Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

MIANNGAMER12345, ET AL. *v.* UNITED STATES

REVIEW TO THE UNITED STATES FEDERAL GOVERNMENT

No. 11–17. Argued July 20, 2021—Decided April 23, 2022

The Petitioner brings the case before our Court following Congress' enactment of the Domestic Safety and Security Act of 2021. In this Act, it worked to prevent Americans in NUSA (group ID: 758071) from joining other American groups that do not match that group identification number. Petitioner argues that this legislation violates the Treason Clause of Article III, the Bill of Attainder Clause, the First Amendment, the Fourth Amendment, the Fifth Amendment, and the Sixth Amendment of the United States Constitution. With such a large allegation, we granted *certiorari*. In this matter, there were also two individuals barred from office. However, the barring of an individual is a power strictly reserved for the legislative branch; therefore, it is not the place for a court of law to review if the barring of an individual was done correctly or within the boundaries of law.

Held: The Domestic Safety and Security Act does not violate the Treason or Bill Attainder Clause of Article III of the United States Constitution. Pp. 2-5.

(a) The Domestic Safety and Security Act does not violate the First or Fourth Amendments, respectively, of the United States Constitu-tion. Pp. 5-12.

(b) The Domestic Safety and Security Act does not violate the Fifth or Sixth Amendments, respectively, of the United States Constitution. Pp. 12-16.

(c) A court of law does not have the authority to determine the barring of an individual was done correctly or within the boundaries of the law given the notion of the political question doctrine as well as the separation of powers. Pp. 16-26.

BUTLER, J., delivered the opinion of the Court, in which SOUTER, C.J.,

Syllabus

and FRANKFURTER, J., joined. VINSON, STORY, and DROZD, JJ., took no part in the consideration or decision of this case.

SUPREME COURT OF THE UNITED STATES

No. 11–17

MIANNGAMER12345, ET AL., PETITIONERS *v.* UNITED STATES

ON WRIT OF REVIEW TO THE UNITED STATES FEDERAL GOVERNMENT

[April 23, 2022]

JUSTICE BUTLER delivered the opinion of the Court.

Given the handful of questions that were embedded in this case, I have decided that the best method to opine on this case is to separate the matter into four topics. The first three will relate to the constitutional provisions that the Petitioner inquired into. The final topic will explore if the Petitioners were properly barred or not. In hopes, this will cause the opinion to be more digestible for its readers, the parties, and as well as the precedent that it establishes for future matters.

I.

Article III, Section 3 is separated into two clauses. The first reads, "[t]reason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court." This particular clause provides us with insight into the definition and legal understanding of treason as a concept. Though, the following clause of Article III, Section 3

says that "[t]he Congress shall Power to declare the punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted." Now, to be fair, the Court has provided *some* further understanding as to how we interpret the treason clause of Article III. In *Ex Parte Bollman*, 8 U. S. 75 (1807), we ruled that "there must be an actual assembling of men, for the treasonable purpose, to constitute a levying of war." While we can fairly say that a Discord server would serve as a place to host the assembly of men, we cannot—at least—rule that the purpose of that server was to "levy a war," *ibid.* We personally have not be supplied with any evidence to support the notion or claim that the server was composed or constructed to levy a war. Nevertheless, "[e]very act, movement, deed, and word of the defendant charged to constitute treason must be supported by the testimony of two witnesses." See *Cramer* v. *United States*, 325 U. S. 1 (1945). Two years after our holding in that case, we adapted it to having two witnesses are not required to prove intent, nor are two witnesses required to prove that an overt act is treasonable. The two witnesses, however, are required to prove only that the overt act occurred. See *Haupt* v. *United States*, 330 U. S. 631 (1947). In the arguments provided, there is no reason to suspect nor do we have two names that serve as witnesses.

Another requirement to weigh is the content within the Article III treason clause is the Bill of Attainder clause. In that, it says, "[t]he Congress shall Power to declare the punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted." *Ibid.* Now, the Court has provided very clear and specific prongs as to the bill of attainder test. First, the law must have "specifically identified the people to be punished"; second, "imposed punishment"; and third, "did so without benefit of judicial trial." See *United States* v. *Lovett*, 328 U. S. 303 (1946). To provide further clarification

on our conjuring of this test, we provided modifications particularly to the punishment piece. As long as the punishment could survive scrutiny—if it was rationally related—to other, nonpunitive goals. Following that, we concluded that the legislation must not be intended to punish; legislation enacted for otherwise legitimate purposes could be saved so long as punishment was a side-effect rather than the main purpose of the law. See *Nixon* v. *Administrator of General Services*, 433 U. S. 425 (1977). Given our standards in *Lovett* alongside the clarification we published in *Nixon*, 433 U. S. 425 (1977)—I do not see how this law in particular would be in violation of those prongs. The punishments that are associated and codified within this law are "side effects," *ibid*. Therefore, with the absence of specific individuals who would be receiving punishment without due process, this law does not violate Article III's treason clause.

II.

In this area, I will be turning to the Petitioner's claims of the law in question violating the First Amendment's guarantee of the American people's right to assembly. As we have observed and continued to uphold, the right of assembly is the individual right of the people to come together and collectively express, promote, pursue, and defend their collective or shared ideas. See *De Jonge* v. *Oregon*, 299 U. S. 353, 364, 365 (1937). My quarrel with answering and settling this question is based on a previous ruling of ours. We once opined that the right to assemble and the notion of assembly is a right that cannot be denied; if that right was violated—especially without due process—, then it is also a Fourteenth Amendment case. It becomes a Fourteenth Amendment case on the basis that we have categorized one's right to assembly as a "liberty," a concept embedded within the Fourteenth Amendment to the United States Constitution. Moreover, our outlines regarding the right to assembly as well as its connection to the right of petition were erected

in *United States* v. *Cruikshank*, 92 U. S. 542 (1876). In that, we highlighted that the purpose of assembly was to engage in peaceable discussion or attend a peaceable gathering. It is not a cop-out that one can suddenly use as a defence mechanism, especially if criminal acts are occurring or are possibly occurring. However, I will not end my thinking there; it is fair to also apply a more strict scrutiny method to this particular claim, compared to the rest of the ones that were made.

Given that one's right to assemble is considered a "liberty" and it also being located within the Bill of Rights, courts—and we have as well in the past—apply strict scrutiny. See *Roe* v. *Wade*, 410 U. S. 113, 155 (1973) (Blackmun, J.). Typically with strict scrutiny, it "leaves few survivors." See *City of Los Angeles* v. *Alameda Books*, 535 U. S. 425 (2002) (Souter, J., dissenting). Standards of review are not going away in the foreseeable future. They therefore must be defined, designed, and implemented to make them work as best they can. This entails the laborious task of separating them into each of their components and exploring the logic and purpose of each standard of review and its components. When extraordinary circumstances arise in which a standard of review needs to be altered or not employed even though the standard is presumptively applicable, this should be done explicitly with reasons given.

Strict scrutiny exemplifies the problem. A prominent standard of review in equal protection, substantive due process, and First Amendment adjudication, it has been variously described, for example, "the strictest scrutiny," "most rigid scrutiny," and "most exacting judicial examination." See *Regents of Univ. of Cal.* v. *Bakke*, 438 U. S. 265, 291, 300 (1978) (describing strict scrutiny as the "most rigid scrutiny" (quoting *Korematsu* v. *United States*, 320 U. S. 81, 216 (1944)), "most exacting judicial examination," and "most exacting scrutiny"). Historically, in previous cases when we applied strict scrutiny, the act in question usually did not

survive and was oftentimes struck down. However, strict scrutiny comes in the modern test of assessing if the legislation will be upheld against constitutional challenge only if "necessary" or "narrowly tailored" to promote a "compelling" governmental interest. See, *e.g.*, *Johnson* v. *California*, 543 U. S. 499, 505 (2005); *Republican Party of Minn.* v. *White*, 536 U. S. 765, 774-75 (2002); *Adarand Constructors, Inc.* v. *Pena*, 515 U. S. 200, 227 (1995); *R.A.V.* v. *City of St. Paul*, 505 U. S. 377, 395-96 (1992); *Perry Educ. Ass'n* v. *Perry Local Educators' Ass'n*, 460 U. S. 37, 45 (1983). It provides "the baseline rule," see *Denver Area Educ. Telecomms. Consortium, Inc.* v. *FCC*, 518 U. S. 727, 800 (1996) (Kennedy, J., concurring in part and dissenting in part), under the First Amendment for assessing laws that regulate speech on the basis of content, see *e.g.*, *United States* v. *Playboy Entm't Group*, *Inc.*, 529 U. S. 803, 813-14 (2000); *Simon & Schuster, Inc.* v. *Members of the N.Y. State Crime Victims Bd.*, 502 U. S. 105, 118 (1991); *Sable Commc'ns of Cal., Inc.* v. *FCC*, 492 U. S. 115, 126 (1989). It also extends to scrutinizing content-based exclusions of speakers from public fora, see *e.g.*, *Ark. Educ. Television Comm'n* v. *Forbes*, 523 U. S. 666, 677 (1998); *United States* v. *Kokinda*, 497 U. S. 720, 726-77 (1990) (plurality opinion); *Widmar* v. *Vincent*, 454 U. S. 263, 269-70 (1981), and of the press from criminal trials. See *Globe Newspaper Co.* v. *Superior Court*, 457 U. S. 596, 606-07 (1982). Statutes that impose substantial burdens on freedom of association are also analyzed under the compelling interest test. See *e.g.*, *Clingman* v. *Beaver*, 544 U. S. 581, 591-92 (2005); *Boy Scouts of Am.* v. *Dale*, 530 U. S. 640, 648 (2000); *Brown* v. *Socialist Workers '74 Campaign Comm. (Ohio)*, 459 U. S. 87, 91-92 (1982).

In modern constitutional law, the term "strict scrutiny" refers to a test under which statutes will be pronounced unconstitutional unless they are "necessary" or "narrowly tailored" to serve a "compelling government interest." See *Johnson* v. *California*, 543 U. S. 499, 505 (2005; *Miller* v.

Johnson, 515 U. S. 900, 920 (1995). When unpacked, the formula makes two main demands that I treat as definitive in tracing strict scrutiny's historical evolution. First, when strict scrutiny applies, the burden falls on the government to defend challenged legislation by demonstrating that it serves a compelling interest. When the modern formula developed, the demand for compelling interest contrasted with a background assumption that legislation would ordinarily be upheld as long as rationally related to any legitimate interest. See *Ferguson* v. *Skrupa*, 372 U. S. 726, 729-32 (1963); *Williamson* v. *Lee Optical of Okla., Inc.*, 348 U. S. 483, 487-89 (1955); *Olsen* v. *Nebraska ex rel. W. Reference & Bond Ass'n*, 313 U. S. 236, 246-47 (1941). Today, the requirement of a compelling interest also contrasts with an intermediate form of strict scrutiny under which the government, in defending challenged legislation, must point to an interest that is "important," *ibid.* Within this hierarchy, compelling interests stand at the top. The overall doctrinal structure presupposes that such interests are not only extremely weighty, possibly urgent, but also rare—much rarer than merely legitimate interests and rarer too than important interests.

Justice Harlan had established that speech is a right of special importance and had ruled, accordingly, that broad restrictions would not be permitted if narrower ones would adequately protect the government's interests. See *id.* (citing *NAACP* v. *Alabama ex rel Flowers*, 377 U. S. 288, 307-08 (1964) (remarking that "a governmental purpose to control or prevent activities constitutionally subject to regulation may not be achieved by means which sweep unnecessarily broadly"); *McGowan* v. *Maryland*, 366 U. S. 420, 466, 67 (1961) (Frankfurter, J., concurring) (stating that a statute that "furthers both secular and religious ends," but does so by means that unnecessarily promote religion, should be declared unconstitutional); *Saia* v. *New York*, 334 U. S. 558, 562 (1948) (requiring that instrumentalities of public speech

"be controlled by narrowly drawn statutes"); *Martin* v. *City of Struthers*, 319 U. S. 141, 147 (1943) (stating that the distribution of information "can so easily be controlled by traditional legal methods … that stringent prohibition can server no purpose but that forbidden by the Constitution, the naked restriction of the dissemination of ideas"); *Thornhill* v. *Alabama*, 310 U. S. 88, 96 (1940) (directing courts to "weigh the circumstances and appraise the substantiality of the reasons advanced in support of" regulations that abridge the First Amendment freedoms (internal quotations marks omitted)); *Schneider* v. *New Jersey*, 308 U. S. 147, 161-62, 164 (1994) (same)). In those cases, the Court seldom if ever made a formal demand that a regulation be necessary to promote a valid interest, as Justice Harlan implied.

Nonetheless, after doing the math, Congress enacted a law, following the President's ratification. Upon which, when we interpret statutes, we "begin with the familiar canon of statutory construction that the starting point for interpreting a statute is the language of the statute itself." *CPSC et al.* v. *GTE Sylvania*, *Inc. et al.*, 447 U. S. 102, 108 (1980). And upon doing so, the Court finds that the plain meaning of the statute can be ambiguous—that certain words or phrases may only become evident when placed into context. Thus, to decide if the language is plain enough, we read the words "in their context and with a view to their place in their overall statutory scheme." *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U. S. 120, 133 (2000). Simply put, "[a]bsent a clearly expressed legislative intention to the contrary, [the] language must ordinarily be regarded as conclusive." *CPSC et al.*, 447 U. S., at 108. This clarification allows the statute to be more plainly read. In *Caminetti* v. *United States*, 242 U. S. 470 (1917), we reasoned that "[i]t be elementary that the meaning of a statute must, in first instance, be sought in the language in which the act is framed, and if that is plain … the sole function of the courts is to enforce it according to its terms." To which,

the *Caminetti* Court warned that "the duty of interpretation does not arise, and the rules which are to aid doubtful meanings need no discussion." *Ibid*. It is also well established that, when interpreting statutes or regulations, "[t]he plain meaning that we seek to discern is the plain meaning of the whole statute [or regulation], not of isolated sentences." *Beechum* v. *United States*, 511 U. S. 368, 372 (1994) (citations omitted). The argument that the plain language of the statute should be applied is always strong. See *Lamie* v. *United States Trustee*, 540 U. S. 526, 536 (2004) ("We should prefer the plain meaning since that approach respects the words of Congress."); *U. S. Nat'l Bank of Or*. v. *Indep. Ins. Agents of Am.*, *Inc.*, 508 U. S. 439, 454 (1993) (A statute's plain meaning must be enforced, of course."); *Patterson* v. *Schumate*, 504 U. S. 753, 760 (1992). As the Court held and reinforced in the Tenth Circuit's application of the plain meaning doctrine within *United States Nat'l Bank* v. *Independent Ins. Agents*, 508 U. S. 439, 454 (1993), "[i]f the language is clear and unambiguous, then plain meaning of the words must be given effect." *Resolution Trust Corp*. v. *Love*, 36 F. 3d 972, 976 (10th Cir. 1994).

This case is before us on the basis that it wishes to have us provide an answer on a matter as it relates to statutory construction, application, and interpretation. Therefore, we turn primarily to the congressional intent demonstrated by "[t]he words chosen by Congress … [and] their plain meaning." *Griffin* v. *Oceanic Contractors*, *Inc*., 458 U. S. 564, 570 (1982). "In ascertaining the plain meaning of [a] statute, [we] must look to the particular statutory language at issue, as well as the language and design of the statute as a whole." *K Mart Corp*. v. *Cartier*, *Inc*., 486 U. S. 281, 291 (1988). It should be noted that "[n]ot all principles of interpretation are created equal; the plain meaning rule should always come first."); see *Watt* v. *Alaska*, 451 U. S. 259, 266 (1981) (noting that, although the plain meaning rule is not absolute, "the words used, even in their literal sense, are the

primary, and ordinarily the most reliable, source of interpreting the meaning of any writing: Be it a statute, a contract, or anything else."). In that, the plain meaning of statutory language is not determined without regard to its context ; rather, "[t]he plain meaning of the statue's words, enlightened by their context," *Edwards* v. *Aguillard*, 482 U. S. 578, 594 (1987), governs the Court's interpretation.

I do not see how this particular law in question, upon its plain reading, violates—quite frankly—any of the freedoms housed in the First Amendment. *Ibid.*

In that regard, I also do not see how the Fourth Amendment would be applied here. The Petitioner does not write about it in his briefing to us. Moreover, if they wish for us to expand upon the securing clause of "[t]he right of the people to be secure in their persons, houses, papers, and effects." *Ibid.* While we have defined "effects" to simply mean other possessions of items beyond the ones already established in that clause, I do not see how one would apply it in this matter. The law that is being challenged has no relation, following a plain reading of the text, to the Fourth Amendment of the United States Constitution. The Petitioner would have had a much more fruitful time perhaps looking to the Fourteenth Amendment; they do refer to a notion of due process in their briefing to us. However, I believe, from what I can infer from their briefing and arguments, is that the notion of due process is in relation to the Fifth Amendment—not the Fourth Amendment of the United States Constitution. Even beyond the initial clause of the Fourth Amendment, the law in question is mute on topics regarding searches, seizures, warrants, or probable cause.

III.

I now turn to the Petitioner's claims of the DSSA violating the Fifth Amendment of the United States Constitution. To

be frank, the Petitioner does not do an excellent job of connecting the Fifth Amendment to the law in question. That said, it is my inference that the Petitioner is trying to argue, but does a poor job such, that the law in question—the DSSA—violates the due process clause of the Fifth Amendment as it relates to criminal matters. To lay out the categories of due process on the table, the Court has said that there are four overall protections of due process—procedural, substantive, a prohibition against vague laws, and as the vehicle for the incorporation of the Bill of Rights. See *Honda Motor Co.* v. *Oberg*, 512 U. S. 415 (1994). The one I can immediately rule out is the vague law protection. We have already established that there is nothing vague or ambiguous about this law. In fact, it is rather straightforward upon conducting a plain reading. *Ibid*. Fortunately, the Court has created a test that allows us, the Court, to determine if the government has, allegedly, imposed restrictions on liberty that would be irrational or arbitrary, or that draw distinctions between persons in a manner that serves no constitutionality legitimate end. Following that understanding of the test, we ought to remember that a law "enacted for broad and ambitious purposes often can be explained by reference to legitimate public polices which justify the incidental disadvantages they impose on certain persons," it must nevertheless, though, bear a "rational relationship to a legitimate governmental purpose." Considering the legislative history, Congress did enact Public Law No. 38-2 and Public Law No. 41-3. I think it is fair to say that Congress was upholding and amending their methods to preserving the existence and legitimateness of our group as a United States of America roleplaying entity. While some may disagree with the law, "[t]he Constitution does not prohibit legislatures from making stupid laws." See *New York State Bd. of Elections* v. *Lopez Torres*, 552 U. S. 196 (2008) (Stevens, J., concurring). However, the Court did maintain that the Fifth Amendment's Due Process Clause

prohibited "such…legislation by Congress as amounts to a denial of due process," meaning that the legislation would fail the rational-basis review. See *Hirabayashi* v. *United States*, 320 U. S. 81, 100, 102 (1943).

In *Bolling* v. *Sharpe*, 347 U. S. 497 (1954), the Court began in earnest to fold an "equal protection" guarantee into the concept of "due process." It went on to include that "[n]o person shall . . . be deprived of life, liberty, or property, without due process of law." See 347 U. S., at 498-500. First, *Bolling*'s interpretation seemingly relies on "a denial of due process of law." 347 U. S., at 499 (citing *Buchanan* v. *Warley*, 245 U. S. 60 (1917)). To which, it would not "constitute an arbitrary deprivation of . . . liberty," see *Lochner* v. *New York*, 198 U. S. 45 (1905). By invoking "due process" to hold an allegedly "unreasonable" or "arbitrary" legislative classification unconstitutional, *Bolling* made clear that it was applying this Court's "substantive due process" doctrine.

But "[t]he notion that a constitutional provision that guarantees only 'process' before a person is deprived of life, liberty, or property could define the substance of those rights strains credulity for even the most casual user of words." *McDonald* v. *Chicago*, 561 U. S. 742, 811 (2010) (Thomas, J., concurring in part and concurring in judgment). Rather, "'considerable historical evidence supports the position that "due process of law" was a separation-of-powers concept designed as a safeguard against unlicensed executive action, forbidding only deprivations not authorized by legislation or common law.'" *Johnson* v. *United States*, 576 U. S. 623 (2015) (Thomas, J., concurring in judgment); see also *In re Winship*, 397 U. S. 358, 378-382 (1970) (Black, J., dissenting). And, to that extent that the Due Process Clause restrains the authority of Congress, it may, at most, prohibit Congress from authorizing a person's life, liberty, or property without providing him the "customary procedures to which freeman were entitled by the old law of England." *Pacific Mut. Life Ins. Co.* v. *Haslip*, 499 U. S. 1,

28 (1991) (Scalia, J., concurring in judgment) (internal quotation marks omitted); see also *Murray's Lessee* v. *Hoboken Land & Improvement Co*., 18 How. 272 (1856). Either way, the Fifth Amendment's text and history provide little support for modern substantive due process doctrine. Therefore, I do not see how the law in question, the DSSA, would be in violation. In fact, it protects the Fifth Amendment. There are particular protocols and procedures in place *before* another party takes action to seek punishment—prosecution, impeachment, or some other medium. If the Petitioner wanted to engage in a discussion and compel the Court to inspect if the procedures established were methods exceeding the legislative's authority, the Court could, hypothetically, engage in that conversation; however, we would have to tread incredibly carefully. Though, I do not see how this law violates any clause couched in the Fifth Amendment of the United States quite frankly.

Another amendment of the Constitution that, in no textualist perspective, would be applicable to this case is the Sixth Amendment of the United States Constitution. Overall, if one carefully reads this Amendment, then they will see that there are essentially twelve rights secured in the Sixth Amendment—speedy trial, public trial, impartial jury, impartiality, venire of juries, sentencing, vicinage, notice of accusation, confrontation, compulsory process, assistance of counsel, and self-representation. I do not see how the Petitioner is connecting any of these twelve rights to this law. This law has no statute or any provision within it that is constructed or written to violate any of those rights.

IV.

The final question that the Petitioners asks us is if they were properly barred. However, I do not believe that is a question we can answer. The barring of office is a power reserved for the legislative branch. "The House of Representatives shall have the sole Power of Impeachment." See

Article I, Section 2, Clause 4 of the United States Constitution; see also Article I, Section 3, Clause 6 ("[t]he Senate shall have the sole Power to try all Impeachments."). This Court is responsible for the creation of a handful of doctrines—standing, mootness, ripeness, and much more beyond those. We were also responsible for one that the Petitioners alluded to the political question doctrine.

In regard to the political question doctrine, its birth was originally found within *Marbury* v. *Madison*, 5 U. S. (1 Cranch) 137 (1803). In that matter, Chief Justice John Marshall drew a line in that case when he said that the Secretary of State was performing an action that was purely discretion; therefore, it was something that could not be reviewed by a court of law. Given that the Court did not provide a clear nor adamant explanation regarding the Secretary of State's actions at that time in regard to its lawfulness, it has been the rule of thumb that if one of the three branches of government are the sole conductors of that business, then a court of law has no business hearing intervening to provide some sort of check or balance. See *Baker* v. *Carr*, 369 U. S. 186 (1962). The political question doctrine is couched within the concept of separation of powers. Each branch has its own responsibilities. Therefore, if it is the sole power of that branch, and the Constitution does not permit another branch to provide a check to balance its power, then that other branch has no basis to intervene.

We are, though, quite satisfied to say that governmental powers are separate and shared, departments distinct and overlapping, functions autonomous and interdependent. See *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U. S. 579, 635 (1952) ("The Constitution 'enjoins upon its branches separateness but interdependence, autonomy but reciprocity.") (Jackson, J., concurring). It is oft-repeated. See, e.g., *Mistretta* v. *United States*, 488 U. S. 361, 381 (1989); *Morrison* v. *Olson*, 487 U. S. 654, 694 (1998) (both quoting Justice Jackson's statement in *Youngstown*).

A not "entirely separate," see *Mistretta*, 488 U. S. 380 (citing *Nixon* v. *Administrator of Gen. Servs.*, 433 U. S. 425, 443 (1977)), — but "entirely free," see *id.* (quoting *Humphrey's Ex'r* v. *United States*, 295 U. S. 602, 629 (1935))—set of departments is the only way we can think about the separation of powers anymore. Indeed, yes, we, the Supreme Court have managed to convince ourselves that these "cancelling quotations" best describe historical understandings. Justice Jackson's statement in *Youngstown* says, "[a] century and half of partisan debate and scholarly speculation" about the separation of powers has yielded no net result other than "apt quotations" that "largely cancel each other." *Youngstown*, 343 U. S. at 634-35 (Jackson, J., concurring). To which, we see said in *Mistretta*, 488 U. S. at 380 (attributing to the Framers and specifically James Madison, the idea that each of the three branches need not be "entirely separate and distinct" but must remain "entirely free from the control or coercive influence" of the others."); see also *Humphrey's Ex'r*, 295 U. S. at 629).

We live in a world in which the very "tyranny" Madison decries has become banal: daily, the departments each perform legislative, executive, and judicial functions without inspiring the slightest public outcry against "tyranny." "[O]ur formal, three-branch theory of government—at least as traditionally expressed—cannot describe the government we long have had…"). Indeed, we have known this for some time. See *Myers* v. *United States*, 272 U. S. 52, 291 (1926) (Brandeis, J., dissenting) (stating that the Constitution "left to each [branch] power to exercise, in some respect, functions in their nature executive, legislative, and judicial"). Every time we use the term "separation of powers," we invoke a common, yet tacit, narrative of power—a narrative constructed upon the legal authority: we imagine the executive, judicial, and legislative power divided and neatly arranged among the departments.

In the past few decades, none of our more significant opinions on the separation of powers has failed to enlist Madison or Madison's *Federalist* in the contemporary battle for the separation of powers. See, e.g., *Plaut* v. *Spendthrift Farm, Inc.*, 514 U. S. 211, 221-223 (1995); *Mistretta* v. *United States*, 488 U. S. 361, 380, 381, 382, 394, 409, 426 (1989); *Morrison* v. *Olson*, 487 U. S. 654, 697-99, 704-05, 726 (1988) (Scalia, J., dissenting); *Bowsher* v. *Synar*, 478 U. S. 714, 721-22 (1986); *Commodity Futures Trading Comm'n* v. *Sclior*, 478 U. S. 833, 860 (1986) (Brennan, J., dissenting) (all citing Madison or Madison's *Federalist Papers* essays to support the separation of powers arguments).

It is widely accepted today that we have lost a coherent theoretical vision of the separation of powers and that in the distance between Madison's time and our own—any real understanding of the need or importance of this doctrine has been squandered. See *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U. S. 579, 634, 634-35 (1952) (Jackson, J., concurring) ("Just what our forefathers did envision, or would have envisioned had they foreseen modern conditions must be divined from materials almost as enigmatic as the dreams Joseph was called upon to interpret for the Pharaoh."

At present, much of the debate about the separation of powers rests on the assumption that the proper questions to ask are questions about the allocation of legal authority: "Is this power properly located in the judiciary department?" or "Is that power permissible for an administrative agency?" See *Mistretta* v. *United States*, 488 U. S. 361 (1989) (addressing the question whether the Sentencing Commission is properly located in the judiciary department); see also *Morrison* v. *Olson*, 487 U. S. 654 (1988) (addressing the question whether the independent counsel may exercise "executive" powers).

Of course, the "independence" that Madison admired was only partially fulfilled in the Constitution. For example,

Madison saw the Senate's role in appointing executive branch officers as an "exception" to be narrowly construed. See *12 Papers of Madison*, *supra* note at 153, at 233 (noting this "exception"). The Senate's advice and consent power and Congress's impeachment power are two obvious reminders that the Constitution authorizes departments to exercise control over individual members of other departments. See, *e.g.*, U. S. Const. art. I, § 3, cl. 6 (providing that the Senate shall try all impeachments); art. II, § 2, cl. 2 (allowing the president to appoint officers "by and with the Advice and Consent of the Senate); art. II, § 2, cl. 2 (providing that the Justices of the Supreme Court are to be named by the president "by and with the Advice and Consent of the Senate). Constitutional omissions such as the lack of an incompatibility clause barring service by judges in the executive branch also create opportunities for cross-departmental influence.

This relates to the idea of "checks and balances" – which sums up our most common ideal of the separation of powers. Not surprisingly, it has come to be associated with Madison's *Federalist* essays on the separation of powers. See *Furman* v. *Georgia*, 408 U. S. 238, 470 (1972) (Rehnquist, J., dissenting) (quoting *Federalist* No. 51 to clarify the purpose behind the system of checks and balances). For example, when checks and balances are in motion, the president has often concurred in legislative proposals that are later found to violate the separation of powers. See, *e.g.*, *Bowsher* v. *Synar*, 478 U. S. 714, 721-34 (1986) (striking down the Gramm-Rudman Hollings Budget Act as a violation of the separation of powers); *Northern Pipeline Constr. Co.* v. *Marathon Pipe Lime Co.*, 458 U. S. 50 (1982) (plurality opinion) (striking down Congress's creation of non-Article III bankruptcy judges as violating the separation of powers); *Buckley* v. *Valeo*, 424 U. S. 1, 109-43 (1976) (*per curiam*) (striking down the Federal Election Commission membership provi-

sions of the Federal Election Campaign Act of 1971 as violating the separation of powers). Similarly, presidents often sign legislation while voicing misgivings about its constitutionality.

To which, we only speak contradiction when we embrace a discourse of separated, but shared, powers if we think that what we are separating, or sharing is the same undifferentiated entity called "power." We only believe that we must choose between a system of separated and what is being shared or checked powers if we believe that what is being separated and what is being shared or checked is the same thing called "power." We only believe that we must describe otherwise conflicting views as "flexible" if we believe that what is being shared and separated leads to conflict because we are sharing and separating the same thing. See *Mistretta* v. *United States*, 488 U. S. 361, 381 (1989) (using the term "flexible" to describe a system of separated and shared powers). Originalists routinely cite Madison as a disciplinarian of the separation of powers who cautioned us about the importance of maintaining departmental integrity." See *Morrison* v. *Olson*, 487 U. S. 654, 697-99 (Scalia, J., dissenting) (citing Madison as a proponent of strict separationism). Moreover, functional analysis conducts a similar intellectual exercise, but proceeds in reverse: It asks whether the challenged action interferes with a "core function" or the successful performance of an essential function of an existing department. See *Mistretta* v. *United States*, 488 U. S. 361, 384, 382-84 (1989) (applying a functional approach in upholding the Sentencing Reform Act of 1984); see also *Morrison* v. *Olson*, 487 U. S. 654, 677-85 (1988) (applying a functional approach in upholding the Ethics in Government Act of 1978). Hypothetically, if a structural innovation permits members of one department to manipulate members of another department, the innovation may be dangers to structure whether or not it interferes with a core function or violates an ideal of functional purity.

Put to the aside questions the Appointment Clause and focus, instead, on how the contemporary debate would characterize the separation of powers questions. See U. S. Const. art. II, § 2, cl. 2; see also *Metropolitan Wash. Airports Auth.* v. *Citizens for the Abatement of Aircraft Noise*, 501 U. S. 252, 277 n. 23 (1991) (expressing no opinion as to whether the appointment of members of Congress to an airport governing board violates the Appointments Clause. The Supreme Court has never precisely delineated the relationship between the Appointments Clause and the separation of powers. More often than not, we have sidestepped Appointment Clause questions and resolved cases on separation of powers grounds.); see also *Metropolitan Wash. Airports Auth.*, 501 U. S. at 286 (White, J., dissenting) (making a similar pragmatic argument that it was "absurd" to suggest that Congress's control over an airport review board was a "legislative usurpation" amounting to "tyranny").

When a formalist reaches for purity, they reach for purity based on functional description—a conceptual process that hardly leads to formal, in the sense of determinate, results. See *Bowsher*, 478 U. S. at 749 (Stevens, J., concurring) ("[G]overnmental powers cannot always be readily characterized with only one of … three labels. On the contrary, as our cases demonstrate, a particular function, like a chameleon, will often take on the aspect of the office to which it is assigned."). At the same time, when functionalists reach to protect the "core" of a department, they depend at least in part upon an ideal of separation that seems distinctly formal—a separation that depends upon three distinct descriptions. Both share an assumption similar to the one originalists tend to make: that the separation of powers is the separation of legal power (generalized as "function"). Neither considers the possibility that what they are separating may be different in kind.

In relation to the political question doctrine, the Court *may* not be able to use its adjudicative functions here (emphasis added). As we opined in *Baker* v. *Carr*, 369 U. S. 186, 217 (1962), we generated six characteristics that are "[p]rominent on the surface of any case held to involve a political question," which are as follows:

- "[a] textually demonstrable constitutional commitment of the issue to coordinate political department; or
- [a] lack of judicially discoverable and manageable standards for resolving it; or
- [t]he impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or
- [a]n unusual need for unquestioning to a political question already made; or
- [t]he potentiality of embarrassment from multifarious pronouncements by various departments on one question."

Article I, § 2 of the Constitution states that the House "shall have the sole power of Impeachment," and Article I, § 3 provides that the "Senate shall have the sole Power to try all Impeachments." Since the Constitution placed the sole power of impeachment in two political bodies, it is qualified as a political question. *Ibid*. As a result, neither the decision of the House to impeach, nor of the Senate to remove a president or any other official, can be appealed to any court." See *Nixon* v. *United States*, 506 U. S. 224 (1993).

The district courts of the United States are courts of limited jurisdiction, defined (within constitutional bounds) by federal statute. See, *e.g.*, *Kokkonen* v. *Guardian Life Ins. Co. of America*, 511 U. S. 375, 377 (1994). The federal "district courts may not exercise jurisdiction absent a statutory basis." *Exxon Mobil Corp.* v. *Attapattah Services, Inc.*, 545 U. S. 546, 552 (2005). And the jurisdiction that is conferred may not "be expanded by judicial decree." *Kokkonen*, 511 U. S., at 377. Rather, the federal court must have what we

have called an "independent jurisdictional basis" to resolve the matter. *Hall Street Associates, L.L.C.* v. *Mattel, Inc.*, 552 U. S. 576, 582 (2008). And, therefore, they have power to decide federal-question cases—suits "arising under" federal law. See Title 28, § 1331 of the United States Code. Typically, an action arises under federal law if that law "creates the cause of action asserted." *Gunn* v. *Minton*, 568 U. S. 251, 257 (2013). So when federal law authorizes the action, the party bringing it—once again, typically—gets to go to federal court. Moreover, this becomes the "'policy of rapid and unobstructed enforcement of arbitration agreements.'" *Cortez Bryd Chips*, 529 U. S., at 201 (quoting *Moses H. Cone Memorial Hospital* v. *Mercury Constr. Corp.*, 460 U. S. 1, 23 (1983).

* * *

The Constitution remains very clear on this topic: The law in question does not violate any of the provisions of the United States Constitution. In one school of thought, *stare decisis* instructs, as a whole Court, that under all our tests, previous interpretations, and standards—the Domestic Security and Safety Act of 2020 is not unconstitutional on the basis of the First, Fourth, Fifth, or Sixth Amendments of the United States Constitution or the provisions within Article III of the United States Constitution.

It is so ordered.

JUSTICES VINSON, STORY, and DROZD took no part in the consideration or decision of this case.