

# Haynes Boone Partners Shaffer and Ramish’s “Federal Grant Practice” Treatise Cited in U.S. Supreme Court Dissenting Opinion in *Department of Education et al. v. California et al.*

April 14, 2025 Daniel Ramish, Jonathan Shaffer

PRACTICES Government Contracts

“Federal Grant Practice,” co-authored by Jonathan Shaffer and Dan Ramish of Haynes Boone for Thomson Reuters, was cited in Justice Ketanji Brown Jackson’s recent dissenting opinion in [Department of Education et al. v. California et al.](#), a high-profile federal grant termination challenge. The majority opinion granted the government’s emergency application to stay a Temporary Restraining Order (TRO) entered against the government by a Massachusetts district court, which had enjoined the termination of more than 100 education-related grants and required the government to pay overdue and newly accruing obligations under the grants.

In a 5-4 *per curiam* decision issued April 4, 2025, the Court granted the government a stay of the district court’s order, pending the government’s appeal of the TRO. The Court determined that it had jurisdiction, construing the TRO as an appealable preliminary injunction because it “carries many of the hallmarks” of one. The Court then considered the equitable stay factors. The Court held that the government was likely to succeed on its argument that the district court lacked Administrative Procedure Act (APA) jurisdiction as the action should have been brought in contract at the Court of Federal Claims under the Tucker Act. The Court further held that the respondent States had not “refuted the Government’s representation that it was unlikely to recover the grant funds once they are disbursed.” Finally, the Court agreed with the government that the States would not suffer irreparable harm because they had “the financial wherewithal to keep their programs running.”

In a dissenting opinion, Justice Elena Kagan said the case did not demand emergency intervention and should have proceeded “in the ordinary way.” She emphasized that the government did not defend the legality of the underlying cancellations of the education grants. She noted that the States had consistently represented that the loss of the grants had forced and would force them to curtail teacher training programs. Finally, regarding jurisdiction, Justice Kagan questioned the Court’s departure from the general rule that APA actions go to the district courts even when a remedial order could result in the disbursement of funds, noting the *Great-West* decision cited by the majority to support a different result was not brought under the APA.

Justice Jackson penned a second dissenting opinion, joined by Justice Sonia Sotomayor. This second dissent similarly contended that the Court should have followed the usual rule that interlocutory orders are generally not appealable. In Justice Jackson’s view, the TRO here did not meet the established exception for orders that are “potentially unlimited in duration”—indeed, the order was set to expire in three days. The dissent further stated that the emergency application should be denied based on a lack of exigency and the lack of irreparable harm. In that regard, Justice Jackson cited “Federal Grant Practice” on the government’s ability to recoup funds paid in advance to which the recipient is later found not to be entitled: “In the end, the Government usually gets its money.” J. Shaffer & D. Ramish, *Federal Grant Practice* § 36:29 (2024 ed.). Finally, the dissent took issue more broadly with the majority’s willingness to provide a new avenue for

piecemeal interlocutory review, expressing concern that it “enables strategic delay and facilitates obfuscation of the weaknesses of the defendant’s merits position.” Justice Jackson noted that the agency had not provided notice or an opportunity to be heard, nor even stated grounds for termination specific to the individual grants, instead just providing an “undifferentiated laundry list of possible reasons for terminating [the] grants.”

The Court’s stay in *Department of Ed. v. California* will prevent the TRO from having effect, pending the disposition of appeal to the First Circuit (and, as applicable, to the Supreme Court). Thus, the grant terminations can be reinstated during the appeal and the agency can discontinue making payments under the grants.

Federal grant funding has become increasingly political during the last few administrations. Grant termination litigation is likely to remain in the national spotlight in the months ahead as the Trump Administration seeks to rapidly overhaul federal funding to conform to its policy priorities. Legal disputes may further proliferate as agency grant policy reviews, performed pursuant to executive orders, conclude later this month. The stakes are high for the federal assistance community, with numerous programs and billions of dollars of awards hanging in the balance.