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Legal Sidebar

Litigation Over the Trump Administration's Grant Terminations

March 19, 2026

Since the beginning of President Trump's second term, the Administration has paused payments under a number of existing grants and terminated billions of dollars' worth of grant awards under a variety of different programs. The Administration's explanations for the pauses and terminations have varied. Executive agencies have premised some of these actions on the assertion that a recipient violated the grant's terms—a so-called termination for cause. More frequently, executive branch agencies have grounded grant pauses and terminations on general concerns that the awards do not align with the Administration's policies. These pauses and terminations have prompted a bevy of lawsuits and raised questions about the authority of executive branch agencies to terminate awards and impose grant conditions after grants have been awarded.

This Legal Sidebar discusses the constitutional authorities underpinning grant programs, the issuance and termination of grant awards, certain statutes and regulations establishing grant programs, and the governmentwide grant guidance and agency regulations governing termination, including a relatively new provision that authorizes termination "if an award no longer effectuates the program goals or agency priorities." The Sidebar concludes with some considerations for Congress.

Constitutional Background

Congress's authority to establish grant programs and place conditions on the receipt of grant funds generally derives from Article I, Section 8, clause 1 of the U.S. Constitution, commonly referred to as the Spending Clause. The Spending Clause provides that "Congress shall have Power ... to pay the Debts and provide for the common Defence and general Welfare of the United States." This "power of the purse" has been said to reside in Congress alone, absent a delegation to the executive branch. The Supreme Court has interpreted Congress's power under the Spending Clause broadly, while expressing four constitutional limitations on the government's ability to impose conditions on the receipt of federal grant funds:

1. The government must provide *clear notice* of conditions on federal funding;
2. Conditions imposed must be generally *related* to the federal interest in the program;
3. Funding conditions must *not be coercive*; and

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LSB11407

4. Conditions may not exceed Congress's constitutional authority or force recipients to *violate an independent provision of the Constitution*, such as the Free Speech or Free Exercise Clauses of the First Amendment.

Thus, Congress may impose conditions on federal grant funds as long as the conditions comply with the notice, relatedness, non-coerciveness, and independent constitutional bar requirements. Lower courts have also held that executive branch agencies generally may only impose funding conditions that Congress has statutorily authorized and that meet the same four constitutional requirements.

Grant Authorizing Statutes and Regulations

Congress has passed laws authorizing scores of grant programs. These laws vary widely in their specificity, running the gamut from only mentioning the general purpose of the grant program to significantly detailing the grant program's terms and conditions, including, at times, establishing the permissible bases and processes for termination. For example, 29 U.S.C. § 671(e) generally authorizes the Director of the Occupational Safety and Health Administration to "enter into contracts, grants or other arrangements, or modifications thereof to carry out the provisions of this section" to improve occupational safety and health standards, but does not provide much in the way of additional statutory guidance.

In contrast, Congress has imposed detailed statutory terms and conditions in authorizing teacher quality enhancement grants. These statutory provisions establish, among other things, application and eligibility standards, permissible uses of the grants, consultation requirements, performance evaluation and accountability standards, and termination conditions.

Congress has also imposed governmentwide standards applicable to certain grounds for grant termination. For example, Congress has imposed extensive limitations on when federal funding can be terminated for violating the antidiscrimination provisions of Title VI of the Civil Rights Act of 1964 (Title VI), which prohibits discrimination on the basis of race, color, or national origin by recipients of federal funds, and Title IX of the Education Amendments of 1972 (Title IX), which prohibits discrimination on the basis of sex in federally funded education programs. As analyzed in-depth by this Legal Sidebar, the Title VI and IX termination process requires the relevant agency to provide the recipient notice of the alleged violation and to seek voluntary compliance. When voluntary compliance cannot be achieved, then the agency must offer the recipient a trial-like, formal adjudication, after which the agency must file a written report on the matter with congressional committees of jurisdiction and wait 30 days before the termination can take effect.

The executive branch agencies that are statutorily authorized to administer grant programs, often promulgate regulations or issue guidance with their own varying levels of specificity to implement and buttress the statutory programs. Agencies also may provide terms and conditions on funding in grant agreements, above and beyond those explicitly required by statute or regulation, as long as they are not inconsistent with the Constitution and governing grant statutes and regulations.

Given this wide variation among grant programs, the White House's Office of Management and Budget (OMB) has issued grant guidance (*OMB Grant Guidance*), codified at 2 C.F.R., Subtitle A, with the goal of promoting uniformity in the award and administration of federal grants across the executive branch. Most executive branch agencies have promulgated regulations that adopt as agency rules the OMB Grant Guidance along with agency-specific deviations, such as those that are necessary to comply with the grant authorizing statutes they administer. These agency-specific grant regulations are mostly codified at 2 C.F.R., Subtitle B.

Section 200.340 of the OMB Grant Guidance establishes the general parameters for terminating grant agreements in whole or in part. This provision notes four ways in which grants may be terminated.

Awards may be terminated by mutual consent of the recipient/subrecipient and the awarding agency/pass-through entity. They may also be terminated unilaterally by the recipient/subrecipient, subject to certain notification requirements. Grant awards may also be unilaterally terminated by the agency or pass-through entity "if the recipient or subrecipient fails to comply with the terms and conditions of the Federal award." The fourth ground for termination is of a more recent vintage than the others—originally issued by OMB in 2020 and amended in 2024. It provides that an agency may terminate a grant "*to the extent authorized by law*, if an award no longer effectuates the program goals or agency priorities" (emphasis added). The phrase "to the extent authorized by law" appears to allow termination only if the termination does not otherwise conflict with governing law, such as the specific grant authorizing statute or regulations. When an agency invokes the fourth termination provision of the OMB Grant Guidance, the agency, at a minimum, must provide the recipient notice of why the grant is being terminated, in addition to any other process stipulated in the grant agreement.

As the foregoing legal overview indicates, assessing the propriety of an agency's decision to terminate a grant award is a fact-specific, case-by-case determination based on the Constitution, governing statutes, applicable regulations, the terms and conditions of the relevant grant agreement, and the process and legal basis by which a grant was terminated.

Litigation Concerning Grant Terminations

The Administration's grant terminations and related guidance have prompted numerous lawsuits by grant recipients. Plaintiffs in these cases have raised a number of constitutional and statutory claims, the latter largely brought pursuant to the Administrative Procedure Act (APA). These claims have included that:

- the Administration terminated or threatened to terminate grants due to recipients' failure to comply with grant conditions that were not authorized by law or contrary to the law in violation of the Spending Clause, the separation of powers, various other constitutional provisions, or the APA;
- agency guidance and termination letters conflicted with the agency's regulations and, therefore, were contrary to the law in violation of the APA; and
- grant termination decisions were arbitrary and capricious in violation of the APA because they lacked reasoned decisionmaking.

Preliminary and merits-based decisions on plaintiffs' legal claims involving agency grant terminations and other grant activities have varied based on the facts and circumstances underlying each of the cases, the specific grant authorizing statutes, applicable agency implementing regulations, and other factors, with the government prevailing in some instances and plaintiffs prevailing in others.

The Supreme Court's *Per Curiam* Decisions

In at least two of these cases, the Supreme Court weighed in during the preliminary stages of the litigation, issuing short, *per curiam* "emergency docket" decisions that focused primarily on whether federal district courts could review, under the APA, legal challenges to grant terminations or whether claims of this nature could only be brought in the U.S. Court of Federal Claims (CFC) under the Tucker Act.

The APA provides a waiver to federal sovereign immunity that authorizes harmed parties to challenge final agency actions in court. Plaintiffs may generally file APA challenges in a federal district court located in the judicial district in which any defendant resides or in which a substantial portion of the challenged actions occurred. Courts may set aside a final agency action under the APA if the plaintiff shows that the action was arbitrary, capricious, an abuse of discretion, or contrary to the law. The APA

does not authorize money damages as a remedy against the United States. As the Supreme Court explained in *Bowen v. Massachusetts*, when the United States is sued in "an action at law for damages -- which are intended to provide a victim with monetary compensation for an injury to his person, property, or reputation," the case must be brought in the CFC under the Tucker Act. The Court also explained in *Bowen*, however, that "an equitable action for specific relief" which "may require one party to pay money to another" may properly be brought in a federal district court under the APA.

The APA's sovereign immunity waiver generally does not apply if "any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought." The Tucker Act is another sovereign immunity-waiving statute that, among other things, authorizes money damage suits against the United States when the suits are founded upon a government contract. The Tucker Act provides the CFC with exclusive jurisdiction over such claims if the damages sought exceed $10,000. (Claims for $10,000 or less may be brought in either the CFC or a federal district court in accordance with the "Little Tucker Act.") In contrast to district courts engaged in APA review, the CFC does not have general equitable powers to provide injunctions or other prospective relief.

Department of Education v. California

In an April 4, 2025 *per curiam* decision, *Department of Education v. California* (*California*), the Supreme Court stayed a district court's temporary restraining order (TRO) that would have prevented the Department of Education (ED) from canceling dozens of grant awards to public schools and universities and ending two competitive grant programs for teacher training, support, and recruitment. These cancelations occurred after President Trump issued a series of executive orders requiring agencies to eliminate direct and indirect support of diversity, equity, and inclusion programs (the DEI Executive Orders). Citing 2 C.F.R. § 200.340(a)(4), which ED has adopted by regulation, ED justified the mass grant cancelations because the awards "no longer effectuate[] the program goals or agency priorities" in light of the DEI Executive Orders. The plaintiffs alleged that the agency's mass terminations were arbitrary, capricious, and an abuse of discretion in violation of the APA. The plaintiffs also argued that ED's guidance issued to implement the DEI Executive Orders conflicted with the agency's regulations and, therefore, were contrary to the law in violation of the APA. As a result, the plaintiffs moved the court to vacate and set aside the grant terminations and enjoin enforcement of the agency's DEI guidance and termination letters.

In an unsigned opinion, a majority of the Justices preliminarily stayed the district court TRO pending the government's appeal, in effect allowing the terminations to stand while the suit continued. Without addressing the merits of the plaintiffs' claims, the majority held that "the Government is likely to succeed in showing that the District Court lacked jurisdiction to order the payment of money under the APA" because the APA's waiver of sovereign immunity does not extend to "orders to enforce a contractual obligation to pay money along the lines of what the District Court ordered here." The majority indicated instead that these claims likely belonged before the CFC in accordance with the Tucker Act.

National Institutes of Health v. American Public Health Association

In a second opinion, *National Institutes of Health v. American Public Health Association* (*APHA*), released on August 21, 2025, a divided Court granted in part and denied in part the government's application for a stay of the district court's decision vacating (1) the National Institutes of Health's (NIH's) issuance of guidance explaining that it would no longer fund research related to DEI objectives, gender identity, or COVID–19, and (2) NIH's termination of hundreds of millions of dollars' worth of medical research grants to comport with the DEI Executive Orders. Four Justices (Thomas, Alito, Gorsuch, and Kavanaugh) would have stayed the district court decision in its entirety, arguing that the case involved a contract claim seeking monetary damages that belonged in the CFC under the Tucker Act. Four other Justices (Chief Justice Roberts and Justices Kagan, Sotomayor, and Jackson) would have

denied in full a stay of the district court's order, arguing that the decision to vacate the NIH guidance fell within the district court's APA jurisdiction, as did claims challenging grant terminations that were based on that guidance, in line with the Supreme Court's decision in *Bowen*.

Justice Barrett, writing for herself, authored an opinion that was decisive on the disposition of the stay application. Justice Barrett concurred with the Justices who voted to grant a stay of the district court's order to the extent the order would require NIH to reinstate the terminated grants. Justice Barrett agreed this relief involved contract-based claims for monetary damages that, in accordance with the Tucker Act, belonged in the CFC. In contrast, Justice Barrett agreed with those Justices who would have denied a stay of the district court's TRO, but solely to the extent the TRO related to NIH's guidance. In this regard, Justice Barrett reasoned that challenges to the agency guidance likely were properly before the district court because they are not claims "founded ... upon" contract even though the guidance related to a grant program. In Justice Barrett's view, vacating the guidance in and of itself would neither reinstate the terminated grants, nor "necessarily void decisions made under" the it.

Justice Barrett concluded that the plaintiffs likely should have bifurcated their claims, pursuing those related to the NIH guidance in the district court and those related to grant terminations in the CFC. To that end, Justice Barrett noted that a federal statute bars the CFC from reviewing claims involving "substantially the same operative facts" that are pending before another federal court, which might force the plaintiffs to pursue their claims targeting the NIH guidance and subsequent grant terminations sequentially, rather than simultaneously. Justice Barrett explained that plaintiffs and the courts must adhere to the statutory scheme that Congress established even if doing so is inefficient.

Subsequent District Court Opinion in *California*

In an opinion issued in November 2025, the district court in *California* considered how to apply the Supreme Court's *per curiam* decisions in conjunction with other Supreme Court precedent. The district court expressed concern about the brevity of the *California* decision and confusion about its precedential value, citing a dozen lower court decisions that grappled with how to apply the Court's preliminary, *per curiam* decisions along with the fully briefed, merits decision in *Bowen*.

Ultimately, the district court ruled that the plaintiffs' claims must be bifurcated. Relying on Justice Barrett's controlling opinion in APHA, the court concluded that the plaintiffs' request for an injunction setting aside the agency's grant termination "is, in effect, a request for disbursement under the terminated grants" that falls within the CFC's jurisdiction under the Tucker Act. In contrast, the court reasoned that plaintiffs' claims seeking prospective relief to set aside the agency's DEI guidance and other allegedly unlawful actions, which could affect future disbursements of grant funds, properly falls within the district court's jurisdiction in accordance with the APA. The court therefore dismissed plaintiffs' retrospective grant reinstatement claims, but allowed plaintiffs to continue pursuing their prospective claims challenging the legality of the agency's guidance and other agency actions. As of this writing, litigation over the plaintiffs' non-contract-based claims remains pending in the district court.

Subsequent Litigation in *APHA*

Following the Supreme Court's *per curiam* opinion, the parties in *APHA* reached a settlement, which the district court approved. The government agreed to review a tranche of the plaintiffs' grant applications in accordance with the agency's standard process and regulations and without regard to the challenged agency guidance. In exchange, the plaintiffs agreed to drop their remaining legal claims.

Considerations for Congress

Under the Constitution, Congress may use its legislative powers to address the questions raised in the Supreme Court decisions discussed above regarding federal courts' jurisdiction and remedial powers in cases addressing the termination of grants.

As Justice Barrett wrote in her controlling opinion in *California*, "Suits against the United States are 'available by grace and not by right,' and the relief available is subject to the conditions Congress sets." As such, if Congress disagrees with the way the courts have interpreted the APA and Tucker Act, it is within Congress's power to legislate to adjust federal court jurisdiction and the remedies available to plaintiffs challenging federal grant-related actions.

Congress could, for example, expand district court jurisdiction under the APA to include suits challenging grant terminations and expressly authorize district courts to reinstate grants upon determining their terminations were unlawful. On the other hand, if Congress prefers that all grant-related litigation go before the CFC, it could expand the CFC's jurisdiction to cover not only grant claims founded in contract, but also other claims challenging agency actions on which grant termination decisions rely, such as regulations and internal agency guidance. Congress might also consider authorizing the CFC to issue prospective equitable remedies, such as preliminary and permanent injunctions to enjoin agency enforcement of grant-related actions determined to be unlawful. Rather than expanding judicial review of grant-related disputes, Congress could also choose to restrict or outright bar judicial review of grant-related agency actions.

Beyond these jurisdictional and remedial issues, Congress also has a great deal of latitude in how to exercise its Spending Clause powers. As mentioned above, existing grant authorizing statutes vary considerably in their level of detail and specificity. Congress could amend existing grant authorizing statutes to eliminate some program implementation discretion provided to executive branch agencies by, for example, statutorily establishing program eligibility criteria, procedural standards applicable to agency award decisions and dispute resolution, and the permissible grounds by which awards may be terminated. Congress could amend individual grant authorizing statutes on a case-by-case basis or codify a uniform grant statute that would establish the default standards for all or certain categories of grant programs. Congress, for instance, could codify in statute aspects of the OMB Grant Guidance it favors, override those provisions it disfavors, and add provisions as it sees fit. These measures could increase uniformity among the grant programs, while establishing congressional prerogatives and reducing executive branch discretion. On the other hand, establishing a uniform grant law could increase administrative costs, slow the disbursement of certain grant awards, and reduce agency flexibility to tailor procedures to the unique characteristics of particular grant programs.

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