



# DOT Grant Funding Litigation

Presented by Paul Lawrence

**APTA**  
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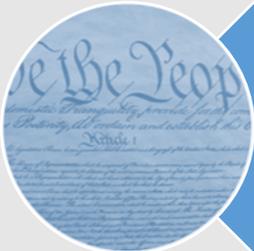
# Agenda



Executive power: sources  
& limits



Federal funds as a tool of  
control



King County v. Turner

# Executive Power

*“The executive Power shall be vested in a President of the United States of America.”*

Article II, Section 1

*“[Sh]e shall take care that the laws be faithfully executed.”*

Article II, Section 3

“The powers delegated by the proposed Constitution to the federal government are few and defined.”

James Madison,  
Federalist No. 45

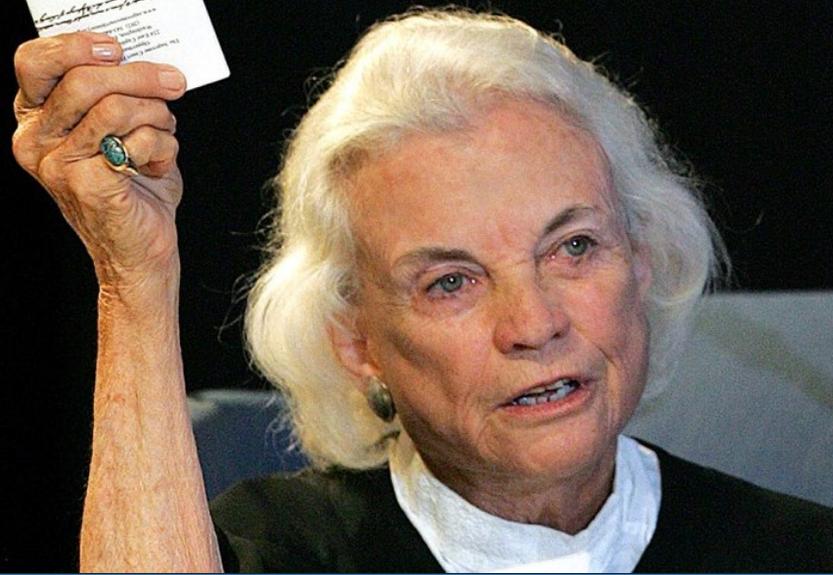


# Limitations on Executive Power

- **Separation of Powers Doctrine:** Executive cannot exercise legislative or judicial functions (*Clinton v. City of New York*); Spending Clause
- **Congress:** Statutory boundaries define permissible executive action (*Youngstown*); appropriations; oversight authority
- **Courts:** Courts assess whether executive actions exceed constitutional or statutory authority (*Marbury v. Madison*; *Hamdan v. Rumsfeld*)
- **Bill of Rights:** Protection of individual rights
- **Federalism:** 10th Amendment reserves powers to the States
- **Administrative law (APA)**

# Strings Attached: Federal Funds as a Tool of Control





“The Constitution simply does not give Congress the authority to require the States to govern according to their instructions.”

Justice Sandra Day O'Connor,  
*New York v. United States*

# What Are the new DOT Conditions?

## 1. “DOT Discrimination Condition”

- Requires recipients “[p]ursuant to Section (3)(b)(iv), Executive Order 14173” to agree that “its compliance in all respects with all applicable Federal antidiscrimination laws is material to the government’s payment decisions for purposes of [the False Claims Act],” and that “it does not operate any programs promoting [DEI] initiatives that violate any applicable Federal anti-discrimination laws.”

# What Are the new DOT Conditions?

## 2. “DOT Immigration Enforcement Condition”

- Requires recipients to “cooperate with Federal officials in the enforcement of Federal law, including cooperating with and not impeding U.S. Immigration and Customs Enforcement (ICE) and other Federal offices and components of the Department of Homeland Security in the enforcement of Federal immigration law,” and a condition requiring recipients to “follow applicable federal laws pertaining to Subchapter 12 and be subject to the penalties set forth in 8 U.S.C. § 1324, Bringing in and harboring certain aliens, and 8 U.S.C. § 1327, Aiding or assisting certain aliens to enter.”

# What Are the new DOT Conditions?

## 3. “DOT EO Condition”

- Requires recipients to “comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance, and use of Federal funds for this [grant]” and lists, among other things, Executive Orders 14168 (“Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government”) and 14173 (“Ending Illegal Discrimination and Restoring Merit-Based Opportunity”), as well as two criminal immigration statutes (8 U.S.C. § 1324 and 8 U.S.C. § 1327) as “provisions” that are “applicable” to grant agreements.

# Sources of New Conditions



- Executive Orders
- Agency letters, policy statements, and guidance
- Updated master terms and conditions, assurances, etc.
- Rulemaking
- All stages of grant making

# Follow the Law Letter to Applicants

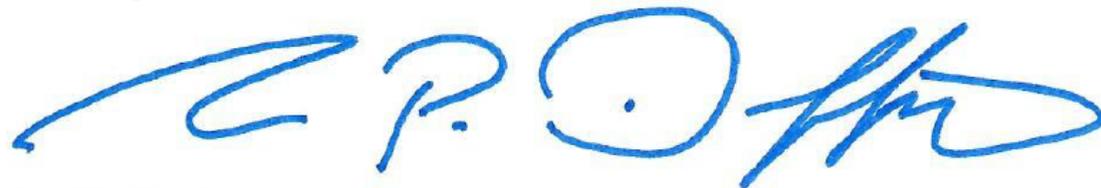
April 24, 2025

To All Recipients of U.S. Department of Transportation Funding:

The U.S. Department of Transportation (Department or DOT) distributes substantial Federal financial assistance for thousands of projects, programs, and activities operated or initiated by diverse entities, including but not limited to State and local governments. The Department administers this Federal financial assistance to support the development and maintenance of the Nation's transportation infrastructure, pursuant to statutory authority and in accordance with binding contractual agreements in the form of Federal financial assistance agreements, usually grants, cooperative agreements, and loans. Accordingly, I write to clarify and reaffirm pertinent legal requirements, to outline the Department's expectations, and to provide a reminder of your responsibilities and the consequences of noncompliance with Federal law and the terms of your financial assistance agreements. It is the policy of the Department to award and to continue to provide Federal financial assistance only to those recipients who comply with their legal obligations.

DOT remains committed to advancing a transportation system that serves the public interest efficiently and unleashes economic prosperity and a superior quality of life for American families. This mission depends upon your strict adherence to the legal framework governing our partnership, and I trust you will take all necessary steps to comply with Federal law and satisfy your legal obligations.

Sincerely,



Sean P. Duffy

# Follow the Law Letter to Applicants

These same principles apply to recipients of Federal financial assistance from DOT, as both a matter of Federal law and by virtue of contractual provisions governing receipt of DOT funding. Accordingly, DOT recipients are prohibited from engaging in discriminatory actions in their own policies, programs, and activities, including in administering contracts, and their employment practices.

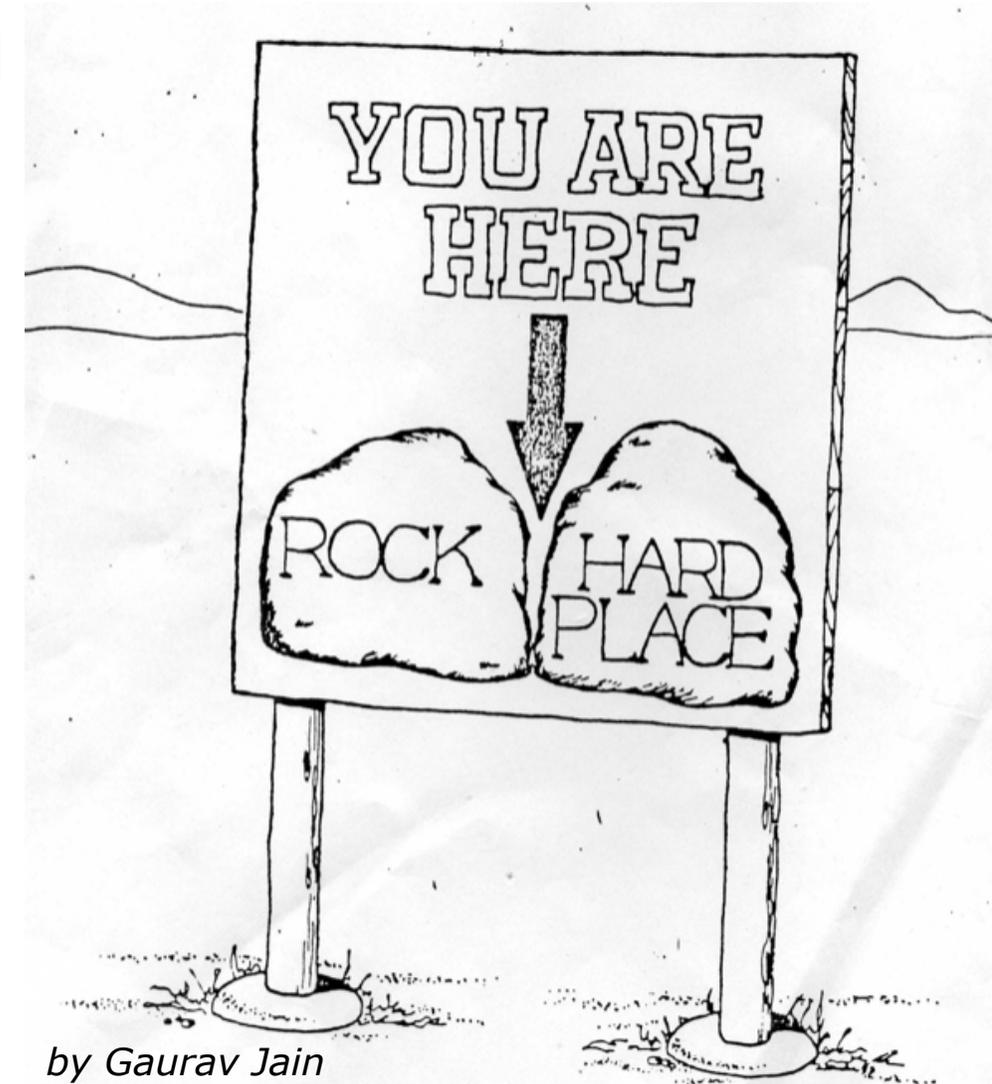
Whether or not described in neutral terms, any policy, program, or activity that is premised on a prohibited classification, including discriminatory policies or practices designed to achieve so-called “diversity, equity, and inclusion,” or “DEI,” goals, presumptively violates Federal law. Recipients of DOT financial assistance must ensure that the personnel practices (including hiring, promotions, and terminations) within their organizations are merit-based and do not discriminate based on prohibited categories. Recipients are also precluded from allocating money received under DOT awards—such as through contracts or the provision of other benefits—based on suspect classifications. Any discriminatory actions in your policies, programs, and activities based on prohibited categories constitute a clear violation of Federal law and the terms of your grant agreements.

# Follow the Law Letter to Applicants

Under the Constitution, Federal law is “the supreme Law of the Land.” U.S. Const. Art. VI. That means that where Federal and State legal requirements conflict, States and State entities must follow Federal law. Declining to cooperate with the enforcement of Federal immigration law or otherwise taking action intended to shield illegal aliens from ICE detection contravenes Federal law and may give rise to civil and criminal liability. *See* 8 U.S.C. § 1324 and 8 U.S.C. § 1373. Accordingly, DOT expects its recipients to comply with Federal law enforcement directives and to cooperate with Federal officials in the enforcement of Federal immigration law. The Department also expects its recipients to ensure that the Federal financial assistance they receive from DOT is provided only to subrecipients, businesses, or service providers that are U.S. Citizens or U.S. Nationals and Lawful Permanent Residents (LPRs) or legal entities allowed to do business in the U.S. and which do not employ illegal aliens.

# Local Obligations v. Federal Demands

- Need federal funds for essential services and projects
- Local values, policies, and commitments
- Conflicting obligations under state/local laws
- Uncertainty and instability in what conditions require
- Threat of federal investigation and recoupment
- Possible False Claims Act (FCA) liability



by Gaurav Jain

# What to Do?

- Accept the new conditions
  - Reservation of rights
  - Mitigation measures: comprehensive DEI audit, training, etc.
- Decline funding
- Challenge in court



# King County v. Turner

- 80 plus local governments across the US
- \$12 billion plus in HUD, DOT, and HHS grants
- Public Transportation Clients include



**King County**



**SOUNDTRANSIT**

INTERcity  
TRANSIT

**SMART**

SOUTH METRO AREA REGIONAL TRANSIT  
WILSONVILLE, OREGON



**SonomaCounty**  
Transit

# *King County v. Turner*

- **Claims:** Separation of Powers, Spending Clause, 10th Am., Vagueness, APA (arbitrary & capricious; contrary to Constitution; exceeds statutory authority; contrary to regulation; without required procedures)
- **Scope:** All HUD, DOT, & HHS discretionary and formula grants
- 2 TROs → 2 PIs → 2 pending appeals
- **Plaintiffs are drawing down fund without agreeing to new conditions**

*King County v. Turner*, No. 2:25-cv-00814-BJR (W.D. Wash.); Nos.25-3664, 25-6248 (9th Cir.)

# U.S. District Court Injunctions

- District Court limited its analysis to APA claims
- Found Conditions Violate APA as Contrary to Constitution and in Excess of Statutory authority
- Conditions violated the Separation of Powers Doctrine
- Conditions not authorized by statute
- Found Conditions were Arbitrary and Capricious
- Held Local Governments Likely to Suffer Irreparable Injury
- Held Balance of Equities Weighs in Local Governments Favor

# Scope of Injunctions Entered

## DOT Enjoined From

- Imposing or Enforcing DOT Grant Conditions or materially similar terms to any DOT funds awarded
- Rescinding, withholding, cancelling, or not processing DOT grant awards
- Requiring certifications related to DOT Grant Conditions
- Refusing to issue, process or sign grant agreements
- Required to treat any actions related to DOT Conditions null and void
- Retroactively trying to apply DOT Grant Conditions
- Governments are able to draw down funds

# Ninth Circuit Appeal

- Case argued on February 9, 2026
- Panel
- Agency Attorney Argument
  - Acknowledges some of the conditions are overbroad
  - Tries to limit scope of other conditions to apply only to the extent of existing law
    - Title VI
  - Argues broad discretion to attach conditions on efficiency basis
    - Use of SAVE verification system

# Ninth Circuit Appeal

## Local Governments Response

- Focus on whether underlying funding statutes allow agencies to mandate the challenged conditions
  - Trump political agenda versus congressional authorization
  - No connection of funding conditions to underlying purpose of the grant
- Cannot use a clause authorizing efficiency conditions to impose substantive conditions beyond the scope of what congress has authorized
- Terms and conditions are arbitrary and capricious
  - What is an unlawful DEI program?
  - What is a SAVE equivalent?
  - What is promoting elective abortions?

# And More Funding Lawsuits...

- **Funding conditions**

- *City of Fresno v. Turner*, No. 3:25-cv-07070 (N.D. Cal.): HUD, DOT, HHS
- *State of California et al v. United States Department of Transportation et al* (25-cv-00208-JJM-PAS): DOT Immigration Condition

# Resources

- Just Security [Litigation Tracker](#)
- Public Rights Project [Resource Center](#)
- Planetizen [Federal Action Tracker](#)

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