

**United States Court of Appeals
for the District of Columbia Circuit**

No. 25-5302

MEDIA MATTERS FOR AMERICA,

Plaintiff-Appellee,

v.

FEDERAL TRADE COMMISSION, *et al.*,

Defendants-Appellants.

*On Appeal from the United States District Court
for the District of Columbia in No. 1:25-cv-01959-SLS*

**BRIEF OF *AMICUS CURIAE*
SOCIETY FOR THE RULE OF LAW INSTITUTE
IN SUPPORT OF PLAINTIFF-APPELLEE**

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES, AND CORPORATE DISCLOSURE STATEMENT

A. Parties and Amici

Except for a coalition of media, research, and advocacy amici listed in Plaintiff-Appellee's brief, all parties, intervenors, and amici appearing before the District Court and in this Court are listed in Defendants-Appellants' brief.

B. Rulings Under Review

References to the rulings at issue appear in Defendants-Appellants' brief.

C. Related Cases

This case has not previously been before this Court or a district court other than the one that ruled below. Two cases involving similar issues and Media Matters were before this Court, *Media Matters for Am. v. Paxton*, No. 24-7059 (D.C. Cir.) and *Media Matters for Am. v. Bailey*, No. 24-7141 (D.C. Cir.), and the United States District Court for the District of Columbia: *Media Matters for Am. v. Paxton*, No. 1:24-cv-00147 (D.D.C.), and *Media Matters for Am. v. Bailey*, No. 1:24-cv-00147 (D.D.C.).

D. Rule 26.1 Disclosure Statement

The Society for the Rule of Law Institute is a not-for-profit advocacy organization. No publicly held corporation has any form of ownership interest in the Society for the Rule of Law Institute, which has no parent corporation and does not issue stock.

February 23, 2026

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TABLE OF CONTENTS

	Page
CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES, AND CORPORATE DISCLOSURE STATEMENT	i
A. Parties and Amici.....	i
B. Rulings Under Review	i
C. Related Cases	i
D. Rule 26.1 Disclosure Statement	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	v
GLOSSARY OF ABBREVIATIONS	viii
STATEMENT OF INTEREST	1
SUMMARY OF ARGUMENT	2
ARGUMENT	4
I. The FTC asserts the sole prerogative to decide not just <i>whether</i> but also <i>where</i> a target may obtain judicial review.....	4
A. <i>Whether</i> : The FTC wants the courthouse keys	4
B. <i>Where</i> : The FTC wants to pick the courthouse.....	8
II. The FTC’s proposed rule would allow forum shopping, undermining the rule of law and individual liberty	9
A. The FTC’s rule would imperil the rule of law by promoting forum (and judge) shopping.....	10
B. The FTC’s rule would infringe on liberty by exacerbating resource imbalances and giving the government the sole prerogative to shape evolving law	14
C. By contrast, Media Matters’ preferred rule minimizes imbalances and the risk of gamesmanship.....	17

III. Reinforcing the rule of law and protecting constitutional
rights will not open the floodgates 19

CONCLUSION 21

TABLE OF AUTHORITIES

	Page(s)
Cases:	
<i>A.A.R.P. v. Trump</i> , 778 F. Supp. 3d 882 (N.D. Tex. 2025), <i>appeal dismissed</i> , No. 25-10534, 2025 WL 1148141 (5th Cir. 2025), <i>cert. granted</i> , <i>judgment vacated</i> , 145 S. Ct. 1364 (2025).....	11
<i>Arizona v. Evans</i> , 514 U.S. 1 (1995).....	16
<i>Axon Enter., Inc. v. FTC</i> , 598 U.S. 175 (2023).....	7, 20
<i>Boumediene v. Bush</i> , 553 U.S. 723 (2008).....	6
<i>Clinton v. City of New York</i> , 524 U.S. 417 (1998).....	6-7
<i>Commonwealth v. Gebo</i> , 489 Mass. 757, 188 N.E.3d 80 (2022).....	12
<i>EPA v. Calumet Shreveport Refining, L.L.C.</i> , 145 S. Ct. 1735 (2025).....	13, 14
<i>Free Enter. Fund v. PCAOB</i> , 561 U.S. 477 (2010).....	7
<i>INS v. St. Cyr</i> , 533 U.S. 289 (2001).....	5
<i>J.A.V. v. Trump</i> , 781 F. Supp. 3d 535 (S.D. Tex. 2025).....	11
<i>Learning Res., Inc. v. Trump</i> , No. 24-1287, 2026 WL 477534 (U.S. Feb. 20, 2026).....	6
<i>McNary v. Haitian Refugee Ctr., Inc.</i> , 498 U.S. 479 (1991).....	7
<i>Media Matters for Am. v. Paxton</i> , 138 F.4th 563 (D.C. Cir. 2025).....	9

<i>Media Matters for Am. v. Paxton</i> , 732 F. Supp. 3d 1 (D.D.C. 2024)	9
<i>MedImmune, Inc. v. Genentech, Inc.</i> , 549 U.S. 118 (2007)	7
<i>Suri v. Trump</i> , 785 F. Supp. 3d 128 (E.D. Va. 2025)	14
<i>Thunder Basin Coal Co. v. Reich</i> , 510 U.S. 200 (1994)	20
<i>Trump v. J.G.G.</i> , 145 S. Ct. 1003 (2025)	10
<i>Tyson v. Trigg</i> , 50 F.3d 436 (7th Cir. 1995)	12
<i>United States v. Mendoza</i> , 464 U.S. 154 (1984)	16
<i>Webster v. Doe</i> , 486 U.S. 592 (1988)	5
 Statutes & Other Authorities:	
15 U.S.C. § 57b-1(e)	8
15 U.S.C. § 57b-1(h)	8
28 U.S.C. § 1391	20
Federal Rule of Appellate Procedure 29(a)(4)(E)	1
Daryl J. Levinson, <i>Rights Essentialism and Remedial Equilibration</i> , 99 Colum. L. Rev. 857 (1999)	5
<i>District Court Reform: Nationwide Injunctions</i> , 137 Harv. L. Rev. 1701 (2024)	18
Joseph Mead, <i>Ending Judge-Shopping in Cases Challenging Federal Law</i> , Yale J. on Reg.: Notice & Comment (Mar. 18, 2024), https://www.yalejreg.com/nc/ending-judge-shopping-in-cases-challenging-federal-law-by-joseph-mead/	12

Joseph Mead, <i>Executive Branch Forum Shopping</i> , 2025 Wis. L. Rev. Forward 41	14, 16
Marc Galanter, <i>Why the “Haves” Come Out Ahead: Speculations on the Limits of Legal Change</i> , 9 Law & Soc’y Rev. 95 (1974).....	15
Martin H. Redish, <i>Constitutional Remedies as Constitutional Law</i> , 62 B.C. L. Rev. 1865 (2021)	6
Michael Herz, <i>Venue in Clean Air Act Challenges</i> , Regul. Rev. (Aug. 5, 2025), https://www.theregreview.org/2025/08/05/herz-venue-in-clean-air-act-challenges/	18
Richard H. Fallon, Jr., <i>Jurisdiction-Stripping Reconsidered</i> , 96 Va. L. Rev. 1043 (2010).....	5
Ronald A. Cass, <i>Nationwide Injunctions’ Governance Problems: Forum Shopping, Politicizing Courts, and Eroding Constitutional Structure</i> , 27 Geo. Mason L. Rev. 29 (2019).....	10

GLOSSARY OF ABBREVIATIONS

CID Civil Investigative Demand

FTC Federal Trade Commission

STATEMENT OF INTEREST¹

Founded in 2018 by lawyers and jurists who served at the highest levels of government in previous Republican administrations, the Society for the Rule of Law Institute is a nonpartisan, nonprofit organization dedicated to defending the Constitution and the rule of law from a traditionally conservative legal perspective.

The Institute writes here because the Federal Trade Commission's selective and retaliatory enforcement violates fundamental rule of law principles and threatens core constitutional protections that the Institute promotes, including individual liberties, free speech, the separation of powers, and limited government.

¹ Under Federal Rule of Appellate Procedure 29(a)(4)(E), the Society for the Rule of Law Institute affirms that no counsel for a party authored this brief in whole or in part; no party or counsel for a party contributed money that was intended to fund preparing or submitting this brief; and no person other than the Society for the Rule of Law Institute or its counsel contributed money that was intended to fund this brief's preparation or submission. All parties have consented to the filing of this amicus brief.

SUMMARY OF ARGUMENT

The FTC wants to both wield compulsory investigative power and control access to judicial review. The Society for the Rule of Law Institute writes to show how the FTC's proposal threatens the rule of law and fundamental principles of limited government.

On the merits, the District Court correctly found that the FTC's politically motivated and retaliatory civil investigative demand (CID) inflicts concrete and ongoing harm on Media Matters' free speech and free association rights. The Institute endorses the District Court's careful decision and adopts Media Matters' merits briefing. The rule of law is incompatible with prosecution aimed not at protecting the public but at vindicating political grievances.

The District Court was right on procedure, too. According to the FTC, Media Matters cannot defend its constitutional rights proactively, but must wait to be sued in the court, and at the time, of the FTC's choosing—if at all. As Media Matters shows, the FTC misunderstands the statutory scheme. Congress never limited district courts' jurisdiction to review unconstitutional investigative demands.

The FTC believes that it can decide not just *whether* but also *where* to litigate. The *whether* matters, of course: the agency does not keep the courthouse keys. But the *where* matters, too.

The parties agree that Media Matters' constitutional defenses to any enforcement action would ultimately be adjudicated in a federal district court. So why does the FTC care when the litigation happens, proactively or responsively—unless, as Media Matters worries, the FTC wants to pick the forum. *See* Pl. Br. at 25 (“If there is any ‘claim-splitting’... it is because the government wants to forum shop or delay enforcement in the hopes of frustrating judicial review.”). The practical difference between the parties, in other words, is in large part the FTC's desire to forum shop versus Media Matters' reasonable and appropriate choice to litigate in the venue that both Media Matters and the FTC call home, and which has deep experience adjudicating claims involving the federal government.

This brief explains how the FTC's rule could facilitate rampant government forum shopping, which risks distorting the development of the law; imposing prohibitive burdens on individuals and advocacy

groups seeking to vindicate constitutional rights; and undermining the principled, neutral adjudication that underlies the rule of law.

ARGUMENT

I. The FTC asserts the sole prerogative to decide not just *whether* but also *where* a target may obtain judicial review.

According to the government, a CID target can only go to court to complain about ongoing constitutional violations if the FTC initiates an enforcement action. The agency inflicting the injury would select, and control access to, the judicial forum charged with providing a remedy. The government's assertion of the power to decide *whether* a constitutionally injured investigative target gets to court is troubling on its face. But the government's assertion of the power to decide *where* targets can litigate threatens individual rights and the rule of law, too.

A. *Whether*: The FTC wants the courthouse keys.

The FTC wants the government to decide whether and when a plaintiff may obtain judicial review of an ongoing constitutional violation. But—at least absent a clear congressional command—letting the Executive control access to the judiciary would threaten the separation of powers and endanger individual liberty.

The Supreme Court has repeatedly forbidden courts from reducing the federal question statute to a dead letter by too-readily interpreting a statutory scheme to foreclose review. *See INS v. St. Cyr*, 533 U.S. 289, 300 (2001) (requiring a clear statement before concluding that Congress intended to preclude judicial review of constitutional claims); *Webster v. Doe*, 486 U.S. 592, 603 (1988) (same). But, under the FTC’s theory, Media Matters—or any similarly situated party—would never be guaranteed access to a judicial forum. The agency’s litigation preferences would dictate the availability and timing of review.

Indefinitely delaying the remedy, though, diminishes or extinguishes the right. If the FTC has its way, a CID could impose ongoing costs, chill speech and association, and disrupt ordinary operations while the agency abandons enforcement altogether—leaving the target without any practical relief. *See, e.g.*, Richard H. Fallon, Jr., *Jurisdiction-Stripping Reconsidered*, 96 Va. L. Rev. 1043, 1050 (2010) (when constitutional rights exist, some court must be able to provide remedies so that rights do not become “practical nullities”); Daryl J. Levinson, *Rights Essentialism and Remedial Equilibration*, 99 Colum. L. Rev. 857, 858 (1999) (describing rights and remedies as “inextricably

intertwined” and noting that rights rely on remedies “for their scope, shape, and very existence”).

The FTC’s preferred regime would reduce the federal-question statute from a grant of jurisdiction into a revocable permission slip, frustrating the separation of powers by making the Executive the gatekeeper for Article III review. *See Learning Res., Inc. v. Trump*, No. 24-1287, 2026 WL 477534, at *14 (U.S. Feb. 20, 2026) (Gorsuch, J., concurring) (separation-of-powers doctrines “safeguard[]” the constitutional allocation of authority by requiring clear congressional authorization before the Executive may exercise sweeping power); Martin H. Redish, *Constitutional Remedies as Constitutional Law*, 62 B.C. L. Rev. 1865, 1875 (2021) (“[C]onstitutional remedies . . . must be solely the province of the judiciary to maintain the power of judicial review”). But the separation of powers is an essential bulwark of individual liberty. *Boumediene v. Bush*, 553 U.S. 723, 742 (2008) (“The Framers’ inherent distrust of governmental power was the driving force behind the constitutional plan that allocated powers among three independent branches. This design serves not only to make Government accountable but also to secure individual liberty.”); *Clinton v. City of New*

York, 524 U.S. 417, 450 (1998) (Kennedy, J., concurring) (“Liberty is always at stake when one or more of the branches seek to transgress the separation of powers”).

Giving the Executive the courthouse keys risks forcing plaintiffs like Media Matters to endure ongoing constitutional injury as the price of obtaining review. The Supreme Court has rejected comparable proposed regimes that require a party to endure continuing harm before suing. *See, e.g., Axon Enter., Inc. v. FTC*, 598 U.S. 175, 191–92 (2023) (parties need not await agency enforcement to obtain review of structural constitutional claims); *Free Enter. Fund v. PCAOB*, 561 U.S. 477, 490 (2010) (plaintiffs need not “bet the farm” before obtaining judicial review) (citation and quotation omitted); *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 128–29 (2007) (rejecting the proposition that a party must risk severe penalties before seeking judicial review); *McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 496–97 (1991) (rejecting review scheme that would require individuals to undergo the challenged process before obtaining meaningful judicial review).

B. *Where*: The FTC wants to pick the courthouse.

Expanding the government's asserted prerogatives even further at the cost of individual rights, the FTC's rule would also empower the government to control *where* judicial review occurs.

The FTC's CID provision underscores the breadth of the government's asserted authority over venue. When a recipient does not comply with a CID, the FTC “may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, ... a petition for an order ... for the enforcement” of the demand. 15 U.S.C. § 57b-1(e). Once the FTC selects the forum, the court in that district “shall have jurisdiction to hear and determine the matter so presented.” *Id.* at § 57b-1(h). For a national organization like Media Matters—whose journalism, online publication, fundraising, and partnerships reach well beyond the District of Columbia—the “transacts business” prong alone potentially opens the door to enforcement litigation in districts across the country.

This case's own history shows why forum matters so much. As Media Matters' brief explains, Pl. Br. at 2, the FTC did not issue its retaliatory CID until after a D.C. federal court enjoined a substantively

similar (and similarly impermissibly motivated) demand from Texas' Attorney General. *Media Matters for Am. v. Paxton*, 732 F. Supp. 3d 1, 9 (D.D.C. 2024). This Court affirmed. *Media Matters for Am. v. Paxton*, 138 F.4th 563 (D.C. Cir. 2025).

Texas served Media Matters in D.C. and demanded records located in D.C., but fought to force Media Matters to litigate in Texas, contesting both personal jurisdiction and venue in Media Matters' home forum. *See id.* at 583. Only the courts' insistence on the neutral application of venue and jurisdictional principles prevented Media Matters' harassers from using forum selection for coercive leverage. The FTC's rule would recreate that same dynamic. The FTC wants to relitigate the case that Texas just lost—but in a different forum, which the FTC may view as more favorable.

II. The FTC's proposed rule would allow forum shopping, undermining the rule of law and individual liberty.

The FTC would let government select the court that will hear any constitutional challenge to its own conduct. That rule would underline and exacerbate structural imbalances that favor the resource-rich federal government at the expense of individual liberties and the rule of law.

A. The FTC’s rule would imperil the rule of law by promoting forum (and judge) shopping.

The rule of law means governance by neutral and predictable principles, not by individual preference: “The rule of law, at its core, demands that legal rules are predictable based on principles knowable in advance.” Ronald A. Cass, *Nationwide Injunctions’ Governance Problems: Forum Shopping, Politicizing Courts, and Eroding Constitutional Structure*, 27 Geo. Mason L. Rev. 29, 45 (2019). Parties forum shop precisely to find decisionmakers they believe will be more likely to favor them: forum shoppers “seek[] out biases that contradict fundamental features of a system that embodies the rule of law.” *Id.*

This case’s own history, *supra*, at 8-9, raises forum shopping concerns—and so does recent litigation behavior by the federal government. For example: the Supreme Court recently confirmed that individuals targeted for removal under the Alien Enemies Act are entitled to judicial review of the legality of their detention and removal. *Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025). In response, immigrant detainees filed habeas petitions in several federal district courts, and the Southern District of Texas entered a classwide temporary restraining

order protecting individuals held within that district. *J.A.V. v. Trump*, 781 F. Supp. 3d 535 (S.D. Tex. 2025).

To evade judicial review, the government then transferred detainees it intended to remove to the Northern District of Texas, where a different court declined to issue similar relief. *A.A.R.P. v. Trump*, 778 F. Supp. 3d 882 (N.D. Tex. 2025), *appeal dismissed*, No. 25-10534, 2025 WL 1148141 (5th Cir. 2025), *cert. granted, judgment vacated*, 145 S. Ct. 1364 (2025). Only an emergency order from the Supreme Court blocked the government from removing the detainees without the prescribed judicial process. *A.A.R.P. v. Trump*, 145 S. Ct. 1364 (2025). Even though the right to review formally existed, the government's power to move detainees to a different district allowed it to avoid the effect of an unfavorable ruling and continue the challenged conduct.

The government's asserted right to choose the forum is especially problematic because it would allow the agency to select not only the governing circuit law and pool of judges but, in many instances, the particular judge who will hear the case. Under the case allotment rules in some districts, a litigant who files in a particular geographical division can "guarantee (or nearly so) the judge that will be assigned," not for

reasons of convenience, but to obtain a perceived strategic advantage. Joseph Mead, *Ending Judge-Shopping in Cases Challenging Federal Law*, Yale J. on Reg.: Notice & Comment (Mar. 18, 2024), <https://www.yalejreg.com/nc/ending-judge-shopping-in-cases-challenging-federal-law-by-joseph-mead/>. Recent nationwide challenges filed in single-judge divisions show that this judge shopping is not a theoretical risk but a recurring reality. *Id.*

Forum- and judge-shopping allow parties to shape outcomes by selecting the decisionmaker, and create a public perception that results turn on judicial identity rather than neutral principles. *See, e.g., Commonwealth v. Gebo*, 489 Mass. 757, 769, 188 N.E.3d 80, 92 (2022) (judge shopping “is inherently unfair to other litigants, undermines public confidence in the judiciary, and properly has earned the condemnation of courts across the country.”). A regime in which one party effectively designates the adjudicator—the regime the FTC would prefer—raises serious due process concerns. *See Tyson v. Trigg*, 50 F.3d 436, 438 (7th Cir. 1995) (“[I]f Congress were to pass a law which provided that... the Environmental Protection Agency shall designate the federal

district judge to preside in civil cases under the Clean Air Act, the law would raise profound issues under the due process clause”).

The distorting effects of forum and judge shopping explain why the Supreme Court recently rejected an interpretation of a jurisdictional statute that would have allowed federal agencies to control the forum in which their actions are reviewed. In *EPA v. Calumet Shreveport Refining, L.L.C.*, the Court resolved a dispute over which court of appeals had authority to review EPA action under the Clean Air Act. 145 S. Ct. 1735 (2025). The statute required certain nationally significant challenges to be filed in the D.C. Circuit, while others could proceed in regional circuits. EPA urged a reading that would have allowed it to determine the reviewing court through the way it grouped and characterized its own actions.

The Court rejected that position in rule-of-law terms. A construction that gave the agency “unfettered control over venue,” it explained, would invite “gamesmanship” and effectively allow the agency a “veto power over venue.” *Id.* at 1748. So the Court adopted an interpretation that tied the reviewing court to objective statutory criteria rather than to the agency’s litigation strategy. *Id.* at 1750.

That reasoning applies here. Under the FTC’s theory, the forum for constitutional review would be determined not by neutral jurisdictional rules but by whether and where the FTC chooses to file an enforcement action. That is the functional equivalent of the “unfettered control over venue” the Court rejected in *Calumet Shreveport*.

B. The FTC’s rule would infringe on liberty by exacerbating resource imbalances and giving the government the sole prerogative to shape evolving law.

As an arm of the federal government, the FTC has unmatched resources and nationwide litigating capacity. But for Media Matters and other small organizations and individuals, venue can make an enormous difference—increasing litigation costs, impairing access to counsel and witnesses, and amplifying the coercive leverage of the government’s investigative demand. *See* Joseph Mead, *Executive Branch Forum Shopping*, 2025 Wis. L. Rev. Forward 41, 43–44 (noting that forcing parties to litigate in a distant forum dramatically raises costs and logistical barriers, imposing burdens most heavily on under-resourced challengers and deterring the vindication of rights); *Suri v. Trump*, 785 F. Supp. 3d 128, 148–49 (E.D. Va. 2025) (refusing a transfer that would

ratify government forum shopping and require litigation far from counsel and family).

Those disproportionate burdens are integral features of a regime that lets the Executive both inflict injury and choose the courthouse in which the target must seek remedies. As the predictable result of the FTC's rule, relatively resource-poor CID targets will abandon meritorious constitutional claims rather than incur the expense and disruption of litigating in a remote forum selected by the same agency that violated their rights.

The FTC's preferred procedural asymmetry would give the government advantages no private litigant has, allowing it to shape not only the outcomes of discrete disputes but the law that will govern future cases. Repeat players "play for rules," shaping doctrine over time through strategic case selection and forum choice. Marc Galanter, *Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change*, 9 *Law & Soc'y Rev.* 95 (1974). Empowering the Executive to control the locus of constitutional review has the potential to distort the law over time. As one scholar observed: "[t]he Executive Branch's manipulation of forum options can have tremendous consequences for the rights of those

in the United States.” Mead, *Executive Branch Forum Shopping*, *supra*, at 49.

Unlike private repeat players, the Executive is both a nationwide litigant and the primary subject of public-law challenges. It appears in every circuit, can sequence enforcement actions across jurisdictions, and can relitigate issues until it secures favorable precedent. By channeling review into selected fora, the government can generate binding circuit law in its preferred venues and impose the (sometimes prohibitive) costs of geographically distant litigation on its opponents. Over time, that structural advantage allows the Executive not merely to win cases, but to tilt the doctrinal landscape against future challengers.

Executive branch forum shopping also limits the development of the law through percolation. The Supreme Court has long recognized the value of percolation—the consideration of a legal question by multiple courts before final resolution—which promotes the “thorough development of legal doctrine” and allows the Court to benefit from competing analyses. *United States v. Mendoza*, 464 U.S. 154, 163 (1984); *see also Arizona v. Evans*, 514 U.S. 1, 23 n.1 (1995) (Ginsburg, J., dissenting) (“We have in many instances recognized that when frontier

legal problems are presented, periods of ‘percolation’ in, and diverse opinions from, state and federal appellate courts may yield a better informed and more enduring final pronouncement by this Court.”). But the government can short-circuit that iterative process by channeling challenges into a single preferred forum. An initial loss in the government’s preferred court may become, as a practical matter, the final word—not because the issue has been fully considered across the judiciary, but because similarly situated parties lack a realistic opportunity to press the same claim elsewhere.

That distortion directly affects the vindication of individual rights. The availability of multiple fora allows different litigants to test the legality of government action without being bound, in practical effect, by the outcome of a single strategically selected case. If the Executive can confine review to a narrow set of courts, it can suppress further percolation and insulate its conduct from meaningful challenge.

C. By contrast, Media Matters’ preferred rule minimizes imbalances and the risk of gamesmanship.

The FTC’s preferred rule allows the government to shape the law, leverage its superior resources, and pick its judges. Media Matters’ rule, by contrast, would minimize or eliminate gamesmanship and promote

parity among litigants. Media Matters filed suit in both parties' home forum, and in a district that is uniquely positioned—regardless of which party controls the Executive—to adjudicate questions about the limits of federal power.

Allowing a plaintiff suffering an ongoing constitutional injury at the federal government's hands to sue in the District of Columbia channels cases into a single, neutral forum chosen by statute rather than by either litigant's strategy. The District has unmatched experience with the work of the federal government and with analyzing and applying administrative law. *See District Court Reform: Nationwide Injunctions*, 137 Harv. L. Rev. 1701, 1722–23 (2024) (explaining that proposals to require nationally significant challenges to be filed in the District of Columbia rest on the court's expertise in administrative law, its relative insulation from perceptions of partisanship, and its ability to generate uniform national rules); Michael Herz, *Venue in Clean Air Act Challenges*, Regul. Rev. (Aug. 5, 2025), <https://www.theregreview.org/2025/08/05/herz-venue-in-clean-air-act-challenges/> (noting that Congress has often required exclusive review in the D.C. Circuit to ensure “even and consistent national application” of

federal law, draw on the court's administrative-law expertise, and prevent forum shopping). Concentrating review in a mutually-convenient forum promotes neutrality, doctrinal coherence, and public confidence in the judicial resolution of disputes over federal authority.

III. Reinforcing the rule of law and protecting constitutional rights will not open the floodgates.

Affirmance will not transform routine administrative investigations into federal litigation.

Media Matters' rule permits access to a neutral Article III forum only where a CID target can show a concrete and ongoing constitutional injury. In the ordinary case—where a party challenges the burden, breadth, or cost of compliance with a CID—review would remain available in a later enforcement proceeding. Those routine challenges concern only the manner of compliance, not the constitutionality of the government's use of its compulsory power. So postponing review in that posture does not perpetuate ongoing constitutional violations.

The Supreme Court has repeatedly distinguished between ordinary statutory or procedural objections, which may be channeled through an administrative enforcement process, and emergent structural or constitutional injuries that would otherwise evade meaningful review.

Axon, 598 U.S. at 191–92. Allowing immediate jurisdiction in the latter category does not expand the universe of cases; it preserves the availability of a judicial forum for a narrow class of claims where constitutional rights cannot be effectively vindicated later. *See Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 212 (1994) (considering whether preclusion would “foreclose all meaningful judicial review”).

Nor would Media Matters’ rule allow plaintiffs to file suit in any district of their choosing. Actions under § 1331 are governed by the general venue statute. 28 U.S.C. § 1391. Venue must be proper based on the residence of the parties or the locus of the relevant events. In practice, that framework directs suits challenging federal agency action into the District of Columbia or into the plaintiff’s home forum—courts with an obvious and legitimate connection to the dispute. That is exactly what happened here.

A regime in which constitutional claims may be heard promptly in a neutral forum does not invite premature litigation. It ensures that the (anathema, and hopefully rare) exercise of retaliatory and coercive governmental power remains subject to the rule of law through judicial review.

CONCLUSION

For all these reasons, the Society for the Rule of Law Institute respectfully asks this Court to affirm.

Dated: February 23, 2026

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CERTIFICATE OF COMPLIANCE

This amicus curiae brief complies with the word limit of Fed. R. App. P. 29(a)(5) because it contains 3,759 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and Circuit Rule 32(e)(1).

This filing complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared using Microsoft Office 365 in Century Schoolbook 14-point font.

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the Rule of Law Institute*

CERTIFICATE OF SERVICE

I certify that on February 23, 2026, I electronically filed this brief with the Clerk of Court for the United States Court of Appeals for the District of Columbia Circuit using the appellate CM/ECF system, thereby serving all persons required to be served.

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