

When Is a TRO Treatable as a Preliminary Injunction? - SCOTUS Today

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While not a decision on the merits, the U.S. Supreme Court's opinion on April 4, 2025, in ***Department of Education v. California*** is worth considering.

The case came to the Court on an application to stay the temporary restraining order (TRO) of the U.S. District Court for the District of Massachusetts enjoining the government from terminating various education-related grants made by the U.S. Department of Education, and requiring that department's payment of past-due grant obligations and the continuing payment of current and future ones. The district court based its conclusion on its finding that the respondents were likely to succeed on the merits of their claims under the Administrative Procedure Act (APA).

In a *per curiam* opinion, the Supreme Court viewed the TRO as having "many of the hallmarks of a preliminary injunction" and treated it that way. In granting the stay, the Court held that the government was likely to succeed in showing that the district court lacked jurisdiction under the APA to order the payment of money. While the APA provides a limited waiver of sovereign immunity on the part of the government, that waiver "does not extend to orders [of a district court] to enforce a contractual obligation to pay money" along the lines of what the district court ordered here. Instead, noted the Court, the Tucker Act, 28 U. S. C. §1491(a)(1), gives the Court of Federal Claims jurisdiction over suits based on "any express or implied contract with the United States."

The Supreme Court also found that, in view of the fact that no grantee had promised to return grant funds if they were paid out but their termination was later reinstated, the government's claim that it would be unlikely to recover such funds under that scenario is unrefuted. Nor would the respondents suffer irreparable injury, because they conceded that they have sufficient funds to keep their operations going while the underlying case proceeds and would be able to recover any wrongfully withheld funds later in the Court of Federal Claims. Accordingly, the Supreme Court granted the stay pending the disposition of the appeal to the U.S. Court of Appeals for the First Circuit and a possible disposition of a writ of certiorari. The Chief Justice simply stated that he would deny the application, and short dissents were written by Justice Kagan and Justice Jackson, who was joined by Justice Sotomayor.

Given that the underlying dispute will continue until resolved by the appeals court and, potentially, by the Supreme Court, and that the respondents might be made whole if they were to win, this is not

exactly a landmark decision. I summarize it now because what I'm already seeing is a host of APA-related and other actions challenging the many executive orders and other policy dictates being issued by the current administration. In the health care space, for example, we are already seeing challenges to grant terminations and denials based upon grounds just like those raised in the instant case. Knowing the criteria that a majority of the Supreme Court would rely upon in applying the APA in such cases should therefore be instructive to counsel for future complainants.

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