of Educ.*, No. 25-0744 (PLF), 2025 WL 1453562, at *8 (D.D.C. May 21, 2025) ("Unfortunately for plaintiffs, the evidence they offer does not support their claim that OCR is failing to satisfy its statutory obligations; indeed, it unequivocally shows that OCR is still investigating complaints. ... In sum, the challenged agency actions are not directly in violation of the Department's statutory and regulatory obligations, and do not directly prevent OCR from complying with its statutory and regulatory requirements. As a result, plaintiffs have not been injured by the Department's actions themselves.").

the [reduction in force] is to improve the Department's "efficiency" but also states that the [reduction in force] has been taken to further the Department's "final mission"—which is, incontrovertibly, its closure. ... There is no indication ... how any of those decisions further Defendants' purported goals of efficiency or effectiveness of the Department.³²

Accordingly, and to prevent irreparable harm to the plaintiffs and after finding the actions taken to be arbitrary and capricious, the district court refused to remand the case to the agency for a further and better explanation of its reasons for acting, particularly as the court had also found the action contrary to law and thus no subsequent explanation could justify the action.³³

On appeal to the First Circuit, after dismissing the government's arguments that the plaintiffs lacked standing and other jurisdictional challenges,³⁴ the court dismissed the Administration's statutory and APA arguments as not making the required "strong showing" of likely success on the merits:

[T]he appellants do not even attempt to engage with the District Court's record-based findings about the extent of the [reduction in force] or the intent behind both it and the transfer of functions to shut down the Department. Nor do the appellants in making that assertion acknowledge, let alone meaningfully dispute, the District Court's record-based findings about the disabling impact of those actions on the Department's ability to carry out statutorily assigned functions. Rather, the assertion merely favorably characterizes the actions found to have been contrary to law and arbitrary and capricious as run-of-the-mill personnel decisions.³⁵

Accordingly, the First Circuit denied the stay, emphasizing that "there is generally no public interest in the perpetuation of unlawful agency action."³⁶

On appeal to the Supreme Court, the six justices stayed the injunction without any explanation.³⁷ The three liberal justices thought the case important enough to dissent and explain their position in an opinion. They noted the very high stakes involved and reaffirmed the constitutional holdings of the district court that the Trump Administration violated the executive branch's constitutional duties in terms that implicitly and harshly criticize their colleagues for violating their own constitutional duties:

When the Executive publicly announces its intent to break the law, and then executes on that promise, *it is the Judiciary's duty*

³² *McMahon*, 784 F. Supp. 3d at 357–58.

³³ *Id.* at 357–60.

³⁴ *Somerville Pub. Schs.*, 139 F.4th at 68–72.

³⁵ *Id.* at 72.

³⁶ *Id.* at 76 (internal quotation marks omitted).

³⁷ *McMahon*, 145 S. Ct. at 2643.

to check that lawlessness, not expedite it. Two lower courts rose to the occasion, preliminarily enjoining the mass firings while the litigation remains ongoing. Rather than maintain the status quo, however, this Court now intervenes, lifting the injunction and permitting the Government to proceed with dismantling the Department. *That decision is indefensible.* It hands the Executive the power to repeal statutes by firing all those necessary to carry them out. *The majority is either willfully blind to the implications of its ruling or naive, but either way the threat to our Constitution's separation of powers is grave.* Unable to join in *this misuse of our emergency docket*, I respectfully dissent. ...

The President ... lacks unilateral authority to close a Cabinet-level agency. Congress created the Department, and only Congress can abolish it. The President, too, may not refuse to carry out statutorily mandated functions assigned to the Department, for he must “take Care that the Laws be faithfully executed.” ...

Rather than contest these bedrock principles, the Government below contended that the mass terminations were not part of any planned closure, but instead simply intended to “cut bureaucratic bloat.” ... The record unambiguously refutes that account.³⁸

In judicial speak, that means that the liberal justices thought that the government was lying to the courts.

Of greater relevance here, the liberal justices, like the judges below, thought the Education Department's actions were both *ultra vires* and prohibited by the relevant statutes:

The Secretary, moreover, unquestionably exceeded Congress' statutory limits on her authority to reorganize the Department. Congress has barred the Secretary from “alter[ing]” functions assigned to the Department by its organic statute and from “abolish[ing] organizational entities” established by law. ... The Secretary's failure to preserve statutorily mandated functions ... contravened that statutory constraint.³⁹

Finally, the liberal justices dismissed the “grab bag of jurisdictional and remedial arguments [asserted] to support [the federal government's] bid for

³⁸ *Id.* at 2644–49 (Sotomayor, J., joined by Kagan and Jackson, JJ., dissenting.) (emphasis added) (quoting the Constitution's Take Care Clause); *see also* U.S. CONST. art. II, § 3, cl. 5.

³⁹ *Id.* at 2650 (citations omitted).

emergency relief⁴⁰ and concluded that the equities clearly favored denying emergency relief.⁴¹

To the extent that the Supreme Court's conservative majority is implicitly announcing previously unknown legal principles, staying lower court decisions without articulating the Court's rationale is certainly the worst possible way to do it.⁴² And without such implicit changes in longstanding legal principles, the Court's ruling seems impossible to justify: The equities would clearly compel preserving the injunction that the lower court imposed.⁴³ Even if the Education Department's actions were somehow found not to be arbitrary and capricious, absent new constitutional executive powers, new statutory interpretation, or new jurisdictional or remedial principles, the challenged actions would remain *ultra vires* and contrary to statute.

We do not know the Supreme Court majority's thinking because the Court has declined to articulate its reasoning. But none of the lower courts even attempted to analyze whether the President had independent authority to disband the Education Department and fire half of its employees. Again, the district court expressly stated that the lack of such authority was not controversial, meaning that it was not *reasonably* disputable. Thus, this case does not present a direct conflict between the President and Congress. Rather, it is a proxy war, with the President encouraging the Education Department to disobey Congress. It remains, like many of the pending disputes, a judicial question of deference to agency interpretations and actions, and not an issue of the President's constitutional powers or any purported need for the President to exercise unilateral control over agencies—that is to have a “unitary executive”—that is at issue in many other pending cases.⁴⁴ We will only learn otherwise if the case reaches the Court on the merits.

⁴⁰ *Id.* at 2651–53.

⁴¹ *See id.* at 2653 (“The Government has continued to press a plainly pretextual explanation for the mass firings in court, even as the Executive makes inconsistent statements to the public. ... That the majority sees fit to repay that obfuscation with emergency equitable relief is troubling.”) (internal citation omitted).

⁴² *See, e.g.,* CHAUTAUQUA INST., *Robert H. Jackson Lecture – Kim Lane Scheppele*, at 01:08:50 (YouTube, Aug. 11, 2025), <https://www.youtube.com/watch?v=JXwQYL8d6kc> (“We don’t know what the law is. The Supreme Court changes its mind every day, with no warning and no reasons. ... This is really lawless behavior and that’s why this is dangerous.”) [<https://perma.cc/DA78-QLEW>].

⁴³ Even if compelled reinstatement of illegally dismissed personnel were somehow beyond a court's power, the First Circuit rejected arguments that such a limitation would prevent courts from prohibiting an unauthorized reorganization of a department through massive personnel dismissals that would preclude it from carrying out its statutory functions. *See* *Somerville Pub. Schs. v. McMahon*, 139 F.4th 63, 73–74 (1st Cir. 2025).

⁴⁴ *See, e.g.,* Jonathan Hafetz & David Sloss, *A.A.R.P. v. Trump: The Uncertain Future of Presidential Power in Removal Cases*, in *SCOTUS 2025*, *supra* note *; Jonathan D. Shaub, *Wilcox v. Trump: The Death Rattle of the Independent Agency*, in *SCOTUS 2025*, *supra* note *.

By the time any decision on the merits could be reached by the Court that holds the Education Department's actions to be illegal,⁴⁵ most of the employees likely will have moved on or may refuse reinstatement, and the public will have incurred numerous harms—including schools and businesses shutting down—from the Education Department's failure to provide the statutorily contemplated grants and services. This is not normal judicial process but the likely intended consequence of the Supreme Court's exercise of judicial power. Small wonder that the liberal dissenters were harsh with their colleagues.

Since the Supreme Court's decision, the Education Department has continued to suffer from staffing and funding cuts and from dismantling of its offices with the U.S. Department of Labor taking on some of its functions and other agencies taking on additional functions.⁴⁶ As one commentary put it:

Critics say a combination of technical problems, communication lapses, bureaucratic hurdles and scant preparation related to new grant payment systems snarled the process of distributing money from a \$1.4 billion program for career and technical education initiatives for schools and local governments. The record-breaking government shutdown didn't help, either.

Now state education leaders, Democratic lawmakers and former Biden administration officials say recent issues with distributing funds are likely a preview of bigger problems that could unfold when the Trump administration starts to outsource more of the Education Department's work to other agencies.

“The shift is like asking states to fly with no air traffic control”⁴⁷

And the plaintiffs in the *McMahon* case have filed an amended complaint to further contest the past actions by the Education Department as well as

⁴⁵ That is, unless the Supreme Court on merits review were somehow to identify new inherent executive powers or were to adopt new interpretive principles regarding the scope and meaning of existing, delegated powers, which would somehow justify rather than prohibit the actions at issue in *McMahon*.

⁴⁶ See U.S. Dep't of Educ., U.S. Department of Education Announces Six New Agency Partnerships to Break Up Federal Bureaucracy (Nov. 18, 2025), <https://www.ed.gov/about/news/press-release/us-department-of-education-announces-six-new-agency-partnerships-break-federal-bureaucracy> [<https://perma.cc/7EY9-JD2W>]; see also Aditi Sridhar et al., *Week in Review*, REGUL. REV. (Nov. 21, 2025), <https://www.theregreview.org/2025/11/21/week-in-review-388/> [<https://perma.cc/KQ9B-NAFL>]; Roger Riddell, *Dive Brief: Labor Department to Take on Day-to-Day Management of CTE Programs*, K-12 DIVE (July 15, 2025), <https://www.k12dive.com/news/education-labor-department-management-CTE-workforce-development/753130/> [<https://perma.cc/JN8F-YHDZ>].

⁴⁷ Juan Perez Jr. et al., *The Education Department Gave Another Agency Power to Distribute Its Money. It Hasn't Gone Well*, POLITICO (Nov. 24, 2025), <https://www.politico.com/news/2025/11/24/the-education-department-gave-another-agency-power-to-distribute-money-it-hasnt-gone-smoothly-00663976> [<https://perma.cc/2KLK-8X4A>] (quoting Richard Kincaid, Assistant State Superintendent for College and Career Pathways, Md. State Dep't of Educ.).

the additional actions taken and harms incurred since the Supreme Court stayed the preliminary injunction, and it appears that they will need to continue to amend their complaint further in light of more recent actions by the Department.⁴⁸ Even more recently, the district court authorized extensive discovery regarding the actual basis for the reductions in force, finding that the public statements made by the Department provided “enough prima facie evidence of pretext to warrant a finding of bad faith.”⁴⁹

We can expect many more similar conflicts so long as the conservative majority continues to defer implicitly or explicitly to the Trump Administration’s lawless statutory interpretations and pretextual and arbitrary policies, or articulates new executive powers and interpretive principles, on both the Court’s emergency and the Court’s regular merits dockets. That is, unless and until the executive branch ceases to act lawlessly, pretextually, and in bad faith.

⁴⁸ New York v. McMahon, First Amended Complaint, No. 1:25-cv-10601-MJJ, D. Mass. (Nov. 25, 2025); Motion for Leave to Amend, *McMahon*, No. 1:25-cv-10601-MJJ (D. Mass. Dec. 2, 2025).

⁴⁹ New York v. McMahon, No. 25-10601-MJJ, 2026 WL 622484, at *7 (D. Mass. Feb. 11, 2026).

* * *