

Grant Terminations and Court of Federal Claims Litigation

Client Alerts

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By: David Robbins, Betsy Henthorne, Zachary C. Schauf, Lauren J. Hartz, Logan Wren

The Administration's dramatic cutbacks to federal funding have changed the landscape and presented new and unprecedented challenges for funding recipients across a range of industries.

The Supreme Court's decision last month in *National Institutes of Health v. American Public Health Association* ("APHA") and *Massachusetts v. Kennedy*, is the Court's latest word on the evolving landscape for challenging grant terminations.^[1] In those cases, the Supreme Court left in place a district court's order invalidating NIH directives that served as the basis for nearly \$1 billion in grant terminations. But the Court stayed the same court's order vacating the ensuing grant terminations, noting that challenges to terminations likely should be brought in the Court of Federal Claims (COFC) rather than in district court.

This leaves grant recipients to navigate an increasingly fraught judicial landscape, alongside the executive branch's ongoing actions to limit, suspend, revoke, and terminate federal funding, which may only be getting started, if Executive Order 14332, *Improving Oversight of Federal Grantmaking*—issued last month^[2]—is any indication. In this environment, funding recipients are well advised to familiarize themselves with litigation in the COFC as it may help your organization recover funds unlawfully withheld by the government.

Two factors make exploring potential relief at the COFC timely:

- *First*, the Supreme Court's decision in *APHA* has made district court challenges to individual grant terminations more difficult and made it more likely that many suits requiring the payment of money by the government will be funneled to the COFC.
- *Second*, some organizations have been reluctant to sue in COFC during a funding pause, with the hope that the flow of money could be restarted before the grant's period of performance ends. However, the end of the government fiscal year (September 30) is a common deadline for grant renewal. Should grants be non-renewed, strategic considerations may change, shifting the focus instead to recovering non-payment of grant funds.

Due to these twin pressures, organizations should explore whether breach-of-contract actions in the COFC could help them recover any unpaid federal funds.

Jurisdictional Battle: Federal District Courts v. the Court of Federal Claims

The COFC—an Article I court created by Congress—is a court of limited jurisdiction that was created as a forum for private parties to sue the federal government for money damages.^[3] Under the Tucker Act, 28 U.S.C. § 1491(a)(1), the COFC has jurisdiction over contract claims against the United States, and courts have held that it has *exclusive* jurisdiction over contract claims seeking more than \$10,000 in damages.^[4]

Under the Administrative Procedure Act (APA), federal courts have jurisdiction to hear challenges to unlawful agency actions. But when the COFC has exclusive jurisdiction over a contractual claim, litigants cannot pursue relief under the APA in district courts for that claim.^[5] This creates a tension between the jurisdiction of district courts under the APA and that of the COFC under the Tucker Act for suits challenging unlawful agency actions that may implicate a contract or agreement with the federal government—an issue that has played a significant role in the dozens of lawsuits challenging adverse federal funding actions taken by the current Administration.

In April, the Supreme Court addressed the line between the APA and the Tucker Act in *Department of Education v. California*,^[6] where it concluded—albeit in a brief, expedited, stay-stage decision—that certain grant-termination claims likely had to be brought in the COFC under the Tucker Act rather than in district court under the APA.^[7] That decision created much uncertainty, and various stakeholders in the research community have been waiting for further guidance from the Supreme Court.

The Supreme Court's Decision in *APHA*: Another Roadblock to Challenging Individual Grant Terminations in District Court

Additional guidance has come in the *APHA* and *Massachusetts* cases, in which researchers at public universities challenged grant terminations pursuant to a number of agencywide directives targeting research into certain topics. The district court determined that the claims belonged entirely in district court—not the COFC—and, finding that the agency's actions were arbitrary and capricious under the APA, vacated both the directives and the ensuing grant terminations.^[8] The government appealed, and the First Circuit denied a stay pending appeal.^[9]

The Supreme Court, in a 5-4 decision with multiple separate writings, granted in part the government's stay application, which sought to stay the district court's orders vacating (1) the agencywide directives targeting disfavored research topics and (2) individual grant terminations taken pursuant to those directives.

The Court *stayed* the district court’s judgments reinstating individual grant terminations. But the Court *rejected* the stay request as to the agency-wide directives, meaning those directives remain vacated while the case proceeds on appeal.

The Court was divided. Justice Barrett was the only Justice who concurred in the Court’s ultimate bottom line, meaning she was the deciding vote and her opinion effectively controls going forward.^[10] In her view, the district court likely lacked jurisdiction to hear the APA challenges to the individual grant terminations because those challenges belong in the COFC under the Tucker Act. She would not stay the judgments as to the agencywide directives, however, because those challenges are more like classic APA claims.

Chief Justice Roberts and Justices Sotomayor, Kagan, and Jackson would have denied the stay in full and allowed the challenges to both the directives and terminations to proceed in district court. Justices Thomas, Alito, Gorsuch, and Kavanaugh would have granted the stay in full, requiring *all* of the claims to be brought in the COFC.

The decision in *APHA* tends to confirm what *California* left uncertain: certain challenges to terminations of individual grants likely must proceed in the COFC, while challenges to agencywide directives remain viable in district courts. *APHA* and *California* centered on claims that the terminations were arbitrary and capricious; neither focused on claims that terminations violated governing statutes, regulations, or the Constitution—and thus, guidance from the Supreme Court as to this latter category remains sparse.

The Court of Federal Claims: A Friendly Forum for Funding Challenges

What, then, is the COFC, and how can funding recipients take advantage of it?

The COFC has limited authority: It may hear claims based in either contracts with the US government, or “money-mandating” statutes or constitutional provisions—*i.e.*, laws that require the United States to compensate for harm via money damages.^[11] And for litigants with successful claims against the US government, the COFC can grant money damages.

To the extent that federal grants and awards are considered contracts with the US government—an issue that has been litigated to some degree in recent funding challenges—the COFC would have jurisdiction to hear breach-of-contract claims arising out of the terms and conditions of those agreements. And because the COFC’s jurisdiction extends to both express and implied-in-fact contracts, litigants may also have arguments for implied contracts based on the government’s prior conduct.^[12]

Accordingly, federal funding recipients may consider bringing claims with respect to frozen or terminated grants, alleging that the government has failed to comply with the terms or conditions of those agreements, which may also incorporate federal regulations governing grant terminations. Litigants may argue, for instance, that the government has failed to follow closeout-cost procedures,

has failed to pay for work already performed but not yet paid for, or has failed to pay for expenses legitimately incurred, which could include salaries, costs for wasted materials, rent, or other facilities upkeep that would not have been incurred but for the government's breach. Broader recovery may also be possible in certain cases, depending on the facts on the ground and legal theories available.

While cases in the COFC proceed against the federal government, the COFC is an impartial, business-driven court, and it rules against the government in contract cases with some regularity—indeed, historically, it has imposed some extremely large judgments.^[13]

Key Considerations for Potential Litigation in the Court of Federal Claims

To determine whether the COFC may be a good option for you or your organization to seek damages based on unpaid federal funding, it is important to consider the following as you begin to strategize and weigh your options.

- What are your damages and what can you reasonably expect to recover?
 - For federal grants, damages will likely be governed largely by the cost-allowability rules applicable to those grants, but they may include actual losses and costs associated with terminations or suspensions that are otherwise allowable.
 - Parties may not be able to obtain the full value of lost grants, though that may depend on factors such as whether there is a money-mandating statute creating a right to those funds—and on the terms of the grants themselves.
 - Expectation damages might be available in certain scenarios but are not a guarantee.
- What litigation timeline is acceptable for you or your organization?
 - The COFC utilizes a judge-supervised alternative dispute resolution (ADR) process that is held in high regard and works to expedite settlements. But, as with most civil litigation, litigation in the COFC can otherwise be a lengthy process that may last for years before a final judgment.
 - We anticipate a wave of funding-termination litigation in the COFC in the coming months, so there may be a time advantage to bringing strategic litigation earlier rather than later.

* * *

As you or your organization continue to navigate the federal funding landscape and the Supreme Court's decision in *APHA*, consider whether strategic litigation in the Court of Federal Claims may be appropriate.

Jenner & Block's Government Contracts and Grants practice has extensive experience in the Court of Federal Claims and has been working closely with litigators and advisors from our Education, Specialized Litigation & Arbitration, and Appellate practices as the legal landscape for federal funding challenges has evolved in recent months. Our teams stand ready to advise clients at every step, from counseling, through Court of Federal Claims litigation and any appeals to the Federal Circuit and the Supreme Court, if necessary.

Footnotes

[1] *NIH v. APHA*, No. 25A103, 606 U.S. ____ (2025).

[2] Executive Order 14332, *Improving Oversight of Federal Grantmaking*, 90 Fed. Reg. 38929 (Aug. 7, 2025), <https://www.federalregister.gov/documents/2025/08/12/2025-15344/improving-oversight-of-federal-grantmaking>.

[3] *See Kanemoto v. Reno*, 41 F.3d 641, 644 (Fed. Cir. 1994).

[4] *See Crowley Gov't Servs., Inc. v. Gen. Servs. Admin.*, 38 F.4th 1099, 1106 (D.C. Cir. 2022).

[5] *See Crowley*, 38 F.4th at 1106; *see* 5 U.S.C. § 702.

[6] 145 S. Ct. 966 (2025).

[7] *California*, 145 S. Ct. at 968-69.

[8] *APHA v. NIH*, No. 1:25-CV-10787-WGY, 2025 WL 1747128, at *1 (D. Mass. June 23, 2025).

[9] *APHA v. NIH*, No. 25-1611, 2025 WL 2017106, at *1 (1st Cir. July 18, 2025).

[10] *See Marks v. United States*, 430 U.S. 188, 193 (1977).

[11] *See, e.g., Jan's Helicopter Serv., Inc. v. F.A.A.*, 525 F.3d 1299, 1306-09 (Fed. Cir. 2008).

[12] *See, e.g., Trauma Serv. Grp. v. United States*, 104 F.3d 1321, 1326 (Fed. Cir. 1997).

[13] *See, e.g., Anchor Sav. Bank, FSB v. United States*, 81 Fed. Cl. 1, 153 (2008) (granting \$350 million award for the plaintiff against the government), *aff'd in part, remanded in part*, 597 F.3d 1356 (Fed. Cir. 2010) (remanding on whether certain damages should have been increased); *see also Maine Cmty. Health Options v. United States*, 590 U.S. 296, 329 (2020) (holding that federal government had obligation to pay insurance companies roughly \$12 billion under the Risk Corridors Program of the Patient Protection and Affordable Care Act, concluding that the plaintiffs properly sued the government in the Court of Federal Claims).

Related Attorneys



David Robbins

Partner

[drobbins@jenner.com](mailto:d Robbins@jenner.com)

+1 202 639 6040



Betsy Henthorne

Partner

bhenthorne@jenner.com

+1 202 637 6367



Zachary C. Schauf

Partner

zschauf@jenner.com

+1 202 637 6351



Lauren J. Hartz

Partner

lhartz@jenner.com

+1 202 637 6363



Logan Wren

Associate

lwren@jenner.com

+1 202 639 6891

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