NATIONAL WOMEN'S LAW CENTER ACTION FUND

JULY 2026 | BRIEF

Close the Loophole that Prevents Courts from Addressing Illegal Terminations of Grants

In a recent shadow docket decision (*NIH v. APHA*),[1] the U.S. Supreme Court made it extremely difficult to sue federal agencies to prevent them from unilaterally terminating federal grants, sometimes after imposing unlawful funding conditions. This loophole created by the Court puts billions of dollars of funding to states, localities, and service providers at risk. Fortunately, Congress can help protect critical services and restore their power to allocate federal funding and set priorities through appropriate legislation.

The Supreme Court Created a Loophole that Limits the Ability of States, Localities, and Service Providers to Challenge Grant Terminations

Every year, Congress allocates billions of dollars in grants – in FY2024, the federal government provided an estimated $1.1 trillion to state and local governments in federal grants.[2] These grants fund essential services and programs across diverse sectors that Americans depend upon, including transportation, health, agriculture, and education. Our system of government relies heavily on services provided by states, localities, and service providers which are funded by the federal government through grants. Congress, having the power of the purse, carefully determines the rules, conditions, and eligibility for grantmaking to make programs and services successful. However, the Trump administration has repeatedly attempted to condition, redirect, and withhold congressionally appropriated funds based on the President's policy preferences, including opposing diversity, equity, and inclusion;[3] opposing environmental science;[4] and using the pretext of fraud to defund childcare.[5]

The Supreme Court has refused to stop these illegal actions by the Trump administration. In fact, through their decision in *NIH v. APHA*, the Court has enabled agencies to violate the law by creating a loophole in the Administrative Procedure Act (APA) and the Tucker Act that requires that lawsuits challenging withholding of funds related to grants and termination of grants to be filed in the Court of Federal Claims. The Court of Federal Claims is normally used for contract disputes, and it offers very limited relief: it cannot issue injunctions to stop the federal government's unlawful actions or restore terminated grants, and it can only award damages for past harms. This means that states, localities, service providers, and other recipients of federal funding face significant barriers to challenging withholding or termination of grants—and, in some cases, they are left with no remedy at all. As Justice Jackson noted in her dissent in *NIH v. APHA*, "no court would have the power to vacate or enjoin a blatantly discriminatory grant-related policy, such as a blanket ban on federal grants to Black or Catholic researchers."[6] At the same time, this loophole effectively deprives Congress of its spending power and gives the executive branch the power to veto government spending.

This Loophole Allows the President to Use Funding to Coerce States, Localities, and Service Providers to Comply with Executive Policies

Through this loophole, the Supreme Court effectively empowered the President to leverage federal funding as a tool of coercion against states, localities, and service providers. While the *NIH v. APHA* case was about grants for science funding, the loophole the Court has created that hinders challenging grant terminations affects funding across every area. Already, the government has invoked this loophole to withhold funding for higher education,[7] improved ICE holding facilities,[8] representation for unaccompanied immigrant children,[9] government benefits like SNAP,[10] environment and agricultural projects,[11] highways and roads,[12] energy,[13] disaster relief grants,[14] maternal and pediatric health,[15] research on internet censorship,[16] and public libraries.[17] Further, the Trump administration has repeatedly threatened, delayed, or denied funding to Democrat-led states and localities.[18]

If recipients of federal funds lack a meaningful, timely ability to challenge unlawful terminations in court, the President can effectively bypass Congress's spending authority and repurpose appropriated funds to impose the President's policy preferences unilaterally. In practical terms, this creates a stark choice for states, localities, and service providers receiving grants: comply with executive demands, even if legally dubious, or engage in burdensome litigation in two separate court systems, in the hope of recovering some of the funds they already spent. And even if the grantee wins, they cannot restore a grant that was illegally terminated. This gives agencies a powerful tool to coerce states, localities, and service providers to align to the President's policies, rather than the program requirements established by Congress, or face massive loss of funding. The result is not just administrative inefficiency but a structural shift in power, where the executive can use public funds as leverage to reshape policy nationwide without meaningful judicial or legislative constraint. The public also suffers due to degraded, uncertain delivery of critical services, such as housing, research, health care, childcare, and education.

Congress Must Take Action to Restore Their Authority and Preserve Critical Federal Services and Programs

While the loophole created by the Supreme Court deprives grantees of an effective remedy when the federal government terminates federal grants, Congress can effectively resolve this issue with a straightforward legislative fix. Specifically, Congress should pass the Federal Funding Protection Act (H.R. 8993),[19] which amends the jurisdiction of the federal district courts to affirm they can address these challenges by grantees, including by restoring improperly terminated grants and providing injunctive relief. This remedy would reinstate the ability of grantees to challenge federal grant terminations through the courts, as they have been able for the last 80 years since the passage of the APA in 1946.[20]

These legislative clarifications would restore grantees' access to district courts, ensure timely judicial review, and prevent the executive from leveraging jurisdictional ambiguity to insulate termination of grant funding from meaningful scrutiny. Through this approach, Congress would both reclaim its spending authority and reassert the integrity of the federal grantmaking process.

Endnotes

1 *National Institutes of Health v. American Public Health Association*, 606 U.S. __ (2026), https://www.supremecourt.gov/opinions/24pdf/25a103_kh7p.pdf [hereinafter "*NIH v. APHA*"].

2 Adam G. Levine, Federal Grants to State and Local Governments, Library of Congress Reports (June 26, 2025), https://www.congress.gov/crs-product/R40638#_Ref197937619.

3 Trump's Executive Actions Freezing Federal Funding, Explained, Southern Poverty Law Center, https://www.splcenter.org/resources/guides/trump-funding-freeze-faq/; Trump Administration Freezes Billions of Dollars in Federal Grants and Loans, Sabin Center for Climate Change Law, Columbia Law School, (Feb. 25, 2025),https://climate.law.columbia.edu/content/trump-administration-freezes-billions-dollars-federal-grants-and-loans; Tony Romm, White House Seeks to Impose Political Test on Billions in Federal Grants, New York Times (June 2, 2026), https://www.nytimes.com/2026/06/02/us/politics/trump-budget-grants-omb-vought.html.

4 Rachel Frazin, NOAA Grant Funding Held Up by Trump, The Hill (Apr. 13, 2026),https://thehill.com/newsletters/energy-environment/5829709-noaa-grant-funding-held-up-by-trump/; Max Kozlov, Jeff Tollefson & Dan Garisto, US science after a year of Trump, Nature (Jan. 20, 2026), https://www.nature.com/immersive/d41586-026-00088-9/index.html.

5 Caitlyn Kim & Molly Cruse, Trump administration freezes childcare, food aid funds to Colorado, CPR News (Jan. 6, 2026), https://www. cpr.org/2026/01/06/trump-freezes-colorado-childcare-food-aid-funds/.

6 *NIH v. APHA* at 9 (Jackson, J., concurring in part).

7 *President & Fellows of Harvard College v. United States Department of Health & Human Services*, 798 F. Supp. 3d 77 (D. Mass. 2025) (applying APHA's bifurcated framework, holding the federal court lacked jurisdiction over APA arbitrary-and-capricious challenges to freezes and terminations of federal funding to Harvard after the university failed to meet the administration's standards on shuttering DEI programs and combatting antisemitism).

8 *City of Chicago v. United States Dep't of Homeland Sec.*, No. 25 C 5463, 2025 WL 3043528 (N.D. Ill. Oct. 31, 2025); *Cmty. Legal Servs. in E. Palo Alto v. United States Dep't of Health & Hum. Servs.*, 155 F.4th 1099, 1100 (9th Cir. 2025).

9 *Id*.

10 *Rhode Island State Council of Churches v. Rollins*, 158 F.4th 304, 308 (1st Cir. 2025).

11 *Sustainability Inst. v. Trump*, 165 F.4th 817, 821 (4th Cir. 2026); U*rb. Sustainability Directors Network v. United States Dep't of Agric.*, No. CV 25-1775 (BAH), 2025 WL 2374528, at *20 (D.D.C. Aug. 14, 2025).

12 *California v. United States Dep't of Transportation*, 808 F. Supp. 3d 291 (D.R.I. 2025).

13 *New York v. Trump*, 811 F. Supp. 3d 215 (D. Mass. 2025).

14 *Cnty. of Santa Clara v. Noem*, No. 25-CV-08330-WHO, 2025 WL 3251660 (N.D. Cal. Nov. 21, 2025).

15 *Am. Acad. of Pediatrics v. U.S. Dep't of Health & Hum. Servs.*, No. 25-CV-4505 (BAH), 2026 WL 80796 (D.D.C. Jan. 11, 2026).

16 *Open Tech. Fund v. Lake*, No. 1:25-CV-00840-RCL, 2025 WL 3289166, at *1 (D.D.C. Nov. 25, 2025).

17 *Rhode Island v. Trump*, 810 F. Supp. 3d 283, 313 (D.R.I. 2025).

18 Thomas Frank, It's 3 times harder for blue states to get disaster funding under Trump, Politico, (Mar. 23, 2026), https://www.politico.com/news/2026/03/23/trump-denies-disaster-aid-for-democratic-led-states-00831199.

19 Federal Funding Protection Act, H.R. 8993, 119th Cong. (2026), https://www.congress.gov/bill/119th-congress/house-bill/8993.

20 For decades, courts have permitted APA suits in district court challenging agency funding decisions and ordering reinstatement of grants and restoration of funds as injunctive relief, not money damages. *See*, *e.g.*, *Bowen v. Massachusetts*, 487 U.S. 879 (1988); *Trudeau v. FTC*, 456 F.3d 178 (D.C. Cir. 2006); *Planned Parenthood of Greater Washington & N. Idaho v. U.S. Dep't of Health & Hum. Servs.*, 328 F. Supp. 3d 1133, 1139 (E.D. Wash. 2018); *Colorado v. U.S. Dep't of Health & Hum. Servs.*, 788 F. Supp. 3d 277, 295 (D.R.I. 2025), appea dismissed, No. 25-1671, 2025 WL 4057116 (1st Cir. July 29, 2025) (stating "just because "a judicial remedy may require one party to pay money to another is not a sufficient reason to characterize the relief as 'money damages.'"); *S. Educ. Found. v. United States Dep't of Educ.*, 784 F. Supp. 3d 50, 65 (D.D.C. 2025), dismissed, No. 25-5262, 2025 WL 2793138 (D.C. Cir. Sept. 30, 2025) (distinguishing from Department of Education because the grant was the plaintiff's sole source of funding and termination would inflict economic harm that threatens the organization's existence); *San Francisco Unified Sch. Dist. v. AmeriCorps*, 784 F. Supp. 3d 1280, 1286 (N.D. Cal. 2025) (describing how "Congress specifically intended for § 702 to allow for judicial review of the administration of federal grant-in-aid programs").