



California Municipalities and Federal Government Actions

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Introduction to Challenges to Federal Government Grant Conditions

During the early days of the current administration, several new executive orders (“EOs”) were issued to advance the President’s policy objectives. Federal agencies then began incorporating compliance with those executive orders into federal grant conditions for subsequent funding cycles. Some of those conditions may be impossible for local agencies to satisfy while remaining compliant with state law (such as SB 54, the “Values Act”). Also, many of the new federal grant conditions and the EOs they implement may conflict with lawful, local government policies, such as local DEI and gender recognition policies, etc. After the Supreme Court’s decision in *Trump v. CASA*, 606 U.S. 831 (2025), which limited the availability of nationwide injunctions, local agencies that cannot comply with challenged conditions must consider whether to seek court relief as named plaintiffs. To date, more than 100 entities in more than 30 cases have sought such relief. These entities reflect a range of perspectives, from those willing and eager to participate in litigation to those more reluctant to do so, but nearly all share the same practical objective: protecting critical funding sources that support important public services and protecting local agency compliance with state law and local government policy prerogatives.

I. Legal Reasons to Participate in Grant Condition Litigation(s) Against Federal Government

A. Conflicting Compliance Between State and Federal Laws

Federal Executive Orders and related grant mandates can conflict with California State law. In 2017, California enacted the California Values Act, known as SB 54, and codified at Government Code § 7282 et seq. SB 54 limits law enforcement’s “discretion to cooperate with immigration authorities.” (Id. § 7282.5(a).) Among other things, SB 54 prohibits state and local

law enforcement agencies from “[i]nquiring into an individual’s immigration status”; “[d]etaining an individual on the basis of a hold request”; “[p]roviding information regarding a person’s release date” or other “personal information,” such as “the individual’s home address or work address”; and “[a]ssisting immigration authorities” in certain activities. (Id. § 7284.6(a)(1).) SB 54 contains some exceptions to these prohibitions. For example, although agencies generally cannot “[t]ransfer an individual to immigration authorities,” such an undertaking is permissible if “authorized by a judicial warrant or judicial probable cause determination,” or if the individual has been convicted of certain enumerated crimes. (Id. §§ 7282.5(a), 7284.6(a)(4).) Similarly, the restrictions on sharing personal information are also relaxed if the individual has been convicted of an enumerated crime, or if the information is available to the public. (Id. §§ 7282.5(a), 7284.6(a)(1)(C)–(D).) The stated legislative purpose of SB 54 is to build and maintain trust between California’s immigrant community and local agencies, which is impacted when state and local agencies are entangled with federal immigration enforcement.

In 2018, the first Trump Administration filed a lawsuit challenging the constitutionality of SB 54. On appeal, the Ninth Circuit affirmed that “California has the right, pursuant to the anticommandeering rule [derived from the Tenth Amendment¹], to refrain from assisting with federal efforts.” (*United States v. California* (9th Cir. 2019) 921 F.3d 865, 873.) When the Trump administration subsequently asked the U.S. Supreme Court to review that decision, the Court denied the request, leaving the Ninth Circuit’s decision and SB 54 in place.

B. Impact of Recent Supreme Court Rulings on Nationwide Injunctions

¹ The 10th Amendment provides: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.”

On June 27, 2025, the U.S. Supreme Court decided *Trump v. CASA, Inc.*, a trio of consolidated cases in which the Court limited the ability of federal courts to issue nationwide injunctions—court orders against the government that prevent the government from implementing a challenged law, regulation, or other policy against all relevant persons and entities, whether or not such persons or entities are parties participating in the litigation. The substantive legal issue in these cases concerns the validity of Executive Order No. 14160, "Protecting the Meaning and Value of American Citizenship", which provides that the protections afforded to individuals under the Citizenship Clause of the Fourteenth Amendment, known as birthright citizenship, shall not apply to certain individuals born in the United States to specified categories of parents not born in the United States. The Supreme Court litigation in *CASA* focused on the procedural question of whether the trial courts erred in entering nationwide injunctions against enforcement of the executive order.

The Court held that a 1789 statute conferring jurisdiction on the federal courts to issue injunctions did not authorize the courts to provide preliminary injunctive relief to anyone harmed by a law or policy—so-called universal relief—but instead to limit relief only to the parties before a court. Justice Barrett reasoned that such relief had no historical analogue in the practices of equity courts in 1789.

Before *CASA*, local agencies could often rely on injunctions entered in other cases without joining the underlying litigation. After *CASA*, however, agencies that are not named plaintiffs may not receive the benefit of such relief, creating a practical litigation risk for any local agency seeking protection from challenged grant conditions that may conflict with state or local laws or policies.

Additionally, in *Nat'l Insts. of Health v. Am. Pub. Health Ass'n*, 2025 WL 2415669, at *1 (U.S. Aug. 21, 2025), a divided Supreme Court held that claims involving the termination of grants must be brought in the Court of Federal Claims. The cases currently filed, such as the King County and the City of Fresno cases, do not involve grants that have already been terminated. Instead, those actions seek relief declaring the challenged agency actions unlawful and setting them aside. See 5 U.S.C. § 706(2); *NIH*, 606 U.S. ---, 2025 WL 2415669, at *2 (“[T]he District Court was likely correct to conclude that it had jurisdiction to entertain an APA challenge to the [internal agency] guidance, and it would be confusing for our disposition of this application to suggest that the CFC [Court of Federal Claims] is the right forum for that claim”). Plaintiffs contend that these claims “aris[e] under the Constitution, laws, or treaties of the United States,” 28 U.S.C. § 1331, are subject to the APA’s waiver of sovereign immunity, 5 U.S.C. § 702, and are therefore within the district court’s jurisdiction. This decision illustrates another reason to seek relief before grant termination occurs; once a grant is terminated, a local agency may be forced to litigate in the Court of Federal Claims.

C. Risk of Non-Compliance with Grant Conditions

Without a court order specifically protecting a local agency against allegedly unlawful federal grant conditions, any acceptance of grant funds with the offending conditions while failing to comply with them could result in contractual, administrative, civil, and even potentially criminal penalties. These penalties are generally imposed on the agency itself rather than agency officials individually. Although extremely rare in practice, an individual who makes false or fraudulent representations with respect to grant applications or agreements may also be personally liable in civil or criminal proceedings.

**a. Contractual/Administrative Enforcement – Recoupment or “Clawback”
of Grant Funds**

One of the primary enforcement mechanisms for violation of grant conditions is recoupment or “clawing back” grant funds, where the local agency must pay back funds that have been received under an agreement the terms of which have allegedly not been satisfied. Recoupment is initiated as an administrative action by the federal agency sponsoring the grant. Typically, the federal agency will make a determination that an improper payment was made and provide notice to the local agency. An “improper payment” is defined as a payment that should not have been made under a statutory, contractual, administrative, or other legally applicable requirement, and includes payments to ineligible grant recipients. (31 U.S.C. 3351(4)(A).)

The local agency may administratively appeal the determination. If the local agency fails to appeal, or if the appeal is denied, the improper payment becomes a debt owed to the federal agency. The local agency and federal agency may work out a repayment plan, or the debt may be referred to debt collection. The specific procedure may differ according to the regulations of the relevant federal agency.

b. Civil Penalties

In addition to administrative enforcement, the government may seek additional penalties where the local agency, or its officials, knowingly make false representations to obtain grant funds. Under the False Claims Act (31 U.S.C. 3729-3733), there is liability for any person who knowingly makes a false or fraudulent claim to the federal government relating to a claim for payment or other obligation. For purposes of the False Claims Act, “knowingly” also includes acting with deliberate ignorance or a reckless disregard for the truth. In addition, in order to be

actionable, the false claim must also be material. Materiality means that the false or fraudulent claim was important enough that it would probably have influenced a government decision. *U.S. ex rel. Poehling v. UnitedHealth Group, Inc.*, No. CV 16-08697-FMO-PVCx (C.D. Cal. Mar. 3, 2025).

The civil liability under the False Claims Act consists of (1) a fine of \$5,000 to \$10,000, adjusted for inflation and (2) three times the damages sustained by the federal government (i.e., the amount of funds received as a result of the false claim).

In some of the recently imposed federal grant conditions, the current administration seeks an admission that violation of the conditions or the Executive Orders from which they are derived is material, thus making it easier to pursue False Claims Act claims. The current administration has thus indicated an intent to utilize the False Claims Act to enforce compliance with executive orders and related conditions on federal grants and other funds. The Administration is also encouraging third parties to utilize the False Claims Act to challenge local entities' compliance with the new grant conditions.

c. Criminal Penalties

Knowingly making a false statement in grant applications or grant agreements may also create potential criminal liability. Although criminal enforcement of the False Claims Act is historically extremely rare, violation of the False Claims Act may be prosecuted as a felony.

II. Existing Litigation

As discussed above, the current litigation landscape concerning federal executive orders and grant conditions is shaped in significant part by *Trump v. CASA*, in which the Supreme Court limited federal courts' authority to issue broad preliminary injunctions extending beyond the

parties before the court. The existing litigation includes more than 30 cases and more than 100 plaintiffs challenging conditions imposed by a broad range of federal agencies, including the Department of Transportation, Department of Housing and Urban Development, Department of Health and Human Services, Environmental Protection Agency, Department of Homeland Security, Department of Justice, and Department of the Interior, as well as their relevant sub-agencies and officials.

Many of these cases challenge federal grant conditions based upon the following EOs:

- EO No. 14151 Ending Radical and Wasteful Government DEI Programs and Preferencing;
- EO No. 14173 Ending Illegal Discrimination and Restoring Merit-Based Opportunity;
- EO No. 14168 Defending Women from Gender Ideology Extremism;
- EO No. 14182 Enforcing the Hyde Amendment;
- EO No. 14218 Ending Taxpayer Subsidization of Open Borders;
- EO No. 14287 Protecting American Communities from Criminal Aliens; and
- EO No. 14332 Improving Oversight of Federal Grantmaking.²

The core legal theories in many of these cases are that the grant conditions violate both the U.S. Constitution and provisions of the Administrative Procedure Act (“APA”). Plaintiffs contend that the EO-based conditions are unconstitutional because they are vague, violate

² Given the number of cases already filed and that new cases are being filed, it is difficult to generalize about the conditions being challenged. Some cases may focus on a single condition or a single agency while others may focus on numerous conditions and multiple agencies.

separation of powers principles (because, in addition to the doctrines mentioned above, executive orders are properly directed at federal executive branch agencies, not separate state and local sovereigns), and lack a sufficient nexus to the purposes of the relevant grant programs. EO No. 14218, which concerns immigration-related conditions, also raises Tenth Amendment concerns because plaintiffs argue it seeks to coerce funding recipients to adopt the federal administration's interpretation of the law. Plaintiffs further contend that the conditions violate the APA because they constitute final agency actions that are reviewable, are not committed to agency discretion by law, are arbitrary and capricious, and exceed the agencies' statutory authority.

III. Strategic Considerations

For a local government to join litigation, approval from its governing body is typically required. Governing bodies may approach these cases differently: some may object to the underlying executive orders as a matter of policy, while others may view the issue as a practical legal question rather than a political one. Agencies awarded funding subject to challenged conditions may confront a difficult choice because compliance may be operationally difficult, legally questionable, or inconsistent with other law, such as state or local law, or other funding obligations. Refusal to sign awards containing the challenged grant terms may jeopardize millions of dollars for services upon which communities depend. Framing the issue as protection of congressionally appropriated funding for local grant programs, as opposed to a challenge to policy objectives of the current administration, may be one way to keep the discussion focused on legal risk and public service continuity.

Another strategic concern is mitigating the risk of retaliation, including reductions in funding or other forms of federal assistance or affirmative federal litigation against local governments. Litigation brought by or against the federal government can be daunting, and

concern about retaliation is common. As the number of cases increases, the likelihood of any one plaintiff being singled out may decrease. For many entities, the reason to litigate is focused on protecting critical funding, preserving legal compliance, and enabling local governing bodies to make informed decisions.

IV. Current Status

Currently, several of the cases have preliminary injunctions in place protecting their named plaintiffs from challenged EOs and related federal grant conditions imposed by named defendants. Several others have motions pending for the same.³ Notable cases include:

- *King County v. Turner* (2:25-cv-00814)
- *City of Fresno v. Turner* (3:25-cv-07070)
- *County of Santa Clara v. Noem* (3:25-cv-08330)
- *Illinois v. FEMA* (D.R.I., 1 :25-cv-00206)
- *City of Fresno v. Noem* (3:26-cv-01535)
- *Housing Authority of San Diego v. Turner* (4:25-cv-08859)

Federal agencies have continued to impose enjoined grant conditions on recipients that are not protected by injunctions. In some cases, despite preliminary injunctions, defendant agencies have also attempted to impose enjoined EO-based grant conditions on plaintiffs covered by court orders. In cases where a plaintiff is protected by a preliminary injunction, plaintiffs' counsel can attempt to resolve the issue with the Department of Justice and, if that is unsuccessful, may seek a court order to prevent enforcement of enjoined conditions. Also, some federal granting agencies now have procedures for recipient agencies to document the

³ This is only a small sampling of the cases filed.

inapplicability of enjoined conditions to their awards. Note that it can be particularly helpful for recipient agencies that have been granted injunctive relief from challenged federal grant conditions and/or executive orders, to the extent possible, to create a record that the enjoined conditions do not form a part of the grant agreement (such as by deleting them or redlining them). That way, even if the enjoined conditions are later permitted to be applied and enforced following an appeal, the funds expended under local awards from which enjoined terms have been deleted are not subject to “clawback” by reason of agency non-compliance with the conditions – because they do not form a part of the agreement and therefore cannot serve as a basis for de-obligating and recovering the funds awarded and expended. Nonetheless, successful federal appeals re-habilitating the challenged executive orders and grant conditions may present recipient local agencies with difficult choices regarding whether to forego or accept future funding subject to executive orders and grant conditions that are currently being litigated.

V. Future Expectations

If the pending state and local government challenges to the lawfulness of executive orders and grant conditions intended to apply the current administration’s policy priorities to state and local governments are successful, plaintiffs may ultimately obtain protection for grants issued by defendant agencies, depending on the scope of relief granted. As new funding cycles proceed, defendant agencies have continued to issue grant agreements containing conditions that some local agencies may be unable or unwilling to certify. In some cases, local governments have submitted reservation-of-rights letters while injunctions remain pending in an attempt to preserve access to necessary funding while trying to avoid liability for grant agreement non-compliance.

As long as the executive orders remain in effect and federal agencies continue to incorporate them and the policies they advance into grant conditions, entities receiving federal funding will face continued uncertainty regarding funding stability and their compliance obligations. In some cases, additional litigation may be necessary to obtain protection through injunctive relief. These cases are likely to continue developing as coalitions of local governments identify shared interests in protecting federal funding, maintaining compliance with applicable law and preserving local policy choices, while meeting constituent needs.