

The Honorable Jamal N. Whitehead

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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

STATE OF WASHINGTON, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, et al.,

Defendants.

CASE NO. 2:25-cv-00869

**AMICI BRIEF OF WEST
VIRGINIA AND 16 STATES IN
SUPPORT OF DEFENDANTS'
MOTION TO DISMISS**

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I. INTRODUCTION

America’s energy situation is dire. With demand high, the grid is severely strained. And because demand is quickly outpacing supply, electricity prices are soaring. Average Americans are suffering as a result. Without intervention, the future looks even bleaker. Consumption projections are grim. Combined with evolving weather conditions, Americans should expect the worst. Unless America rapidly invests in our energy infrastructure, more blackouts will occur, threatening the well-being of the country’s most vulnerable. And were all that not enough, America’s geopolitical power also hangs in the balance.

Seeing all this, the President responded. Shortly after taking office, he issued an executive order declaring a national emergency and directing federal agencies to expedite energy-related processes. *See Declaring a National Energy Emergency*, Exec. Order No. 14156, 90 Fed. Reg. 8433 (Jan. 29, 2025). His goal was clear: to strengthen the grid to meet the nation’s growing demand for energy. “The looming energy crisis requires federal, regional, and state policymakers to embrace reforms that put consumers first and let efficient solutions win.” Brian Deese & Lisa Hansmann, *The Coming Electricity Crisis*, FOREIGN AFFS. (Sept. 9, 2025), <https://tinyurl.com/y4un7af4>. The declaration was meant to make it easier for those reforms to happen.

For many different reasons, the Court should reject Plaintiffs’ request to unwind that good work. The emergency is real. And in passing the National Emergencies Act, Congress intended the President to address problems like these. The Act’s language bespeaks this broad authority. Apart from the statute’s text, the Constitution demands caution from the Court before it second-guesses the President’s judgment in traditional executive realms like foreign policy and national security.

This Court should decline to override the President’s considered judgment. It should instead dismiss the Amended Complaint.

1 **II. INTERESTS OF AMICI STATES**

2 The energy crisis endangers millions of Americans, and Amici States and their citizens are
3 among those facing serious harms. Left unaddressed, the crisis will impose a heavy toll on Amici
4 States and their people. *See, e.g.,* Kirstin Marcell, *Uniting States to Save the Mid-Atlantic From*
5 *an Impending Energy Crisis*, REALCLEAR ENERGY (Oct. 29, 2025), <https://tinyurl.com/mtmba4hs>.
6 So Amici States, West Virginia, Alabama, Alaska, Florida, Georgia, Idaho, Indiana, Iowa, Kansas,
7 Montana, Nebraska, North Dakota, Oklahoma, South Carolina, South Dakota, Texas, and
8 Wyoming write to protect both their economies and the health and welfare of their citizens.

9 A more foundational problem compels the States to speak up, too. The executive branch—
10 and the federal government writ large—are the parties constitutionally empowered and practically
11 equipped to handle problems that threaten the entire nation’s security and economy. But if Plaintiff
12 States had their way, the federal government wouldn’t be able to uphold its end of the federalist
13 bargain. Worse still, the federal government’s powers would be at their *weakest* in times of crisis
14 when they should be *strongest*.

15 This upside-down system will not do. The Amici States thus write to explain exactly why
16 the President can and should address national problems like these.

17 **III. ARGUMENT**

18 The President properly declared a national emergency under the Act. *First*, a genuine
19 energy emergency exists. *Second*, the Act gives the President broad discretion to declare
20 emergencies. *Third*, separation of powers and federalism principles preclude judicial review here.

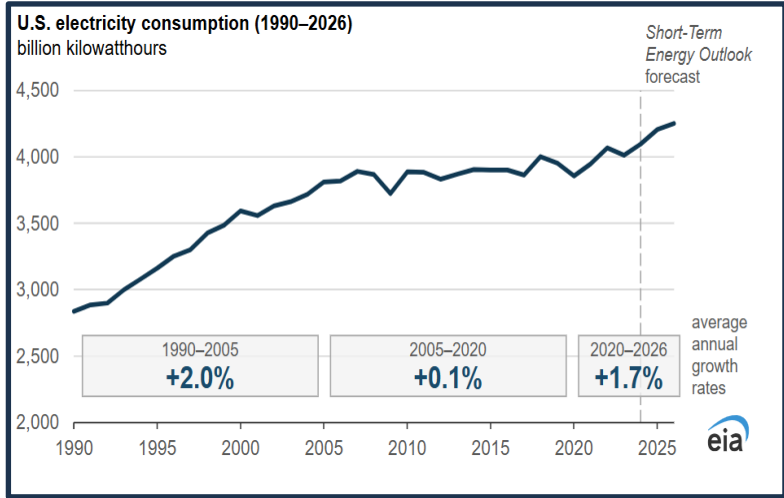
21 **A. America’s Energy Crisis Constitutes A Genuine Emergency.**

22 The United States faces an energy crisis. Demand is skyrocketing while the grid struggles
23 to keep pace. Costs are rising. Blackouts loom. Without immediate action, millions of Americans
24 will pay the price.

1 Plaintiff States ask this Court to ignore these facts. They concede that “energy production,
2 the infrastructure needed to support it, and a reliable and affordable supply of electricity are of
3 critical importance to both the States and the Nation.” Am. Compl. ¶ 3. They recognize that
4 “invocation of the Nation’s emergency authorities” would be an appropriate response to an energy
5 emergency. *Id.* Yet they claim no “actual emergenc[y]” is gripping the nation. *Id.* They seem to
6 reason that no emergency exists because production is high; they also take issue with the current
7 administration’s focus on the country’s most reliable energy sources. *Id.* ¶¶ 91-115. But neither
8 of these policy disagreements gives this Court a basis to reverse the President’s determination of
9 an emergency.

10 While “U.S. energy production is at an all-time high, and growing,” *Id.* ¶ 1, even this “all-
11 time high” isn’t enough. Consumption forecasts have shot up in recent years, so production must
12 grow even faster. *See* NAT’L MINING ASS’N, THE GRID RELIABILITY CRISIS COLLIDES WITH
13 SURGING POWER DEMAND (2024), <https://tinyurl.com/msdr8fcs>. In Georgia, for example, “the
14 projection of new electricity use for the next decade [is] now 17 times what it was only recently.”
15 Evan Halper, *Amid explosive demand, America is running out of power*, WASH. POST (Mar. 7,
16 2024), <https://tinyurl.com/2u8uvz52>. Arizona projects “it will be out of transmission capacity
17 before the end of the decade absent major upgrades.” *Id.* “In Oregon, Portland General Electric
18 ... doubled its forecast for new electricity demand over the next five years.” *Id.* PJM
19 Interconnection—the nation’s largest grid operator—recently “tripled its growth expectations ...
20 over the next decade.” NAT’L MINING ASS’N, *supra*, at 3. Electric utilities as a whole “have nearly
21 doubled their forecasts of how much additional power they’ll need by 2028.” Brad Plumer &
22 Nadja Popovich, *A New Surge in Power Use Is Threatening U.S. Climate Goals*, N.Y. TIMES (Mar.
23 14, 2024), <https://tinyurl.com/y5rz2xet>. Put simply, the nation is experiencing a “significant
24 acceleration of electricity demand.” U.S. DEPT. OF ENERGY, THE FUTURE OF RESOURCE
25 ADEQUACY 6 (2024), <https://tinyurl.com/mr3w22xm>.

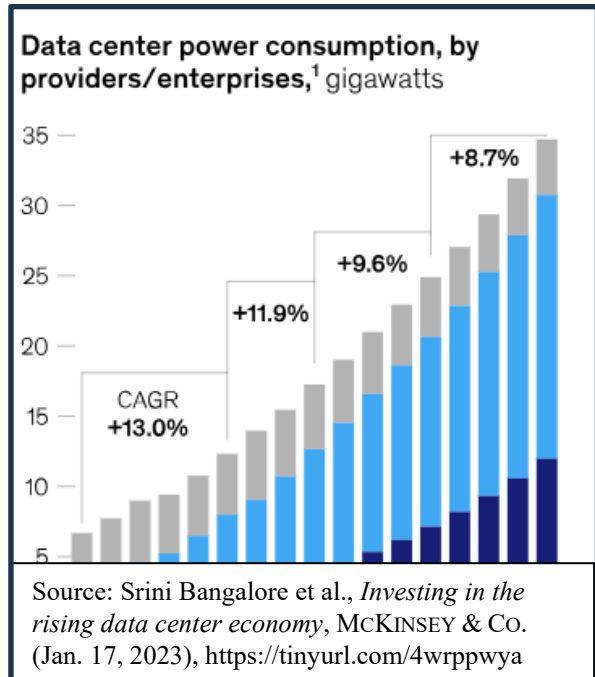
1 This “spike in electricity needs is unprecedented.” Alastair Green et al., *How data centers*
 2 *and the energy sector can satiate AI’s*
 3 *hunger for power*, MCKINSEY & CO.
 4 (Sept. 17, 2024),
 5 <https://tinyurl.com/3awdvbyz>.
 6 Power demand in the United States
 7 “has barely grown since 2007.” *Id.*
 8 So, the recent jump has put
 9 America’s grid “under more
 10 pressure than ever before.” Samuel
 11 Newell, *The US is facing*
 12 *unprecedented load growth. Here’s*



Source: *After More than a decade of little change, U.S. electricity consumption is rising again*, EIA (May 13, 2025), <https://tinyurl.com/5as68e86>

13 *how we ensure resource adequacy.*, UTIL. DIVE (April 17, 2025), <https://tinyurl.com/3bm47xah>.
 14 If America hopes to keep up, we “will have to expand [the grid] more than five times faster than
 15 in the previous two decades.” *Id.*

16 Demand isn’t going to slow down, either.
 17 A “surge of Artificial Intelligence” is “turning
 18 data centers into giant energy users,” largely
 19 driving the rise in demand. Helen Kou, *Power*
 20 *for AI: Easier Said Than Built*, BLOOMBERGNEF
 21 (April 15, 2025), <https://tinyurl.com/yfkykner>.
 22 Over the next decade, experts project that those
 23 data centers will “more than double” their share
 24 of the nation’s energy demand. *Id.* “The power
 25 needs of data centers are expected to grow to

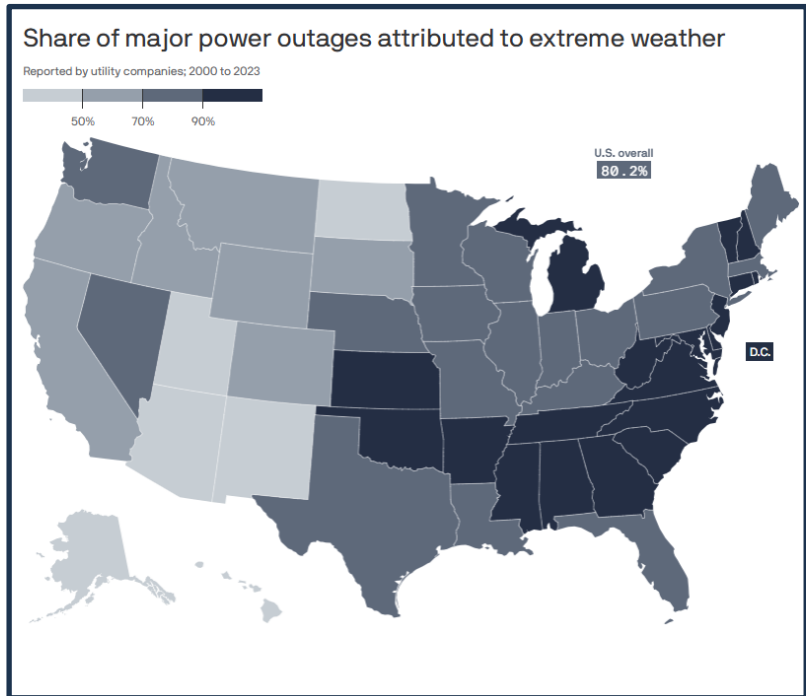


Source: Srinu Bangalore et al., *Investing in the rising data center economy*, MCKINSEY & CO. (Jan. 17, 2023), <https://tinyurl.com/4wrppwya>

1 about three times higher than current capacity by the end of the decade.” Green, *supra*. “Meeting
 2 this demand will require considerably more electricity than is currently produced in the United
 3 States.” *Id*. So “all regions of the country will need massive amounts of new resources and
 4 increased grid capability.” Newell, *supra*. Take just northern Virginia. It “needs the equivalent
 5 of several large nuclear power plants to serve all the new data centers planned and under
 6 construction.” Halper, *supra*.

7 Extreme weather poses a threat to an already strained energy grid, too. In recent years,
 8 “the frequency and severity of ... weather events” has risen. *Strengthening the Grid Against*
 9 *Extreme Weather*, NCSL (Jan. 4, 2025), <https://tinyurl.com/yjdtxf5m>. Dangerous weather events

10 like “[w]ildfires, winter storms,
 11 and tornadoes threaten the grid’s
 12 reliability and increase the risk of
 13 power outages.” *Id*. These events
 14 affect the entire country. One
 15 study shows that across a two-
 16 year span, over 73% of counties
 17 suffered a blackout related to a
 18 severe weather event. *See*
 19 Nathaniel Scharping, *U.S. Power*
 20 *Grids are Vulnerable to Extreme*



21 *Weather*, EOS (Feb. 21, 2025),
 22 <https://tinyurl.com/5xfbzyzc>.

Source: Andrew Freedman, *Extreme weather is making power outages trend higher*, AXIOS (Apr. 24, 2024), <https://tinyurl.com/bdhhunzs>

23 And “age-related grid failure” has
 24 amplified extreme weather’s effects; these failures will “continue to cause more weather-related
 25 outages” without “targeted preparedness and investment strategies.” Vivan Do et al.,

1 *Spatiotemporal patterns of individual and multiple simultaneous severe weather events co-*
2 *occurring with power outages in the United States, 2018-2020*, PLOS CLIMATE (Jan. 22, 2025),
3 <https://tinyurl.com/a6aeykr4>.

4 The practical result: power is getting expensive. “Electricity costs are rising nationwide.”
5 Alex Fitzpatrick, *Electricity costs rise amid data center boom*, AXIOS (Aug. 4, 2025),
6 <https://tinyurl.com/38rtpmvx>. In 2025, the nationwide average retail residential price of electricity
7 increased 6 percent. *End Use: December 2025*, EIA (February 24, 2026),
8 <https://tinyurl.com/53d7jbhp>. And higher costs hinder the economy, threatening the growth of
9 emerging technologies and putting the nation at risk of falling behind globally. *See Kou, supra*.
10 This affordability problem will only get worse, as “power and grid capacity constraints could
11 hamstring” technological advancements and thus “jeopardize US economic and geopolitical
12 leadership.” Martin Stansbury et al., *Can US infrastructure keep up with the AI economy?*,
13 DELOITTE (June 24, 2025), <https://tinyurl.com/3ptsraae>. Shoring up the grid to reduce electric
14 costs “will be crucial to the international competitiveness and economic prosperity of the United
15 States.” Nicol Turner Lee & Darrell M. West, *The future of data centers*, BROOKINGS (Nov. 5,
16 2025), <https://tinyurl.com/mrxdwvct>.

17 The energy crisis isn’t just a matter of dollars and cents, though. Energy shortages mean
18 more power outages. And yes, “[p]ower outages are more than just an inconvenience.” *Weather-*
19 *related Power Outages Rising*, CLIMATE CENT. (April 24, 2024), <https://tinyurl.com/mryctvbx>.
20 They “disrupt communications, water utilities, and transportation,” “cause food spoilage and water
21 contamination,” “prevent use of medical devices,” and even “cause injuries, disease or death.”
22 FEMA, *Be Prepared for a Power Outage* (2023), <https://tinyurl.com/5ftj4x4e>. For these reasons,
23 experts routinely “underscore[] the public health importance of ensuring electric grid resiliency.”
24 Christine Dominianni et al., *Health Impacts of Citywide and Localized Power Outages in New*
25 *York City*, 126 ENV’T HEALTH PERSPS. 6, 067003-1 (2018). Yet “blackouts could increase by 100

1 times in 2030 if the U.S. continues to shutter reliable power sources and fails to add additional
 2 firm capacity.” *Department of Energy Releases Report on Evaluating U.S. Grid Reliability and*
 3 *Security*, DEPT. OF ENERGY (July 7, 2025), <https://tinyurl.com/3jwanabv>. These resiliency and
 4 reliability concerns explain why it makes sense to prioritize traditional fuels. Coal, oil, and gas
 5 afford consistent “baseload” power in a way that other energy sources can’t. Hampden Macbeth,
 6 *Nuclear Chaos: The Exelon-Phi Merger and What It Means for Nuclear Power in the United States*
 7 *and the EPA’s Carbon Emission Rules*, 28 GEO. ENV’T L. REV. 731, 737 (2016),

8 Even Plaintiff States are at risk from this crisis. A recent report “indicate[d] Washington
 9 could face an energy crisis within five years as its power capacity approaches its limits.” Taylor
 10 Winkel, *WA nears energy crisis as Amazon funds nuclear reactors, sparking controversy*, FOX 13
 11 SEATTLE (Oct. 28, 2024, 1:34 PM), <https://tinyurl.com/3w97r4xm>; *see also* Amanda Zhou, *PNW*
 12 *could face energy shortage during extreme conditions, report says*, SEATTLE TIMES (Oct. 21, 2025,
 13 10:00 AM), <https://tinyurl.com/5pzypsvw> (indicating that entire Pacific Northwest region are at
 14 risk of energy shortage in extreme conditions). And in its 2025 summer reliability assessment,
 15 MISO—the grid operator for 15 States including Illinois, Michigan, Minnesota, and Wisconsin—
 16 warned of short-term risk of “running low on electricity” and a “high risk of shortfalls in the next
 17 10 years.” Sarah Montalbano, *MISO at ‘elevated risk’ of blackouts this summer, warns grid*
 18 *monitor*, AM. EXPERIMENT (May 16, 2025) (cleaned up), <https://tinyurl.com/hdatazjf>. Plaintiff
 19 States’ citizens are feeling the pressure, too. From 2019 to 2024, “California experienced a
 20 meteoric 58.45% [electricity price] increase, ... and New England residents saw anything from
 21 20% to nearly 40% increases in their electricity bills.” Heath Knakmuhs, *Pipeline Bottlenecks,*
 22 *Increasing Demand Driving Up Electricity Prices*, U.S. CHAMBER OF COM. (Apr. 28, 2025),
 23 <https://tinyurl.com/45f7k3y7>. “Washington’s average retail price for residential electricity
 24 climbed from 12.14 cents per kilowatt hour in May 2024 to 13.67 cents in May 2025 — a 12.6%

1 increase.” Melissa Santos, *Higher power costs hit Washington as data center demand looms*,
2 AXIOS SEATTLE (Aug. 12, 2025), <https://tinyurl.com/25np34cx>.

3 A failing electrical grid also directly threatens America’s national security and undermines
4 its foreign policy objectives. Modern military operations depend on reliable electricity. *See*
5 Robert Walton, *As US defense facilities face rising outage risks, regional transmission could help:*
6 *ACORE panel*, YAHOO! FIN. (Dec. 6, 2023), <https://tinyurl.com/ypx5ysm8> (“About 98% of DOD
7 installations depend on private energy to function.”). Without a resilient grid, defense readiness
8 suffers, leaving the nation vulnerable to adversaries who might exploit our infrastructure
9 weaknesses. Energy dependence on foreign nations, particularly hostile actors, compromises
10 America’s ability to act independently on the world stage. *See Foreign Policy and National*
11 *Security Implications of Oil Dependence: Hearing before the H. Comm. on Foreign Affs.*, 110th
12 Cong. 17-20 (2007), <https://tinyurl.com/3bzxtbb>. When the United States cannot meet its own
13 energy needs, it must negotiate from a position of weakness, giving leverage to countries like
14 China and Russia. *See Oil Dependence and Economic Risk: Hearing Before the S. Comm. on*
15 *Foreign Relations*, 109th Cong. (2006), <https://bit.ly/4bcU6Xz>. Moreover, America’s global
16 leadership depends on demonstrating technological superiority and economic strength. A nation
17 that cannot keep its own lights on loses credibility as a superpower. Allies question America’s
18 reliability, and adversaries see opportunity. Energy security is thus inseparable from national
19 security.

20 And in terms of immediate need, this emergency aligns with similar emergency
21 declarations from Presidents of all political stripes. For decades, Presidents—Republicans and
22 Democrats—have declared emergencies involving “exceptional” and “severe” ongoing situations;
23 “acuteness” isn’t treated as a material issue. *See Kelly Bridges, Water Security in the Wake of*
24 *Arizona v. Navajo Nation: How the President’s Emergency Powers Can Provide a Path Forward*
25 *for the Navajo Nation*, 2024 U. CHI. LEGAL F. 399, 416 (2024). In 2019, for instance, President

1 Trump declared a national emergency regarding the flow of drugs into the United States from its
2 southern border. *See Declaring a National Emergency Concerning the Southern Border of the*
3 *United States*, Proclamation No. 9844, 84 Fed. Reg. 4949 (Feb. 20, 2019). In 1994, President Bill
4 Clinton declared a national emergency to slow the proliferation of weapons of mass destruction.
5 *See Proliferation of Weapons of Mass Destruction*, Exec. Order No. 12938, 59 Fed. Reg. 59099
6 (Nov. 16, 1994). Other examples abound. *E.g.*, *Declaring a National Emergency Concerning the*
7 *Novel Coronavirus Disease (COVID-19) Outbreak*, Proclamation No. 9994, 85 Fed. Reg. 15337
8 (Mar. 18, 2020); *Declaration of a 2009 H1N1 Influenza Pandemic National Emergency*,
9 Proclamation No. 8443, 74 Fed. Reg. 55439 (Oct. 28, 2009). Ultimately, the intensity and degree
10 of harm informs whether it is emergent, and this situation is about as intense and harmful as they
11 come.

12 In fact, President Trump isn't the only president to recognize a current, pressing energy
13 emergency. In 2022, President Joe Biden declared an emergency addressing "the threats to the
14 availability of sufficient electricity generation capacity to meet expected customer demand."
15 *Declaration of Emergency and Authorization for Temporary Extensions of Time and Duty-Free*
16 *Importation of Solar Cells and Modules From Southeast Asia*, Proclamation No. 10414, 87 Fed.
17 Reg. 35067 (June 9, 2022). In doing so, he recognized that "[e]lectricity is an essential part of
18 modern life," and "[e]ven isolated interruptions in electric service can have catastrophic health and
19 economic consequences." *Id.* at 35067. So just as President Trump says now, President Biden
20 agreed that "[a] robust and reliable electric power system is ... not only a basic human necessity,
21 but is also critical to national security and national defense." *Id.*; *see also*, *e.g.*, Cal. Exec. Dep't,
22 *Proclamation of a State of Emergency* (July 30, 2021), <https://tinyurl.com/5t2vtx6z>.

23 Plaintiff States also insist that no real emergency exists because the President has
24 purportedly not invested enough in alternative energy sources or direct-assistance grant programs.
25 *See Am. Compl.* ¶¶ 97-109. But that argument confuses the question of whether an emergency

1 *exists* with the separate question of how to *address* it. Plaintiff States’ differing policy preferences
 2 for how to solve the crisis don’t render the problem any less significant (or somehow deprive the
 3 President of statutory authority to act). Ultimately, “[h]ow the President chooses to exercise the
 4 discretion Congress has granted him is not a matter for [courts’] review.” *Dalton v. Specter*, 511
 5 U.S. 462, 476 (1994).

6 The energy crisis presents a national emergency.

7 **B. The President Has Broad Discretion To Declare A National Emergency.**

8 Plaintiff States concede that the President has the power to declare a national emergency.
 9 *See* Am. Compl. ¶ 21. But they claim the Act severely “cabin[s] the President’s emergency
 10 authority.” *Id.* ¶ 22. It does not—the Act’s “procedural limitations [a]re modest.” Timothy Meyer
 11 & Ganesh Sitaraman, *Presidential Regulation*, 42 YALE J. ON REG. 803, 832 (2025).

12 The Act grants the President wide authority to determine what constitutes a national
 13 emergency. During “the period of a national emergency,” it empowers the President “to declare
 14 such national emergency.” 50 U.S.C. § 1621(a). By the Act’s plain terms, the President—and he
 15 alone—decides what makes an emergency. *Id.* The law does not “define the term ‘emergency’
 16 [or] ... require that the powers invoked by the President relate to the circumstances giving rise to
 17 their emergency declaration[,] ... thereby le[aving] discretion in the hands of the President to
 18 determine such matters.” Rachel Riegelhaupt, *Manufactured Emergencies: The Crisis at the Core*
 19 *of the National Emergencies Act*, 23 N.Y.U. J. LEGIS. & PUB. POL’Y 277, 288 (2021).

20 Plaintiff States are right that the President’s power isn’t limitless. But they’re wrong about
 21 what those limits are. Congress didn’t place restrictions on the initial determination. Instead,
 22 Congress checked the President by reserving the power to terminate declared emergencies by joint
 23 resolution. *See* 50 U.S.C. § 1622(a)-(b).

24 With that limit in mind, President Trump is entitled to considerable deference. When he
 25 declares an emergency under the Act, he acts with the “express ... authorization of Congress.”

1 *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635 (1952) (Jackson, J., concurring). His
2 “authority is at its maximum, for it includes all that he possesses in his own right plus all that
3 Congress can delegate.” *Id.* For that reason, the President’s emergency declaration is “supported
4 by the strongest of presumption and the widest latitude of judicial interpretation.” *Dames & Moore*
5 *v. Regan*, 453 U.S. 654, 674 (1981) (citation omitted). Finding that the President cannot declare
6 this emergency “would mean that the Federal Government as a whole lacked the power” to do the
7 same. *Id.* Plaintiffs cannot shoulder that “heavy burden.” *Id.*

8 Moreover, “[t]he complex[,] subtle, and professional decisions as to” what constitutes a
9 national emergency are “essentially professional . . . judgments” that the President is best-equipped
10 to make. *Gilligan v. Morgan*, 413 U.S. 1, 10 (1973). Congress “can hardly have been expected to
11 anticipate in any detail” every crisis warranting a nationwide response. *Dames & Moore*, 453 U.S.
12 at 669. It makes sense then that Congress chose not to micro-manage the President on these
13 decisions. And Congress didn’t intend that the judiciary be the arbiter of emergency
14 determinations, either. The courts’ “lack of competence” in such rapidly evolving matters “is
15 marked.” *Rostker v. Goldberg*, 453 U.S. 57, 65 (1981). Indeed, since the founding, “all men of
16 sense” have “agree[d] in the necessity of an energetic Executive.” THE FEDERALIST NO. 70
17 (Alexander Hamilton). So “when it comes to collecting evidence and drawing factual inferences”
18 on emergencies, “respect for the Government’s conclusions is appropriate.” *Holder v.*
19 *Humanitarian Law Project*, 561 U.S. 1, 34 (2010).

20 President Trump stayed in his lane, too. The current energy crisis falls squarely within the
21 President’s authority over foreign policy. The Executive Order responds to the “active threat” of
22 an “inadequate energy supply and infrastructure.” 90 Fed. Reg. at 8433. That threat has
23 “diminished” the country’s “capacity to insulate itself from hostile foreign actors.” *Id.* And
24 Plaintiff States can’t dispute that “foreign policy” is the President’s domain. *Haig v. Agee*, 453
25 U.S. 280, 291 (1981). The President is the “sole organ of the federal government in the field of

1 international relations.” *United States v. Curtiss-Wright Exp. Corp.*, 299 U.S. 304, 320 (1936).
2 He can rightfully determine that the United States should work to remain energy independent lest
3 it weaken its standing on the world stage. By securing the “low vulnerability” of “vital energy
4 systems,” Aleh Cherp & Jessica Jewell, *The Concept of Energy Security: Beyond the Four As*, 75
5 ENERGY POL’Y 415, 418 (2014), America can protect both our nation’s continued international
6 leadership and its future economic growth.

7 The energy crisis also implicates “national security,” another “central Presidential
8 domain[.]” *Harlow v. Fitzgerald*, 457 U.S. 800, 812 n.19 (1982) (cleaned up). The crisis limits
9 our nation’s “defense industries” and “military preparedness” so severely that energy production
10 and reliability is a “pressing priority for the protection of the United States’ national ... security.”
11 90 Fed. Reg. at 8433. And what is “essential to national security” has traditionally been left up to
12 the President. *Winter v. NRDC*, 555 U.S. 7, 26 (2008). But at the very least, it is an
13 “uncontroversial principle” that “courts owe substantial deference to the” President’s “national
14 security policy determinations.” *Washington v. Trump*, 847 F.3d 1151, 1161 (9th Cir. 2017). Here
15 again, “the assurance of reliable supplies of energy, the ability to protect those supplies, and the
16 ability to deliver enough energy to meet operational needs”—is “critical for national security.”
17 Becky Norton Dunlop, *Economic Markets and Technological Advancements*, 7 FIU L. REV. 29,
18 35 (2011).

19 Since the Act’s passage, Congress seems to agree that the President should use emergency
20 powers to creatively solve novel, pressing problems. In the past, when presidents have acted as
21 President Trump did here, “Congress has not acted on the matter” or taken steps to remove this
22 power. *Am. Ins. Ass’n v. Garamendi*, 539 U.S. 396, 429 (2003). That longstanding acquiescence,
23 coupled with “the President’s independent authority in the areas of foreign policy and national
24 security,” means “congressional silence is not to be equated with congressional disapproval.” *Id.*
25 (cleaned up). This Court should not take it upon itself to act where Congress has chosen not to.

1 It's no surprise, then, that no court has ever been willing to overturn a President's
 2 emergency declaration. Jack Queen, *Trump US energy emergency order should withstand court*
 3 *challenges*, REUTERS (Jan. 22, 2025, 8:12 PM), <https://tinyurl.com/mksj4ufj>. So if this Court
 4 probes the President's declaration, it must do so "in a way that respects the President's Article II
 5 authority to execute the laws—that is, to exercise discretion and policymaking authority within the
 6 limits set by Congress and without undue judicial interference." *FCC v. Consumers' Rsch.*, 606
 7 U.S. 656, 703 (2025) (Kavanaugh, J., concurring). And "[a]ny rule of constitutional law that would
 8 inhibit the flexibility of the President to respond to changing world conditions should be adopted
 9 only with the greatest caution." *Trump v. Hawaii*, 585 U.S. 667, 704 (2018) (cleaned up).

10 Altogether, the Act's grant of emergency power is broad, and President Trump's order falls
 11 comfortably within its bounds.

12 **C. Separation of Powers and Federalism Principles Preclude Judicial Review.**

13 If all that weren't enough, the separation of powers and federalism likewise require this
 14 Court to dismiss.

15 The separation of powers demands that the Court tread lightly here. The President has
 16 broad Constitutional authority over the "sensitive and weighty interests of national security and
 17 foreign affairs." *Hawaii*, 585 U.S. at 708 (citation omitted). His determinations in those spheres
 18 are "judgment call[s]," so "courts traditionally have been reluctant to intrude upon" them. *Dep't*
 19 *of Navy v. Egan*, 484 U.S. 518, 529-30 (1988). "Judicial inquiry into" national security and foreign
 20 policy "raises concerns for the separation of powers." *Ziglar v. Abbasi*, 582 U.S. 120, 142 (2017)
 21 (cleaned up). And make no mistake: "[t]he energy area is replete with federal interests," including
 22 "national security interests." Pamela J. Stephens, *Implementing Federal Energy Policy at the State*
 23 *and Local Levels: 'Every Power Requisite,'* 10 B.C. ENV'T AFFS. L. REV. 875, 900 (1983). So
 24 courts "cannot substitute [their] own assessment for the Executive's predictive judgments on
 25 [foreign policy and national security] matters." *Hawaii*, 585 U.S. at 708. "It would be intolerable

1 that courts ... should review and perhaps nullify” such “political, not judicial” executive decisions.
2 *Chicago & S. Air Lines v. Waterman S. S. Corp.*, 333 U.S. 103, 111 (1948).

3 Likewise, federalism should steer this court away from reviewing the Executive Order.
4 “The production and transmission of energy is an activity particularly likely to affect more than
5 one State, and its effect on interstate commerce is often significant enough that uncontrolled
6 regulation by the States can patently interfere with broader national interests.” *Ark. Elec. Co-op.*
7 *Corp. v. Ark. Pub. Serv. Comm’n*, 461 U.S. 375, 377 (1983). Thus, the Supreme Court emphasizes
8 “the many vital considerations of national policy implicated in deciding how Americans will get
9 their energy.” *West Virginia v. EPA*, 597 U.S. 697, 729 (2022). Those national interests only
10 heighten in times of crisis.

11 Allowing Plaintiff States to override the President’s decision would effectively give them
12 a “veto power” that “easily could destroy the effectiveness of the [Act].” *First Iowa Hydro-Elec.*
13 *Co-op v. Fed. Power Comm’n*, 328 U.S. 152, 164 (1946). Such a balkanization of our
14 emergency-response system isn’t how our federalist system works. Indeed, “[t]he principal defect
15 of the Articles of Confederation” was that it created a government that “had to rely upon the
16 cooperation of state legislatures to achieve national goals.” *FERC v. Mississippi*, 456 U.S. 742,
17 791 (1982) (O’Connor, J., concurring in part and dissenting in part). To avoid repeating that
18 mistake, the Founders made federal law the “supreme Law of the Land.” U.S. CONST. art. VI, cl.
19 2. So the Act reigns supreme and empowers the President to declare national emergencies,
20 irrespective of what any individual State thinks.

21 IV. CONCLUSION

22 The Court should grant Defendant’s Motion to Dismiss.
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2 Respectfully submitted,

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