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Legal Sidebar

Congressional and Executive Power Over Spending: Selected Recent Litigation

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On January 20, 2025, President Trump issued the first group in a series of executive orders that seek to align past and future federal spending decisions with the new Administration's policy priorities. The first Legal Sidebar in this series summarizes the range of policy issues the executive orders address as well as the spectrum of spending issues that they implicate.

This Sidebar is the second in the series and seeks to contextualize recent executive actions affecting federal spending by examining Congress and the executive's respective roles in controlling and administering federal funding. It examines three separate legal challenges to executive actions affecting federal spending that are currently pending in various federal courts. Building on the previous Sidebar's examination of general principles governing appropriations and spending, this Sidebar looks at how several courts have applied those principles, at least preliminarily. These cases are *New York v. Trump*, *AIDS Vaccine Advocacy Coalition v. U.S. Department of State*, and *California v. U.S. Department of Education*. These three cases represent a small subset of the many challenges to recent executive spending decisions and remain ongoing. The early written decisions in these cases may offer guidance, however, as to how courts are applying relevant legal principles and thus how Congress might analyze these issues when considering ways to confirm or limit recent executive branch decisions.

New York v. Trump

On January 27, 2025, the Office of Management and Budget (OMB) issued OMB memorandum M-25-13 which required that, "to the extent permissible under applicable law, Federal agencies must temporarily pause all activities related to obligation or disbursement of all Federal financial assistance." The next day, New York led a group of 22 states and the District of Columbia in filing suit in federal court in Rhode Island challenging the legality of this directive.

The states initially made five separate legal claims in their lawsuit. They alleged that the funding freeze violates: (1) the Administrative Procedure Act (APA), because agencies "have no authority to impose a government-wide pause on federal awards without regard to the individual authorizing statutes, regulations, and terms that govern each funding stream"; (2) the APA, because the OMB directive was arbitrary and capricious because it lacked a "reasoned basis" for the pause; (3) the Constitution's

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separation of powers, because it "impermissibly arrogates to the executive power that is reserved to Congress"; (4) the Constitution's Spending Clause, by placing additional conditions on federal funding to states "that are coercive, retroactive, ambiguous, and unrelated to the purpose of myriad grants affected"; and (5) the Constitution's Presentment, Appropriations, and Take Care Clauses, by purporting to "unilaterally amend or cancel appropriations that Congress has duly enacted." The states later amended their complaint to include additional agency defendants and a new claim. The amended complaint asserts an additional APA violation, arguing that aspects of the funding freeze constitute agency actions are "contrary to law," as they violate the terms of specific grants of authority in the Inflation Reduction Act and Infrastructure Investment and Jobs Act.

On January 31, 2025, the district court issued a temporary restraining order (TRO) that the government "shall not pause, freeze, impede, block, cancel, or terminate Defendants' compliance with awards and obligations to provide federal financial assistance to the States, and Defendants shall not impede the States' access to such awards and obligations, except on the basis of the applicable authorizing statutes, regulations, and terms." The court did so notwithstanding OMB's recission of its funding freeze directive two days earlier.

After finding that the "States have presented evidence . . . that the Defendants in some cases have continued to improperly freeze federal funds and refused to resume disbursement of appropriated federal funds" and that "[t]hese pauses in funding violate the plain text of the TRO," the court issued a subsequent order to enforce its TRO on February 10, 2025. The court stated, however, that the government may "show a specific instance where they are acting in compliance with this Order but otherwise withholding funds due to specific authority."

On March 6, 2025, the court entered a preliminary injunction. The court balanced the four traditional legal factors that courts analyze when considering a request for a preliminary injunction and found that the plaintiffs had made the requisite showing. Among other things, the court reasoned that the government likely acted *ultra vires*—that is, it exceeded its lawful authority—by failing to comply with the procedural requirements of the Impoundment Control Act (ICA) for proposing deferrals or recissions of budget authority.

The court's preliminary injunction has five requirements, which concern only existing awards of federal funding. In the main, the preliminary injunction bars agencies from giving effect to the OMB directive, any "Executive Orders issued by the President before rescission" of the directive, or any materially similar directive. The agencies may not, on the basis of such a directive, pause, freeze, block, or take similar action with respect to existing awards. The preliminary injunction further instructed agencies to release disbursements of funds on existed awards that had previously been frozen. Due to particular concerns with the Federal Emergency Management Agency's (FEMA's) compliance with the earlier TRO, the district court also ordered FEMA to file a status report regarding its compliance with the court's orders.

The federal government filed an appeal of the preliminary injunction. The U.S. Court of Appeals for the First Circuit (First Circuit) denied a request for a stay of the preliminary injunction pending appeal and issued an opinion explaining its reasoning for why the government had not satisfied the standard for a stay. The First Circuit found that the government did not show it was likely to succeed on the merits based on the argument that the OMB directive was not reviewable under the APA. (The court did not state a view on the substantive violations of the APA or application of the ICA specifically). Weighing the potential harm to the government, the First Circuit also observed that the preliminary injunction does "not apply to a pause or freeze based on an individualized determination under an agency's actual authority to pause such funds."

Both the trial court and appellate court proceedings remain pending.

AIDS Vaccine Advocacy Coalition v. U.S. Department of State

To effectuate the President's executive order titled "Reevaluating and Realigning United States Foreign Aid," on January 26, 2025, the Department of State paused all "foreign assistance grants" administered by the U.S. Agency for International Development (USAID) for a period of 90 days pending an internal review of those grants. Three days later, the Department clarified that there would be a waiver to the pause for "life-saving humanitarian assistance."

On February 10, 2025, several nonprofits who received grants through USAID filed suit in federal court in the District of Columbia challenging the pause in two separate lawsuits. (Though not formally consolidated, the second lawsuit, *Global Health Council v. Trump*, was assigned to the same judge and has generally proceeded in parallel to the *AIDS Vaccine Advocacy Coalition* case). The nonprofits alleged that the pause violated both the separation of powers and the President's duty to take care that the laws be faithfully executed, as well as the statutory requirements of the APA. Specifically, they alleged that under the APA, the pause was arbitrary and capricious and also *ultra vires,* violating the Further Consolidated Appropriations Act of 2024, the Impoundment Control Act, and the Anti-Deficiency Act.

The plaintiffs sought, and the court granted in part, a TRO. The order prohibited the defendants from "suspending, pausing, or otherwise preventing the obligation or disbursement of appropriated foreign-assistance funds in connection with any contracts, grants, cooperative agreements, loans, or other federal foreign assistance award that was in existence as of January 19, 2025." The court explained, however, that "it would be overbroad to enjoin Defendants from taking action to enforce the terms of particular contracts, including with respect to expirations, modifications, or terminations pursuant to contractual provisions."

After additional litigation surrounding the government's compliance with the TRO, the court ordered the government to issue payments for work already completed before the issuance of the TRO. The government appealed, ultimately seeking an order vacating the TRO from the Supreme Court. In a 5-4 decision, the Supreme Court denied the motion to vacate the TRO in a brief order that stated, "in light of the ongoing preliminary injunction proceedings, the District Court should clarify what obligations the Government must fulfill to ensure compliance with the temporary restraining order, with due regard for the feasibility of any compliance timelines."

Justice Alito, joined by Justices Thomas, Gorsuch, and Kavanaugh, dissented, arguing that sovereign immunity barred the claims at issue because the APA does not generally permit claims for money damages. Instead, he opined, such claims may need to be brought under the Tucker Act in the U.S. Court of Federal Claims.

On remand, the trial court orally ordered the government to pay outstanding balances to the plaintiffs by March 10. On March 10, the court also issued an order granting in part and denying in part plaintiffs' motion for a preliminary injunction. The court prohibited the government defendants from "giving effect to any terminations, suspensions, or stop-work orders issued between January 20, 2025, and February 13, 2025, for any grants, cooperative agreements, or contracts for foreign assistance." At the same time, the court determined that "Plaintiffs' proposed relief is overbroad insofar as it would specifically order Defendants to continue to contract with them." In the court's view, while the government was required to "to make available for obligation the full amount of funds Congress appropriated" under the ICA and other appropriations laws, that did not necessarily require reviving cancelled partnerships with the plaintiff nonprofits. Instead, "both the Constitution and Congress's laws have traditionally afforded the Executive discretion on how to spend within the constraints set by Congress." Plaintiffs, citing the

government's data, indicated that more than 90% of USAID awards were terminated during the State Department's internal review of foreign assistance grants.

The government filed a notice of appeal of the preliminary injunction on April 1, 2025. Both the appeal and trial court litigation remain ongoing.

California v. U.S. Department of Education

California is leading a group of eight states in challenging the Department of Education's (ED's) termination of Teacher Quality Partnership (TQP) and Supporting Effective Educator Development (SEED) grants. These programs are among a group of grants historically offered by ED that "support high-quality teacher preparation and professional development." As alleged by the states, beginning February 2025. ED "effectively eliminated" the TQP and SEED programs. On March 6, 2025, this group of states filed suit in federal court in the District of Massachusetts arguing that termination of these grants was unlawful.

Specifically, the states argue that these terminations violated the APA in two different ways. First, they argue that the terminations were arbitrary and capricious because the agency did not adequately explain its reasons for the terminations and failed to consider relevant factors affecting the impact of termination. Second, the states argue the terminations were not in accordance with law because the agency purportedly did not comply with the grant terms and conditions for termination, which is, in the states' view, a necessary condition for termination under the government's cited authority for termination.

The district court granted the plaintiff states' request for a TRO on March 10, 2025. In granting the TRO, the trial court found that the states "are likely to succeed in their claims that the Department's action in terminating the grants is arbitrary and capricious."

The federal government then sought a stay of the TRO from the First Circuit, which denied the request. First, the First Circuit determined that the Massachusetts District Court had jurisdiction over the lawsuit because, although contractual claims must often be brought in the Court of Federal Claims, the legal claims in this case were not contractual in nature despite involving grants or contracts. In the First Circuit's view, "[t]he States' claims are, at their core, assertions that the Department acted in violation of federal law—not its contracts." The Court of Appeals also agreed with the trial court that the federal government likely acted arbitrarily and capriciously by failing to give a reasoned explanation for the termination.

The federal government then sought a stay from the Supreme Court. In a 5-4 decision, the Supreme Court granted the federal government's request. In a brief, three-page decision, the majority found that it was likely that "the District Court lacked jurisdiction to order the payment of money under the APA." Justice Kagan dissented, as did Justice Jackson, joined by Justice Sotomayor. Chief Justice Roberts noted he would deny the request but did not write separately or join a dissent.

Both the trial court litigation and First Circuit appeal remain pending.

Considerations for Congress

The three cases highlighted in this Sidebar are still in active litigation, and their final outcome, including any appeals, could be years away. Even in this preliminary stage, however, they may offer guidance to Congress, both demonstrating how courts are viewing the legal issues presented by these executive actions and highlighting Congress's ability to control how federal funds are spent.

Cases like *New York v. Trump* and *AIDS Vaccine Advocacy Coalition* show that some courts have been skeptical of broad program- or agency-wide funding pauses, with both courts citing to the ICA as a reason

for issuing preliminary injunctions. On the other hand, at least one court previously held during the Biden administration that the ICA was not enforceable in a lawsuit by private parties because the statute vests enforcement exclusively in the Comptroller General. Congress could consider legislation to clarify when and how, if at all, entities other than the Comptroller General may enforce the ICA.

These cases also highlight the significance of the distinction between programmatic delay and impoundment. The executive branch has maintained throughout litigation that any pauses in funding are programmatic delays, which are within the executive branch's discretion, rather than impoundments that trigger the special message procedural requirements under the ICA. As the other Sidebar in this series explained, this distinction is not explicitly drawn from the text of the ICA but, rather, is drawn from a series of Government Accountability Office opinions interpreting that law. Congress could consider legislation codifying the distinction between programmatic delays and impoundment and clarifying when or whether the executive may delay the obligation or disbursement of funding for programmatic reasons.

Both cases highlight the typical deference given to the executive branch on individual contracting or grant award decisions. The court in *New York v. Trump* specifically contrasted the government's categorical approach in implementing the OMB directive, on one hand, with "individualized assessments of their statutory authorities and relevant grant terms" on the other. The court's preliminary injunction order also focused on prohibiting a "categorical pause or freeze of funding." In *AIDS Vaccine Advocacy Coalition*, the court likewise declined to order reinstatement of particular terminated grants, even after finding that categorical funding pauses likely violated the ICA.

The Supreme Court orders in both *AIDS Vaccine Advocacy Coalition* and *California v. U.S. Department of Education* also raise issues surrounding the availability of certain kinds of lawsuits to challenge grant terminations. Because both cases were decided on the Supreme Court's emergency docket on requests for relief from a lower court's ruling, there is limited information as to why the Court viewed these two cases differently. The four dissenters in *AIDS Vaccine Advocacy Coalition* argued that sovereign immunity likely barred the lawsuit, and they were joined by Justice Amy Coney Barrett in the *California* case to form a majority that cited sovereign immunity to reach the opposite result as the *AIDS Vaccine Advocacy Coalition* case. The availability of sovereign immunity as a defense can be altered by Congress, which likewise has the authority to limit the availability of certain types of claims or to direct that certain claims be filed in certain courts (such as the Court of Federal Claims). Congress could consider legislation that clarifies which types of claims are available to litigants challenging grant terminations. In addition to these procedural considerations, Congress could also consider legislation codifying or amending the substantive agency authorities to terminate grants.

Finally, Congress could adopt a wait-and-see approach. It may wish to allow these legal issues to percolate and further develop in the courts before determining whether any legislative action is appropriate or desired.

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