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 STATE OF RIDGEWAY

Syllabus

TITANIC, GOVERNOR OF RIDGEWAY *v.* NEV ET AL.

CERTIORARI TO THE SUPERIOR COURT OF RIDGEWAY

No. 22-16. Argued December 31, 2022—Decided January 13, 2023

In 2022, the Senate passed the Modified Sedition Act, codified at 6 R. Stat. § 8101 *et seq*., which created prohibitions against certain persons from receiving expungements, as well as obtaining and retaining employment. Respondents serve in both the Ridgeway County Sheriff's Office, as well as the Boulder County Transit Authority. They therefore filed suit, arguing that they are being unconstitutionally barred from filing an expungement and that their employment in the Sheriff's Office is jeopardized by the Modified Sedition Act. respondents moved for a preliminary injunction. The Superior Court granted the injunction and "enjoined the Modified Sedition Act as challenged[.]" 2 R. Supp. 7, 8. The State then filed this petition for a writ of certiorari, arguing that respondents lacked standing, and that the Superior Court abused its discretion in issuing a preliminary injunction.

Held: The Superior Court abused its discretion in issuing a preliminary injunction, and respondents lack standing to bring suit in this case. Pp. 2–17.

(a) When a court enters a negative injunction against a law, an order prohibiting certain conduct, it is not removing that law or making it inoperative, but enjoining those who are charged with enforcing that law. But it is a feature of equitable doctrine that judicial officers, including their clerks, are totally immune from equitable remedy. *Whole Woman's Health* v. *Jackson*, 142 S. Ct. 522. When the law is violated, appeal is usually sufficient to remedy those errors. Pp. 3-4.

(b) To satisfy the "irreducible constitutional minimum" of standing, respondents must have demonstrated 1) an injury in fact; 2) connection between the injury and the conduct being complained about; and 3) the ability of a court to remedy such injury. *Spokeo, Inc.* v. *Robins,* 578 U. S. 330, 338. Respondents in this case are in no capability to benefit from

Syllabus

a favorable ruling regarding expungements. Respondents claim that they "would have the ability to claim imminent harm if [they were] able to suggest in [their] pleadings that [they were] subject to the provisions of the law." This Court disagrees to the extent that it is incomplete. Respondents would need to additionally show that being subject to those pleadings caused injury in fact. "Fact" is the keyword that separates conjecture from imminence, and actual from hypothetical. Respondents plead no single fact that demonstrates injury beyond a societal wrong or grievance, which is prohibited. Pp. 4-5.

(c) Because subject-matter jurisdiction may be dispositive of a case, it is exempt from the party-presentation rule this Court explained in *State* v. *Infinity,* 1 Rid. 22. Under the law, administrative courts have the right to review administrative "actions[,] policy[,] [and] rules[.]" 2 R. Stat. § 3305. The Senate has created a civil cause of action that allows the Superior Court to review any "policy, order, procedure, or directive." for whether it is legally or constitutionally compatible. 1 R. Stat. § 3201. The legislature clearly intended for the administrative courts to exclusively review these issues, by creating a specific grant of jurisdiction compared to a generalized cause of action specified in 1 R. Stat. § 3201. Under the canons of statutory construction, when a specific clause and a general clause conflict, the specific clause prevails. The administrative court retains subject-matter jurisdiction, and the Superior Court may not hear claims which have been entrusted to a different court. Employment cases are therefore within the Administrative Court's jurisdiction, not the Superior Court's. Pp. 6-8.

(c) 6 R. Stat. § 8301(a) states that a discharge under that section cannot be reviewed by any court. The impasse becomes clear when the respondents allege a violation of constitutional rights. Federal courts have faced this problem thanks to a practice known as "jurisdiction stripping," which occurs when there is clear and convincing legislative intent. This jurisdiction-stripping practice can also occur within the Superior Court where the legislature can narrow the applicability of a given statute. While this Court holds that jurisdiction-stripping may occur, it cannot preclude review over alleged violations of the State or Federal constitution. Pp. 8-11.

(d) The legislature does not mean the public office canon to be a *de jure* requirement by arguing whether a person is in public office as a question of law, but instead to be a *de facto* requirement. This requirement is met when a person holds some agency to act on behalf of a sovereign. The law places no specifics as to comparative minima or maxima on the power held and instead creates a general specification that all persons who hold positions in an agency, no matter how trivial or insignificant, satisfy the requirement. Petitioner contends that because

Syllabus

there are no legally defined public offices in Boulder County or Pauljkl's United States, there are no public offices. Because of this, there is no way to claim imminent injury. This court, however, is not in the business of interpreting foreign laws, and that conclusions are predicated on us interpreting a foreign constitution or statute to determine its own applicability as to this State's must be avoided. Furthermore, this Court disagrees with the respondent's application of the substantial risk standard. In this case, the certainly impending standard is the applicable way to review. When it comes to the State's locality the substantial risk standard is mostly irrelevant. The respondents have made no proof as to the certainty of whether such harm would occur. Pp. 11-12.

(e) To obtain a preliminary injunction, the plaintiff must demonstrate that 1) they are likely to succeed on the merits; 2) they are likely to suffer irreparable harm without the injunction; 3) the balance of equities and hardships is in favor of the plaintiff; and 4) whether that injunction is in the public interest. See *Winter* v. *Natural Resources Defense Council, Inc.,* 555 U. S. 7, 20. The public interest and the balance of equities factors combine when the government is a party in an action. *Nken* v. *Holder*, 556 U. S. 418, 435. Pp. 15-16.

(f) One showing a plaintiff must make to obtain a preliminary injunction is likelihood of success on the merits. *Winter, supra,* at 20. Those merits encompass not only substantive theories but also establishment of jurisdiction. *Electronic Privacy Info. Center* v. *Dept. of Commerce,* 928 F.3d 95, 104. If, in reviewing the lower court's judgment on whether to issue a preliminary injunction, this Court determines that a litigant cannot establish standing as a matter of law, the proper course is to remand the case for dismissal. *Id.* Because that is the case here, dismissal is appropriate. P. 17.

2 R. Supp. 7, reversed and remanded.

JACKSON, J., delivered the opinion for a unanimous Court.

SUPREME COURT OF THE STATE OF RIDGEWAY

No. 22–16

LARGETITANIC2, GOVERNOR OF RIDGEWAY, PETITIONER *v.* NEVPLAYSGAMES, ET AL.

ON WRIT OF CERTIORARI TO THE SUPERIOR COURT OF RIDGEWAY

[January 13, 2023]

JUSTICE JACKSON delivered the opinion of the Court.

On November 8th, 2022, petitioner, the Governor of the State of Ridgeway, signed the Modified Sedition Act, codified at 6 R. Stat. § 8101 *et seq*., into law. The Modified Sedition Act, among other things, created prohibitions against certain persons from receiving expungements, as well as obtaining and retaining employment.[1] Respondents NevPlaysGames and TheAvengerNick are employed in the Ridgeway County Sheriff's Office, as well as the Boulder County Transit Authority of Nightgaladeld's United States of America. Their claims are twofold: they argue that they are being unconstitutionally barred from filing an expungement and that their employment in the Sheriff's Office is jeopardized by the Modified Sedition Act. In the Superior Court, respondents moved for a preliminary injunction. The Superior Court granted the injunction and "enjoined the Modified Sedition Act as challenged[.]" *Nev v. Titanic,* 2 R. Supp. 7, 8 (Super. Ct. 2023). The State then filed for certiorari, arguing that respondents lacked standing, and that

[1] We did not grant review as to the constitutionality of the law, and therefore this opinion will not consider the merits of those arguments.

the Superior Court abused its discretion in issuing a preliminary injunction.

We granted certiorari. 1 Rid. 511 (2022).[2]

I

Our Case and Controversy Clause, found at Article V, Section IV of the Ridgeway Constitution, is identical to the clause found in Article III of the United States Constitution,[3] and we have generally held that when we have structurally and practically similar clauses, we may use United States court precedent when creating our decisions. See *State* v. *Lx1nas,* 1 Rid. 46, 51, 52-54 (2022) (*Lx1nas III*). In determining the standard of review for issues presented on appeal, we look towards the nature of the question presented. "Decisions on questions of law are reviewable de novo, decisions on 'questions of fact' are reviewable for clear error, and decisions on matters of discretion are reviewable for abuse of discretion." *Highmark Inc.* v. *Allcare Health Management System, Inc.*, 572 U. S. 559, 563 (2014) (quoting *Pierce* v. *Underwood*, 487 U. S. 552, 558 (1988) (internal quotation marks omitted)). Standing is a question of law and thus reviewed *de novo*. *Muransky* v. *Godiva Chocolatier, Inc.,* 979 F. 3d 917, 923 (CA11 2020); see also *Hunstein* v. *Preferred Collection & Mgmt. Servs.*, 48 F. 4th 1236, 1241 (CA11 2022); *Abraugh* v. *Altimus*, 26 F. 4th 298, 302 (CA5 2022). As a result, no deference given to the lower court's decision, and we must adjudicate the question as if it were presented before us for the first time. Cf. *State* v. *Infinity,* 1 Rid. 22, 34 (2022) (Powell, J., concurring in part and concurring in the judgment in part) (citing *Salve Regina College* v. *Russell,* 499 U. S. 225, 238 (1991)).

---

[2] The only questions we granted on were whether respondents had standing, and whether the preliminary injunction was issued in accordance with the law.

[3] U.S. Const., Art. III, §2, cl. 1.

A

Respondents' civil complaint has severe issues as to the cause of action being pleaded. They attempt to plead their claim under "Civil Action for Deprivation of Rights," however it is unclear what statute authorizes their claim. The State gives itself immunity from any claim except for a few in which the legislature explicitly authorizes suit against the government. 1 R. Stat. § 3203. The only way for respondent's claims to hold legal entitlement is if they were able to plead under 1 R. Stat. § 3201. Luckily for the respondents, this cause of action is extremely general and incorporates generally recognized doctrine regarding sovereign immunity. While lower courts ought to be extremely zealous in ensuring the right causes of action are being stated, we will liberally construct the pleadings to best preserve and dispose of the controversy.

Due to respondents' drastically different claims being compounded in this case (expungements and termination), we will bifurcate them into separate issues that will be addressed individually starting with expungements.

For an injunction to be enforceable, it needs a person who it can be enforced upon. When a court enters a negative injunction against a law, an order prohibiting certain conduct, it is not removing that law or making it inoperative, but enjoining those who are charged with enforcing that law. See *Massachusetts* v. *Mellon*, 262 U. S. 447, 488 (1923). While this court has never made a settled opinion regarding statewide injunctions, it has attempted to discuss the propriety of such relief. *State* v. *Lx1nas,* 1 Rid. 502, 506 (2022) (JACKSON, J. concurring in the denial of certiorari) ("A statewide injunction is inherently unenforceable.") (*Lx1nas II*) Now, this is not to say that statewide injunctions are prohibited by equitable doctrine contrary to the discussion in *Lx1nas II*. They are a useful remedy in the federal courts which refer to when an injunction has universal application

beyond the parties to the case, as seen when a court enjoins the enforcement of a provision of law for everyone rather than just the plaintiffs raising the issue. *Rodgers* v. *Bryant*, 942 F. 3d 451 (CA8 2019). The nuance which increases the difficulty is when there is no specific officer enjoined and it is just the "State of Ridgeway." Respondents argue that, because of the state at large being enjoined, an injunction was not issued against judicial officers with regard to expungements. We disagree.

In the technical form of the order, this is true as no judicial officer is specifically named in the order. In the functional aspect, however, the only persons able to carry into effect such an order are judicial officers. The governor has no authority to deny an expungement, nor does any executive officer. The ability to hear and grant expungements has been placed in the exclusive jurisdiction of the judiciary, thereby making it a whole judicial process. See Rid. Const. Art. V, § IV. It is a feature of equitable doctrine that judicial officers, including their clerks, are totally immune from equitable remedy. *Whole Woman's Health* v. *Jackson*, 142 S. Ct. 522 (2021). This is not due to the courts cloaking themselves with immunity arbitrarily, but because the courts have a different measure for relief when the law or constitution is violated - appeal. Even if the law prohibited clerks from docketing these matters, there are still the usual appellate remedies for when a court fails to act upon a non-discretionary action, such as the extraordinary writ of mandamus. This comes from the notion that courts are not robotic, and apply the law that they see to be right, meaning it is within a court's jurisdiction to come to a finding that the expungements portion of the Modified Sedition Act is unconstitutional and therefore refuse to apply it as to an expungement case before it. Likewise, the State and the parties could seek appellate review for a misapplication of the law in which appellate remedy can be dispensed.

There are three requirements for standing under the

Case and Controversy clause of the United States Constitution. We have already held that the jurisdictional doctrines under that clause apply to cases in the State of Ridgeway as well. *Lx1nas III, supra,* at 53-54. To satisfy the "irreducible constitutional minimum" of standing, respondents must have demonstrated 1) an injury in fact;[4] 2) connection between the injury and the conduct being complained about; and 3) the ability of a court to remedy such injury. *Spokeo, Inc.* v. *Robins,* 578 U. S. 330, 338 (2016).

As to the first prong, the injury must be actual or imminent. See *Lujan* v. *Defenders of Wildlife*, 504 U. S. 555 (1992). A person is not able to use the courts as a vehicle for a remedy against a governmental or societal wrong unless that person benefits more than the average member of the public from a favorable ruling. *Id.,* see also *Fairchild* v. *Hughes*, 258 U. S. 129 (1922). Respondents in this case are in no capability to benefit from a favorable ruling regarding expungements. Respondents claim that they "would have the ability to claim imminent harm if [they were] able to suggest in [their] pleadings that [they were] subject to the provisions of the law." We disagree to the extent that it is incomplete. Respondents would need to additionally show that being subject to those pleadings caused injury in fact. "Fact" is the keyword that separates conjecture from imminence, and actual from hypothetical. Respondents plead no single fact that demonstrates injury beyond a societal wrong or grievance, which is prohibited. See *Mellon, supra,* at 488.

The third prong of standing is redressability. Under the law, legal damages are prohibited in a case against the government, meaning the only other option is an equitable remedy. 1 R. Stat. § 3204. However, no equitable remedy is

---

[4] An injury-in-fact refers to an injury that is concrete, particularized, and actual or imminent, not conjectural or hypothetical. *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555 (1992).

available pertaining to this case due to the doctrines of equity prohibiting the enjoinment of a judicial officer, and therefore there is no means for whatever injury is being alleged to be redressed through either legal damages or equity.

This claim fails the *Lujan* test for standing and therefore the controversy is nonjusticiable.[5]

B

The next issue, in this case, is regarding claims of imminent termination – specifically, whether or not the Superior Court had subject-matter jurisdiction to decide a claim about a termination. Respondents argue that we should not consider an argument because it was not raised by the petitioners. We disagree. In our holdings regarding the party presentation principle, we consider arguments that are not briefed upon if those arguments are "ultimately dispositive" of the issue before our court. See, *e.g., State* v. *Infinity,* 1 Rid. 22, 32 (2022) (quoting *United States Nat. Bank of Ore.* v. *Independent Ins. Agents of America, Inc.*, 508 U. S. 439, 447 (1993)); *Lx1nas III, supra,* at 54. The justiciability of a claim is always dispositive, for they are not merits arguments but considerations of a court's legal authority to even hear a claim in the first place. A finding of nonjusticiability is a rug pull on an entire case, as the court cannot continue with a nonjusticiable case, making it dispositive of the controversy. Furthermore, it is our prerogative to determine whether we have subject-matter jurisdiction over the case, even if the parties have not briefed us on the issue. See, *e.g., Hertz Corp.* v. *Friend,* 559 U. S. 77, 94 (2010); *Arbaugh* v. *Y & H Corp.,* 546 U. S. 500, 514 (2006). Otherwise, it would allow the parties to exclusively determine whether the court has the judicial authority to even preside over it, something less than desirable if both parties conspire to demand the

[5] As pertaining to the justiciability of the expungement claim.

court adjudicate a controversy it has no legal right to decide; it would strongarm the court into the issuance of advisory opinions.

Under the law, administrative courts have the right to review administrative "actions[,] policy[,] [and] rules[.]" 2 R. Stat. § 3305. The law has thoroughly defined what is administrative action. Title 2, Chapter 3, Subchapter 1 of the Ridgeway Code of Statutes defines the spectrum of; and authorizes the actions the government may take against an employee of the State. Termination itself is an administrative action but just colored under the law with modifiers that surround the character of the discharge.

The question now is whether this grant of jurisdiction is exclusive to the Administrative Court, or if the Superior Court can hear these issues as well. The Constitution grants the authority to the Superior Court to have original jurisdiction over "civil and criminal cases or controversies." Rid. Const. Art. V, § IV. The Senate has created a civil cause of action that allows the Superior Court to review any "policy, order, procedure, or directive." for whether it is legally or constitutionally compatible. 1 R. Stat. § 3201. This now creates a divergence as to who can claim original jurisdiction in the dispute. Both courts, at face value, appear to have the entitlement of law to hear the claim. Two legally separate courts, however, cannot share original jurisdiction. An issue close to this posture has been heard in the federal courts where the court has held that the creation of separate administrative procedures precludes district court review. *Elgin* v. *Dept. of Treasury*, 567 U. S. 6 (2012) (citing *Thunder Basin Coal Co.* v. *Reich*, 510 U. S. 207 (1994)), see also *United States* v. *Fausto*, 484 U. S. 443 (1988). We hold that 2 R. Stat. § 3305 precludes review of such by the Superior Court. If we were to adjudicate this in the other direction then it renders moot any lawful authority an administrative court may have, obviously an asinine result. The leg-

islature clearly intended for the administrative courts to exclusively review these issues, by creating a specific grant of jurisdiction compared to a generalized cause of action specified in 1 R. Stat. § 3201. Under the canons of statutory construction, when a specific clause and a general clause conflict, the specific clause prevails. See *Long Island Care at Home, Ltd.* v. *Coke*, 551 U. S. 158, 170 (2007); *Morales* v. *Trans World Airlines, Inc.*, 504 U. S. 374, 384-85 (1992). The administrative court retains subject-matter jurisdiction, and the Superior Court may not hear claims which have been entrusted to a different court.

There exists, however, a large elephant in the room when looking at statutes where judicial review has been precluded. 6 R. Stat. § 8301(a) states that a discharge under that section cannot be reviewed by any court. The impasse becomes clear when the respondents allege a violation of constitutional rights. We have to decide as to whether the court ought to just ignore this statute and be allowed to proceed, or that the judicial power is ever so subordinate to the will of the legislature that it can annul judicial review with clever clauses. Since judicial review became the law of the land, it has ushered in an American tradition where there is no greater thing that our society respects more than the law. It has forced the political branches to adhere to the written word, and the courts have inserted themselves as the ultimate arbiter as to what that word says. There is strong evidence showing, however, that this principle only exists because Congress allows it to. Our federal courts have faced this problem thanks to a practice known as "jurisdiction stripping," which occurs when there is clear and convincing legislative intent. See *Abbott Laboratories* v. *Gardner*, 387 U. S. 136, 141 (1967) (citing *Rusk* v. *Cort*, 369 U. S. 367, 369, 379-380 (1962)). This doctrine relies on the Exceptions Clause found in the United States Constitution where the limitations of the court's jurisdiction occur "with

such Exceptions, and under such Regulations as the Congress shall make[.]" See U.S. Const., Art. III, § II. We have held that we may only apply these doctrines if we are able to find an equivalent clause in our own constitution. Our constitution, however, does not contain an equivalent clause, therefore the cases may not be applied. Our constitution does allow courts the "trial of all causes proper for their cognizance[]" See Rid. Const. Art. V, § I. There is textual evidence in the constitution supporting the power of the legislature to create additional courts beyond what was specified in the constitution, albeit not explicitly stated, so there is little doubt as to the authority of the legislature to create additional courts, including courts of limited-jurisdiction and handing them original jurisdiction. Administrative courts, compared to the Superior Court, are created with an act of the legislation, and therefore may have their jurisdiction modified by the legislature in a matter they decide. This jurisdiction-stripping practice can also occur within the Superior Court where the legislature can narrow the applicability of a given statute. While we hold that jurisdiction-stripping may occur, it cannot preclude review over alleged violations of the State or Federal constitution. While federal courts have allowed jurisdictional stripping of constitutional arguments, they do not fit within the structure and text of our constitution. See *Ctr. for Biological Diversity* v. *Bernhardt*, 946 F. 3d 553 (CA9 2019). Our constitution guarantees a remedy when its provisions are violated. See Rid. Const, Art. I, § I. We have held that we are to apply Vermont case law when interpreting our Constitution. See *Lx1nas III, supra,* at 51. Vermont treats this canon of our constitution as a "due process" clause. See *Levinsky* v. *Diamond*, 151 Vt. 178, 197, 559 A. 2d 1073, 1086 (1989), overruled on other grounds by *Muzzy* v. *State*, 155 Vt. 279, 583 A. 2d 82 (1990). This clause has been further constructed to guarantee access to the judicial process. See *Shields* v. *Gerhart*, 163 Vt. 219, 223, 658 A. 2d 924, 928

(1995). To deny access to a review of a constitutional violation would be a violation of our constitution. The legislature has the full power to withdraw the fangs of enforcement as to its own laws, but it may not detain the enforcement and subsequent adjudication of a constitutional liberty interest. As to the statute, we do not think that the clause provided in the law was aimed at precluding constitutional review, instead, it was aimed at preventing unwanted and burdensome litigation over a proscribed action the legislature has authorized. Such actions are reasonable and constitutionally sound. For a constitutional bar to even be constructed, the Senate must show clear, explicit, legislative intent to bar a constitutional challenge. *Bernhardt, supra*. While we expect the government to be zealous prosecutors of crimes, which is why we afford a plethora of due-process rights to ensure that such zealousness does not compromise civil liberty, we hold the view that the government is able to administer itself, including the civil service. To the most likely dismay of those who comprise this court's bar, the courts were never constructed to play babysitter of the government, but to resolve cases and controversies when so legally defined. Ultimately, we are bound by the rules to which the government wishes to apply itself, including rules that reorganize or remove jurisdiction to hear a legal claim. This means that the government, through the lawmaking process, gets to define where, when, why, and how they are prosecuted. Absent of material due process concerns, the courts must follow suit.

The complexity of this issue expands when viewed in the context of the administrative court being also composed of Superior Court judges. 2 R. Stat. § 3302. While a Superior Court judge has the legal authority to hear these matters, they cannot do so while acting under the authority of the Superior Court. There are two different ballgames being played which have drastically different procedural foundations. Administrative courts are constructed on the notion

that factual disputes in administrative claims are never really considered, and claims are mostly disputed as questions of law. These claims, by their procedure, consist entirely of whether the given actions violate the law. 2 R. Stat. § 3314. When there are claims of fact, these claims of fact are decided not by a single judge, but by the members of the department which administered the action being contested. 2 R. Stat. § 3309-3310. This is in direct contrast to a civil proceeding where all issues of fact are determined in a bench trial and decided solely upon by a single judge. The standards of review pertaining to each individual action are quite different compared to that of a civil court. Because of these overwhelming differences, it is not enough to say because of the two hats the Superior Court judge wore, they comingle subject-matter jurisdiction. The jurisdiction they are acting under is revealed by what procedures they followed and there is no evidence found to prove that the lower court judge was acting in anything other than their capacity as a Superior Court judge.

C

We now move to whether there was an imminent injury proved in the pleadings.

Petitioner contends that because there are no legally defined public offices in Boulder County or Pauljkl's United States, there are no public offices. Because of this, there is no way to claim imminent injury. We disagree. The petitioner brings forth a rigid interpretation of what a public office is by constructing it as something which gains its authority from a piece of paper set forth by a "foreign hostile power." Petitioner's Merits Brief, at 11-13. This court, however, is not in the business of interpreting foreign laws, and that conclusions are predicated on us interpreting a foreign constitution or statute to determine its own applicability as to ours must be avoided. We doubt that there is any dispute

as to what a public officer means beyond the petitioner attempting to grasp for straws and ask this court to adopt an overly technical approach to statutory construction. We agree with respondents' assertion that this interpretation was devised in a "vacuum." Reply Br. of Respondents, at 6. We further agree that this practice is incompatible with governing law. See *Sturgeon* v. *Frost*, 577 U. S. 424 (2016). Public office in its ordinarily understood terms means that a person is employed by a given government. Some governments do not have written laws or a constitution, but some individuals still wield the sovereign's power. The legislature does not mean the public office canon to be a *de jure* requirement by arguing whether a person is in public office as a question of law, but instead to be a *de facto* requirement. This requirement is met when a person holds some agency to act on behalf of a sovereign. The law places no specifics as to comparative minima or maxima on the power held and instead creates a general specification that all persons who hold positions in an agency, no matter how trivial or insignificant, satisfy the requirement. If we were to adopt the petitioner's construction of the law, it would effectively neuter the clause passed by the legislature. It is asinine to think that the legislature would pass a law they would expect to be wholly inoperative, and for the court to construct it that way is a violation of accepted statutory construction doctrine. *Husted* v. *A. Philip Randolph Institute*, 138 S. Ct. 1833, 1858 (2018). We find that respondents were employed in public office in Boulder County, as pleaded by their complaint.

Pre-enforcement claims still involve factual exercises just as in regular cases where the alleged injury already occurs. Pleading standards are still in effect, and standing remains just as pertinent of an issue. In a case where the injury already occurred, the burden of proof is on the plaintiff to prove with preponderance that there was an injury in fact, and likewise when the injury is imminent - the burden is on

the plaintiff to prove such with preponderance. *Lujan, supra*, at 561. Imminence is purely a factual exercise, and therefore to prove such, sufficient facts must be pleaded that injury must be "certainly impending" or "substantial risk" to prove injury-in-fact and that "[a]llegations of possible future injury" are not enough to prove injury. *Whitmore* v. *Arkansas,* 495 U. S. 149, 158 (1990); *Clapper* v. *Amnesty Int'l USA*, 568 U. S. 398, 399 (2013) The *Clapper* court defaults to the "certainly impending" standard and not the "substantial risk" standard except when plaintiffs "incur costs to mitigate or avoid that harm." *Id.,* see also *Beck* v. *McDonald*, 848 F. 3d 262, 275 (CA4 2017).

When the petitioners attempted to get the matter dismissed in the lower court, the lower court opined that a suit is actionable "if there is a probable causal relation between the relief they seek, the facts they bring and the arguments[.]" *Nev* v. *Titanic,* RSC-CV-798 (Dec. 10, 2022). While we do not disagree with the Superior Court's determination, it applied a deficient standard for a challenge against standing, which the courts must infer is nonexistent until pleaded otherwise. See *Bender* v. *Williamsport Area Sch. Dist.*, 475 U. S. 534, 546 (1986), This means that it is the duty of the lower court judge to recognize and apply all measures relating to standing including *Lujan* and other pleading tests. The lower court also ruled that "factual arguments should be limited in scope if presented in motions to dismiss and rather they're indicative for a trial matter[.]" See *Titanic, supra*. We disagree. At each part of the judicial process, there is a requirement for factual review. A trial is an exercise not to determine the number of whole facts, but the veracity of a fact pleaded by the plaintiff. That' is why the courts endeavor in prima facie review when evaluating whether they fit the factual requirements of a legal test. These tests do not involve testing the veracity of a given fact, but instead whether that fact if accepted as true, satisfies the legal requirement. See *Bell Atlantic Corp*. v.

Twombly, 550 U. S. 544 (2007) Finally, the lower court states that "contravening angle of technical definitions of the statute are simply arguments for trial[.]" *Titanic, supra.* As a matter of best practice, courts ought to settle as many legal disputes before heading to trial. Including technical definitions of law. Petitioner's flawed, but relevant, motion to dismiss centered on the "public office" definition was ripe for adjudication as, while its arguments had factual precursors, the dispute was not a factual one. They were not attempting to challenge any fact pleaded by the plaintiff through their motion, and instead were creating a dispute of law. The source of the lower court's error is when it incorrectly probed the spirit of the controversy, which does not lie in any fact, but in how the law ought to be interpreted to the facts already plead. Trials do not suddenly make clear statutory or constitutional ambiguity.

When attempting a *de novo* review of standing on the pleadings, it is a closed universe problem, and the court cannot consider any information or allegations not wholly contained in the pleadings.[6] *Turtle, supra,* at 32. The respondents in their civil complaint allege that because they hold office in what was determined to be a hostile foreign power, their position is being put at substantial risk pursuant to 6 R. Stat. § 8301. The plaintiffs, through their factual allegations, prove that their client is most certainly subject to the statute. We disagree with the respondent's application of the substantial risk standard. In this case, the certainly impending standard is the applicable way to review. When it comes to our locality the substantial risk standard is mostly irrelevant. The respondents have made no proof as to the

---

[6] Respondents attempted to introduce facts in their statement of the case contained in the merits brief, the and further alleged new evidence. We cannot consider what is not originally on the trial court record. Even if we were to consider such evidence, the claim would not pass the standing test laid out in *Lujan*, *supra*.

certainty of whether such harm would occur. The Governor's Executive Order makes no mention nor offers any directive as to how a department would or ought to enact 6 R. Stat. § 8301. This statute places the power entirely within the hands of the discretion of the executive. There is no canonical evidence that the statute is an imperative command. Furthermore, the plaintiffs have not pleaded that their employing department was even considering exercising such discretion, nor have they shown any proof of that discretion being exercised on another person. There is no certainty as to the imminence of any action taking place. Furthermore, the statute does not grant a blank check to a department head, as the law requires that there be a finding that a person is a security risk. Even if we were to apply the substantial risk standard, there is no offer of proof, nor factual modifier, which makes the risk of adverse action substantial. The existence of a discretionary clause alone does not generate substantial risk, nor does it prove action is certainly impending.

This claim fails the *Lujan* test for standing, and the Superior Court lacked subject-matter jurisdiction to hear the claim. Therefore, the controversy is nonjusticiable.

II

Both petitioner and respondent stipulate that the *Winter* test is the proper test to use when evaluating whether to grant preliminary relief. To obtain a preliminary injunction, the plaintiff must demonstrate that 1) they are likely to succeed on the merits; 2) they are likely to suffer irreparable harm without the injunction; 3) the balance of equities and hardships is in favor of the plaintiff; and 4) whether that injunction is in the public interest. See *Winter* v. *Natural Resources Defense Council, Inc.,* 555 U. S. 7, 20 (2008). Generally, we have held that common law doctrines, including doctrines of equity, are incorporated into our system of laws as well, and therefore federal precedent relating to

such may be used as precedent. *State v. Lx1nas*, 1 Rid. 501 (2022) (Jackson, J. concurring in the denial of certiorari) (*Lx1nas I*), see also *Lx1nas III, supra*. Preliminary injunctions are equally as manifest in equity as a permanent one, and *Winter* represents a whole interpretation of not only the federal government's *modus operandi* but other states as well. Several states including but not limited to California, Pennsylvania, Texas, and Vermont have similar understandings of preliminary injunctions. See, *e.g., IT Corp.* v. *County of Imperial*, 35 Cal. 3d 63, 672 P. 2d 121 (1983); *Summit Towne Center, Inc.* v. *Shoe Show of Rocky Mt., Inc.*, 573 Pa. 637, 828 A. 2d 995 (2003); *Butnaru* v. *Ford Motor Co.*, 84 S. W. 3d 198, 204 (Tex. 2002); *In re J.G.*, 160 Vt. 250, 255 n.2, 627 A. 2d 362, 365 n. 2 (1993). Some states make the elements more abstract or not worry themselves over whether the injury is irreparable. They, however, put these principles to the other corresponding elements of the test. For example, irreparable injury significantly tips the balance of equities and hardships in favor of the plaintiff. Furthermore, the federal courts have held that the public interest and the balance of equities combine when the government is a party in an action. *Nken* v. *Holder*, 556 U. S. 418, 435 (2009). We ultimately hold that the Winter test shall be used to probe for whether to enter a preliminary injunction, and in a case against the government, the public interest is already accounted for in the balance of equities portion of the test and is therefore not required to be explicitly proven or denied. We further agree with the federal court's assertion that, contrary to the position of the respondents, preliminary injunctions are an "extraordinary remedy never awarded as of right." *Winter, supra* (citing *Munaf* v. *Geren*, 553 U. S. 686 (2008)). We review preliminary injunctions as an abuse of discretion. See *Brown* v. *Chote*, 411 U. S. 452 (1973); *Doran* v. *Salem Inn, Inc.,* 422 U. S. 922 (1975).

In this case, we find no need to determine whether respondents are likely to succeed on their constitutional

claims. One showing a plaintiff must make to obtain a preliminary injunction is likelihood of success on the merits. *Winter, supra,* at 20; see also *Glossip* v. *Gross,* 576 U.S. 863, 876 (2015); *Whole Woman's Health* v. *Jackson,* 141 S.Ct. 2494, 2495 (2021); *Ramirez* v. *Collier,* 142 S.Ct. 1264, 1275 (2022); *Perry* v. *Perez,* 565 U.S. 388, 394 (2012) (*per curiam*). Those merits "encompass not only substantive theories but also establishment of jurisdiction." *Electronic Privacy Info. Center* v. *Dept. of Commerce,* 928 F.3d 95, 104 (CADC 2019). "[I]f, in reviewing [the lower court's judgment on whether to issue] a preliminary injunction, we determine that a litigant cannot establish standing as a matter of law, the proper course is to remand the case for dismissal." *Id.* Because that is the case here, dismissal is appropriate.

* * *

We find that there is no standing for the respondents to bring this claim against the government, and therefore the preliminary injunction was issued beyond the legal jurisdiction of the Superior Court. We therefore reverse the judgment of the Superior Court, vacate the injunction issued below, and remand with instructions to dismiss the case.

It is so ordered.