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More Thoughts on NCN Litigation and Nationwide Injunctions

05.05.25 | Linda J. Rosenthal, JD

"The First One Hundred Days of the current Trump administration have been a 24/7 rollercoaster of developments, large and small," we wrote in *Update on National Council of Nonprofits Litigation* (April 26, 2025) *FPLG Blog.*

"A deliberate effort by the president and his team to roll out an "...unceasing flow of initiatives" – a critical tactic in the Shock-and-Awe 2.0 strategy – was evident as early as the end of Week One. See *Trump's 'Flood the Zone' Strategy Leaves Opponents Gasping in Outrage* (January 28, 2025) Luke Broadwater, *The New York Times* ["On Tuesday, just when Democrats thought they might come up for air, news broke that Mr. Trump had ordered a freeze on trillions of dollars in federal grants and loans, prompting a new round of outrage."]

The shocking news about the now-notorious OMB Memorandum (M-25-13), *Temporary Pause of Agency Grant, Loan, and Other Financial Assistance Programs* (1/27/25) leaked to the press the same night that the acting OMB director had secretly transmitted it to top administration officials.

The National Council of Nonprofits sprang into action in the overnight hours, alarmed at the prospect of "catastrophic practical consequences" from "an immediate, across-the-board freeze on federal grant programs…." By the next morning, as lead plaintiff, they filed a lawsuit in the district court of the District of Columbia. During that same time, a coalition of 23 Democratic state attorneys general had prepared a parallel complaint for filing in the federal District Court of Rhode Island.

As we've reported extensively this spring, there are now preliminary injunctions in place in both cases. See *The Preliminary Injunctions Re OMB Memorandum (M-25-13): A Closer Look* (March 18, 2025) *FPLG Blog* [including links to four earlier posts in February and March].

One More NCN Lawsuit

Since Inauguration Day, the Trump administration has "flooded the zone" with an astonishing array of orders and directives to halt federal funding, curtail or forbid operations and activities, and slash executive departments and agencies including with massive layoffs that directly relate to grantmaking or oversight. It's continuing into The Second Hundred Days with a scorched-earth strategy. Even Big Bird now has a target on his back.

There have been extraordinary efforts (largely successful) by Public Citizen, Democracy Forward, coalitions of state attorneys general, and others to stop these end-runs around the rule of law. See NCN's latest update to the *Chart of Executive Orders Affecting Charitable Nonprofits*.

"From its very first day in office, the Trump administration has engaged in concerted efforts to strangle the flow of federal funding on which Americans of all walks of life rely." That's how the National Council of Nonprofits, on March 13, 2025, opened its *second* successful federal lawsuit since Inauguration Day 2025. For the full docket, with all documents, exhibits, and developments, see *Woonasquatucket River Watershed Council v. Department of Agriculture,* 1:25-cv-00097, (D.R.I.) (March 13, 2025), Hon. Mary Susan McCrory, presiding.

There, the six named plaintiffs – including NCN – challenge the government's outrageous guerilla assault on billions of dollars of federal funding authorized by the wildly popular Inflation Reduction Act and the Infrastructure Investment and Jobs Act from the early COVID-19 era. "Congress passed these laws to support infrastructure improvements, climate initiatives, and public health protections." See *Suit Filed To Restore Critical Infrastructure and Investment Funds* (March 13, 2025) *National Council of Nonprofits;* and *Nonprofits Win Injunction To Release Frozen Federal Funds* (April 15, 2025) *The NonProfit Times.*

In *Woonasquatucket River*, the challenged freeze announcement was based on communications including:

- *Executive Order No. 14, 154: Unleashing American Energy* [1/20/25]; and
- *OMB Memorandum M-25-11*, Memorandum to the Heads of Departments and Agencies: *Guidance Regarding Section 7 of the Executive Order Unleashing American Energy* [1/21/25]

The administration, the plaintiffs allege, "… implemented broad, non-individualized freezes of funds appropriated by those laws, and in doing so, have acted arbitrarily, capriciously, without statutory authority, and contrary to law, in violation of the Administrative Procedure Act…."

"These congressionally appropriated funds could reduce lead in school and daycare water fountains, weatherize the homes of low-income Americans to lower their utility bills, maintain green spaces in disadvantaged areas, and reduce the risk of wildfires through land management. Freezing these funds will harm many and benefit no one…." There has been "…real and irreparable harm to the

recipients of that funding in this District and across the country, as well as to the people and communities they serve…."

Plaintiffs skipped the TRO stage, proceeding directly to a motion for preliminary injunction. See Document #26 (March 17, 2025). After expedited briefing, Judge McCrory granted the injunctive relief on April 15, 2025. As expected, the government has appealed.

The Judge's Ruling

One month later, on April 15, 2025, the court granted the plaintiffs' request for a nationwide preliminary injunction.

Federal district judge McElroy had little trouble discarding each and every argument by the defendant federal agencies and officials attempting to justify action pursuant to Executive Order *No. 14, 154* and *OMB Memorandum M-25-11*.

A key factor leading to the granting of the injunctive relief is that these two COVID-19-era legislative packages include *specific guidance* on when and how a particular grant may be modified or curtailed. (In this regard, this lawsuit started off on even stronger legal footing than did the earlier challenge (in the D.C. case initiated on January 28th) to the across-the-board funds freeze based on OMB Memorandum (M-25-13).

See paragraph 27 of First Amended Complaint: "In addition to the appropriations for grants funding created by the IRA and IIRA, the regulations that govern the administration of grants by the defendant agencies set out specific conditions and procedures for terminating and suspending grants. 2 C.F.R §§ 200.339-200.343 (2024)."

None of this was followed by the government. To make matters worse, the EPA Administrator, Lee Zeldin, also slapped on a requirement for "all [funding] actions greater than $50,000)." They now require "approval from an EPA Doge Team member." That DOGE-related condition was not required by law. It was not followed in any event.

In her ruling, see Document #45, Judge McCrory explained (albeit in considerable detail; the ruling is 63 pages long) how she saw "no threshold issues" like "standing to sue" or whether the agency decision was a "final" appealable one. She listed particular evidence to support her finding of "irreparable harm in several forms." Moreover, she wrote that plaintiffs' claims are "likely to be successful" when later decided on the merits of the case, and "the balance of the equities and the public interest weigh heavily in their favor."

Her discussion of how seriously the administration had failed (see pp. 2-4 and 42-45) is particularly good reading. She slammed hard the "freeze first, ask questions later" policy of the government. "The Court wants to be crystal clear: elections have consequences and the President is entitled to enact his agenda. The judiciary does not and cannot decide whether his policies are sound. In other words, 'the wisdom' of his decisions is none of our concern…."

"But where the federal courts are constitutionally required to weigh in—meaning we, by law, have no choice but to do so—are cases 'about the procedure' (or lack thereof) that the Government follows in trying to enact those policies. Id. Agencies do not have unlimited authority to further a President's

agenda, nor do they have unfettered power to hamstring in perpetuity two statutes passed by Congress during the previous administration." Here, the Government failed to follow the specific termination procedures established in the original legislation.

The *coup de grace*: "And because of these claims' unique nature, the broad powers that the Government asserts, and the harms inflicted on the Nonprofits and similarly situated nonparties, the Court holds that a nationwide injunction is appropriate."

Conclusion

This review of *Woonasquatucket River Watershed Council v. Department of Agriculture,* leads nicely into the high drama about to play out on May 15, 2025, in the United States Supreme Court. Front and center will be the oral argument on the controversial topic of nationwide injunctions.

In a rare move, the justices have agreed to hear argument and make a decision that is entirely severed from the merits of the three lower court rulings on the underlying issue of birthright citizenship.

For a bit of background reading, the Congressional Research Service is an excellent and nonpartisan resource. See, for example –

- CRS Report R46982, *Nationwide Injunctions: Law, History, and Proposals for Reform* (September 8, 2021) Joanna R. Lampe
- CRS Report R48467, *Nationwide Injunctions Under the First Trump Administration and the Biden Administration* (March 20, 2025) Joanna R. Lampe and Laura Deal
- CRS Report R48476, *Nationwide Injunctions from January 20, 2025 through March 27, 2025* (March 28, 2025) Joanna R. Lampe

"Although courts at all levels of the federal judiciary, including the Supreme Court, can and do issue nationwide injunctions, the legal basis for such injunctions is uncertain. As a legal matter, no federal statute explicitly authorizes the courts to issue nationwide injunctions, nor does any statute expressly limit the courts' ability to do so."

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