GOVERNING FOR IMPACT

Challenging Politicized Funding Cuts

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Issue Brief

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I. INTRODUCTION

The Trump administration has tied recent funding cuts, particularly during the 2025 lapse in federal appropriations, to the political perspectives of those receiving the funds or of the voters in the states and localities where the recipients reside.[1] Affected parties might consider litigation to protect federal funding from unlawful political retaliation. This Issue Brief discusses the types of claims that litigants might pursue. First, it identifies constitutional limitations on politicized funding cuts: the First Amendment right to free expression and association; the Fifth Amendment's equal protection guarantee; the Spending Clause; and "the fundamental principle of equal sovereignty among the States."[2] Then, it addresses how the Administrative Procedure Act (APA) might come into play and considers how recent Supreme Court orders might affect litigation strategy.

II. BACKGROUND

The Trump administration has repeatedly attempted to tie federal funding decisions to politics, including by terminating federal grants to those perceived by the administration as opposing its policies. GFI has written elsewhere about how litigants might generally challenge unlawful funding terminations.[3] This Issue Brief focuses

[1] *See, e.g.*, Skylar Woodhouse, *Trump Aides Review Funds for New York City After Mamdani Win*, Bloomberg (Nov. 11, 2025), https://www.bloomberg.com/news/articles/2025-11-11/trump-aides-review-funds-for-new-york-city-after-mamdani-win; Zach Montague, *Groups Sue to Reverse Trump's Cuts to Energy Projects in Democratic States*, N.Y. Times (Nov. 10, 2025), https://www.nytimes.com/2025/11/10/us/politics/trump-shutdown-cuts-lawsuit.html; Ben Johansen, *White House pauses new round of largely blue-state projects*, Politico (Oct. 17, 2025), https://www.politico.com/news/2025/10/17/white-house-pauses-new-round-of-largely-blue-state-projects-00613875; Dan Mangan, *Trump administration cancels nearly $8 billion in climate funding to blue states: Vought*, CNBC (Oct. 1, 2025), https://www.cnbc.com/2025/10/01/trump-green-new-deal-funding-states-vought.html.

[2] *Shelby Cnty., Ala. v. Holder*, 570 U.S. 529, 544 (2013) (quotation and emphasis omitted).

[3] *See, e.g.*, John Lewis, *Litigating in the Shadows: Federal Funding and the Supreme Court*, Lawfare (Dec. 2, 2025), https://www.lawfaremedia.org/article/litigating-in-the-shadows--federal-funding-and-the-supreme-court; GFI, Seeking Recovery for Unlawful Grant Terminations in the Court of Federal Claims (Oct. 2025), https://governingforimpact.org/wp-content/uploads/2025/10/CFC-Issue-Brief.pdf; *see also* GFI, Challenging Funding Conditions Imposed by the Executive Branch (Sept. 2025), https://governingforimpact.org/wp-content/uploads/2025/09/Funding-Conditions-Issue-Brief-final.pdf (addressing challenges to conditions imposed on federal grants, which generally is not our subject here).

specifically on potential claims against politicized funding cuts—cuts that aim to punish the recipients of federal funds or the voters and state and local elected officials associated with the recipients (for example, in the same state as a recipient) based on their political speech and voting behaviors.

This issue came to the fore particularly during the lapse in federal appropriations in the fall of 2025 when the administration terminated several clean energy grants located only in states represented by senators who caucus with the Democratic Party.[4] Office of Management and Budget (OMB) Director Russ Vought announced in an online post that the administration would slash $8 billion from the "'Left's climate agenda'" and highlighted that projects would only be cut in "16 states, all of which voted for Democrat Kamala Harris in last year's presidential election."[5] These cuts are the subject of ongoing litigation.[6] President Trump later confirmed that if the shutdown continued he would be "'closing up programs that are Democrat programs.'"[7]

Similarly, in the run up to the 2025 New York City mayoral election, the President and his allies repeatedly threatened to cut federal funding to the city if its residents voted against the President's preferred candidate.[8] More recently, the administration reportedly threatened to withhold federal funds from Indiana if the state failed to comply with the President's redistricting demand.[9]

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[4] Montague, *supra* note 1.

[5] Michael Phillis & Matthew Daly, *White House cancels nearly $8B in clean energy projects in blue states*, PBS (Oct. 2, 2025), https://www.pbs.org/newshour/politics/white-house-cancels-nearly-8b-in-clean-energy-projects-in-blue-states.

[6] *See Saint Paul v. Wright*, No. 25-cv-3899 (D.D.C. filed Nov. 10, 2025), https://www.courtlistener.com/docket/71894043/city-of-saint-paul-minnesota-v-wright/; *Thakur v. Trump*, No. 3:25-cv-4737 (N.D. Cal. filed Dec. 10, 2025), https://www.courtlistener.com/docket/70459259/thakur-v-trump/; *see also* Montague, *supra* note 1. In one of the cases, the government has argued that the challenged cuts—all within states associated with the party opposite that of the President—are not the only cuts. *See* Defs.' Mem. in Opp'n to Pls.' Mot. for P.I. at 3-8, *Saint Paul v. Wright*, No. 25-cv-3899 (D.D.C. filed Dec. 4, 2025), https://storage.courtlistener.com/recap/gov.uscourts.dcd.286703/gov.uscourts.dcd.286703.14.0.pdf. Plaintiffs have countered that, while the Department of Energy may have identified additional awards to potentially terminate, at the start of the government shutdown the agency took action against only the challenged terminations, "all located in Blue States." Reply in Supp. of Pls.' Mot. for P.I. & Consolidation Under Rule 65(a)(2) at 9, *Saint Paul v. Wright*, No. 25-cv-3899 (D.D.C. filed Dec. 9, 2025). As of the time of publication, plaintiffs' motion for preliminary remains pending.

[7] Johansen, *supra* note 1.

[8] Woodhouse, *supra* note 1.

[9] Post by Zack Stanton, Dec. 12, 9:34 am, https://x.com/zackstanton/status/1999487914812879207. Indiana ultimately rebuffed the President's demand. *See* Jane C. Timm, *'We can't be bullied': How Trump and the GOP's redistricting push in Indiana backfired*, NBC News (Dec. 12, 2025),

The administration may take steps to muddy the waters, complicating potential legal challenges. For example, if the administration ultimately makes similar cuts in geographies with politics friendlier to the President, litigants might have trouble connecting the cuts to purely partisan motivations. Or the administration might present plausible reasons for cuts other than retribution. For instance, the Secretary of Agriculture threatened to cut Supplemental Nutrition Assistance Program funding to "blue states" allegedly because they refused to share program data with the federal government.[10]

III. FIRST AMENDMENT

Litigants might argue that politicized funding cuts violate the First Amendment rights to free expression and association. "At the heart of the First Amendment's Free Speech Clause is the recognition that viewpoint discrimination is uniquely harmful to a free and democratic society."[11] The government may not use its power "to punish or suppress disfavored expression."[12] The Trump administration has arguably done just that in withholding federal funding based on recipients' views or those of voters or elected officials in recipients' states and cities.

Depending on the circumstances, at least two types of First Amendment claims might be relevant.

A. Retaliation

Litigants might argue that politicized funding cuts impermissibly retaliate against a political viewpoint. This might apply in particular where cuts are premised on the litigants' own First Amendment activities. "[T]he First Amendment prohibits government officials from subjecting individuals to retaliatory actions … for having

https://www.nbcnews.com/politics/elections/trump-gop-redistricting-push-indiana-backfired-rcna247832.

[10] Kevin Breuninger, *USDA secretary threatens to cut funding to blue states over alleged SNAP data noncompliance*, CNBC (Dec. 2, 2025), https://www.cnbc.com/2025/12/02/trump-usda-snap-funding-rollins.html.

[11] *Nat'l Rifle Ass'n of Am. v. Vullo*, 602 U.S. 175, 187 (2024).

[12] *Id.* at 188.

engaged in protected speech."[13] Retaliation is subject to challenge because such actions "may tend to chill individuals' exercise of constitutional rights."[14]

In considering a retaliation claim, litigants should survey the universe of potential free speech and association rights at issue. Individuals obviously have First Amendment rights, as do private entities (such as grantees).[15] Whether state and local governments themselves have First Amendment rights appears to be an open question,[16] but such litigants could mount a compelling argument in favor of such rights.[17] Regardless, following the lead of, for example, those challenging the Department of Energy cuts described above, litigants might explain that they are asserting violations of the speech rights of *citizens* of states, not states themselves, and argue that they have third-party standing to do so.[18] Additionally, state and local elected officials themselves have First Amendment rights,[19] and if the circumstances

[13] *Houston Cmty. Coll. Sys. v. Wilson*, 595 U.S. 468, 474 (2022) (quotation omitted).

[14] *ACLU of Md., Inc. v. Wicomico Cnty., Md.*, 999 F.2d 780, 785 (4th Cir. 1993); *see Hartman v. Moore*, 547 U.S. 250, 256 (2006); *Perry v. Sindermann*, 408 U.S. 593, 597 (1972).

[15] *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 340 (2010).

[16] *United States v. Am. Libr. Ass'n, Inc.*, 539 U.S. 194, 210-11 (2003); *see* Eugene Volokh, *Do state and local governments have free speech rights?*, The Volokh Conspiracy (June 24, 2015), https://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/06/24/do-state-and-local-governments-have-free-speech-rights/.

[17] Courts have generally considered whether states and cities have a particular constitutional right on a right-by-right basis, analyzing text and history. *See, e.g., Thorpe v. Hous. Auth. of City of Durham*, 393 U.S. 268, 278 n.31 (1969); *Aguayo v. Richardson*, 473 F.2d 1090, 1100-01 (2nd Cir. 1973); *Sault Ste. Marie v. Andrus*, 532 F. Supp. 157, 167-68 (D.D.C. 1980). Unlike, for example, the Fifth Amendment's Due Process Clause, *see South Carolina v. Katzenbach*, 383 U.S. 301, 323-24 (1966) (construing the Amendment's use of the word "person" as excluding), the First Amendment is not limited to any particular party; it broadly prescribes that the government "shall make no law." U.S. Const. amend. I.

[18] *See* Reply in Supp. of Pls.' Mot. for P.I. & Consolidation Under Rule 65(a)(2) at 2, 16-19, *Saint Paul v. Wright*, No. 25-cv-3899 (D.D.C. filed Dec. 9, 2025). The Supreme Court has recently observed that under what "some have called" the doctrine of third-party standing, "a narrow class of litigants" can "assert the legal rights of others." *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 393 n.5 (2024). As a prudential matter, *see Sec'y of State of Md. v. Joseph H. Munson Co.*, 467 U.S. 947, 955 (1984), courts generally require "a party seeking third-party standing" to make two showings beyond the traditional Article III standing showings: "a close relationship with the person who possesses the right" and some "hindrance to the possessor's ability to protect his own interests," *Kowalski v. Tesmer*, 543 U.S. 125, 130 (2004) (quotations omitted). But as potentially applicable here, within the context of the First Amendment the Court has "lessen[ed]…prudential limitations on standing," and the "Court has allowed standing to litigate the rights of third parties when enforcement of the challenged restriction *against the litigant* would result indirectly in the violation of third parties' rights." *Id.* (quotations omitted).

[19] *See Wood v. Georgia*, 370 U.S. 375, 394 (1962) (addressing the free speech of an elected sheriff); *Bond v. Floyd*, 385 U.S. 116, 135-36 (1966) ("The manifest function of the First Amendment in a representative government requires that legislators be given the widest latitude to express their

were such that they would have standing (e.g., if the funding cuts were based on the officials' particular political views or speech), litigants might consider including them in any lawsuit.

A First Amendment retaliation claim has three elements: the plaintiff must show that (1) it engaged in protected expression; (2) a government actor took a materially adverse action against it; and (3) there is a causal relationship between the protected expression and the adverse action.[20] In the context of politicized funding cuts, (1) the protected expression might be the association with, and speech in favor of, political views opposite those of the President. The Supreme Court has held that "speech on public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection."[21] And (2) the materially adverse action would seem self-evident in the case of funding cuts.[22] Finally, with respect to (3) a causal link, litigants might establish it with reference to statements by the administration.[23] Where the administration has been less direct, litigants might instead point to circumstantial evidence to make the connection, including with respect to the timing of the cuts.[24]

B. Punishing speech through intermediaries

Litigants might argue that funding cuts impermissibly punish individuals' First Amendment rights by targeting private intermediaries. "[A] government official may not do indirectly what she is barred from doing directly," so "the First Amendment

views on issues of policy."); *Republican Party of Minn. v. White*, 536 U.S. 765, 788 (2002) (addressing free expression rights of judicial candidates).

[20] *Aref v. Lynch*, 833 F.3d 242, 258 (D.C. Cir. 2016); *see Associated Press v. Budowich*, No. 25-5109, 2025 WL 1649265, at *10 (D.C. Cir. June 6, 2025) (Rao, J., concurring), *reconsideration en banc denied*, No. 25-5109, 2025 WL 2047025 (D.C. Cir. July 22, 2025).

[21] *Snyder v. Phelps*, 562 U.S. 443, 452 (2011) (quotation omitted); *see also Stand With US Ctr. for Legal Just. v. Massachusetts Inst. of Tech.*, 158 F.4th 1, 13 (1st Cir. 2025) ("A law punishing private citizens for expressing political opinions disfavored by Congress would be subject to 'the most exacting' First Amendment scrutiny." (quoting *Texas v. Johnson*, 491 U.S. 397, 412 (1989))).

[22] *See President & Fellows of Harvard Coll. v. U.S. Dep't of Health & Hum. Servs.*, -- F. Supp. 3d --, No. 25-cv-10910, *et al.*, 2025 WL 2528380, at *22 (D. Mass. Sept. 3, 2025) (the government did not dispute that orders and letters freezing and cancelling federal funding "constitute an adverse action").

[23] *See, e.g.*, Johansen, *supra* note 1.

[24] *See, e.g., Media Matters for Am. v. Fed. Trade Comm'n*, No. 25-5302, 2025 WL 2988966, at *6 (D.C. Cir. Oct. 23, 2025) (per curiam) (discussing a pattern of litigation targeting Media Matters, the broad scope of the investigative demand at issue, and public statements of the Federal Trade Commission Chair).

prohibits government officials from wielding their power selectively to punish or suppress speech … through private intermediaries."[25]

As the Supreme Court recently held in *National Rifle Association v. Vullo*, a strategy that selectively targets intermediaries to punish other actors "allows government officials to expand their regulatory jurisdiction to suppress the speech of organizations that they have no direct control over."[26] Some politicized funding cuts have arguably been based on the political viewpoints of citizens or elected officials in the state or locality where the (former) recipient of federal funds is located.[27] The federal government does not have control over the political expression of those individuals, but might nevertheless seek to punish and coerce them by means of cutting funding to associated recipients.

Litigants might emphasize several factors that the *Vullo* Court raised. First, "[t]he power that a government official wields, while certainly not dispositive, is relevant to the objective inquiry of whether a reasonable person would perceive the official's communication as coercive."[28] Litigants might therefore highlight statements from high-level officials—for example, statements, letters, or online posts from the President, cabinet officials, and other officials, such as OMB Director Vought, who wield significant authority over funding decisions. "Generally speaking, the greater and more direct the government official's authority, the less likely a person will feel free to disregard a directive from the official."[29] The formality of the communication may also be relevant.[30]

Second, the Court emphasized the content of the communications from the government official to the intermediaries. In *Vullo*, the state official told regulated entities that she would focus enforcement efforts on those with ties to gun advocacy groups, indicating that entities would be spared if they cut ties with such groups.[31] In the context of politicized funding cuts, litigants might highlight the connection between the threat and the protected speech that the government seeks to punish. With respect to the Department of Energy cuts described above, for example, the protected conduct might be the political views or voting behaviors of individuals and

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[25] *Vullo*, 602 U.S. at 190, 198.

[26] 602 U.S. at 197-98 (quotation omitted).

[27] Montague, *supra* note 1.

[28] *Id.*

[29] *Id.* at 191-92.

[30] *See id.* at 194 (noting that one communication was "issued on official letterhead" and others were tweeted by the governor); *Bantam Books*, 372 U.S. at 61 (discussing notice issued on "official Commission stationery").

[31] 602 U.S. at 192.

elected officials in the jurisdictions where the recipients reside, and the funding cuts might be connected to that protected conduct through explicit threats from the President.[32]

Third, threatened entities' "reaction" can "further confirm[] the communications' coercive nature."[33] In the seminal *Bantam Books, Inc. v. Sullivan*, the Supreme Court noted that a threatened book distributor took "steps to stop further circulation" of books disfavored by the government.[34] Litigants challenging politicized funding cuts might identify instances where federal grantees change their behavior in response to the government's threats — for example, if a grantee moved its project to a place with political allegiances friendlier to the Trump administration or modified its public posture toward the administration.

IV. EQUAL PROTECTION AND ANIMUS

Litigants might press arguments that politicized funding cuts violate the Fifth Amendment's equal protection guarantee.[35]

Where the government treats similarly situated parties differently and no "'fundamental right'" or "'suspect class'" is involved, courts generally uphold the differential treatment "'so long as it bears a rational relation to some legitimate end.'"[36] Due to the inherent need to draw lines in policymaking, rational basis review is usually a "relatively relaxed standard," and, where it applies, courts will uphold a government action "so long as there is any reasonably conceivable state of facts that could provide a rational basis for the classification."[37] Lower courts have applied this

[32] Johansen, *supra* note 1.

[33] *Vullo*, 602 U.S. at 193.

[34] 372 U.S. at 63.

[35] U.S. Const. amend. V; *see Bolling v. Sharpe*, 347 U.S. 497, 499-500 (1954). Courts' "approach to Fifth Amendment equal protection claims has always been precisely the same as to equal protection claims under the Fourteenth Amendment." *Weinberger v. Wiesenfeld*, 420 U.S. 636, 638 n.2 (1975).

[36] *United States v. Skrmetti*, 605 U.S. 495, 510 (2025) (quoting *Romer v. Evans*, 517 U.S. 620, 631 (1996)).

[37] *Id.* at 522 (quotations omitted).

deferential standard even where political considerations were part of the decisionmaking.[38]

However, this does not mean that rational basis review is toothless, particularly where litigants can allege that a challenged classification exhibits a "'bare … desire to harm a politically unpopular group'"[39] or is "'inexplicable by anything but animus.'"[40] Upon such a finding, courts have applied what has been described as "rational basis with bite."[41] Although this area of the law appears unsettled, when the Supreme Court has found animus at play, the Court has rejected it as a legitimate government interest and tended to treat alternative justifications for a challenged policy with relative skepticism.[42]

Litigants therefore might attempt to trigger this more "searching form" of rational basis review[43] by arguing that political retribution is a form of "improper animus" against a "'politically unpopular group'" — in the context of politicized funding cuts, recipients associated with political views that are out of power at the federal level.[44] Indeed, terminated recipients of the Department of Energy grants described above have argued just that: "Plaintiffs have been subject to differential treatment relative to similarly situated entities, based on [the Trump administration's] political animosity toward others who they associated with Plaintiffs, which is not a legitimate basis for that differential treatment."[45] And at least one district court has already

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[38] *See, e.g.*, *Wisconsin Educ. Ass'n Council v. Walker*, 705 F.3d 640, 654 (7th Cir. 2013).

[39] *Trump v. Hawaii*, 585 U.S. 667, 705 (2018) (quoting *Dep't of Agric. v. Moreno*, 413 U.S. 528, 534 (1973)) (alteration in the original).

[40] *Id.* at 706 (quoting *Romer v. Evans*, 517 U.S. 620, 632 (1996)).

[41] *Bishop v. Smith*, 760 F.3d 1070, 1099 (10th Cir. 2014) (Holmes, J., concurring) (quotation omitted) (collecting the "different labels" applied "in the animus decisions"); *see, e.g.*, Raphael Holoszyc-Pimente, *Reconciling Rational-Basis Review: When Does Rational Basis Bite?*, 90 N.Y.U. L. Rev. 2070, 2072 n.4 (2018).

[42] *See, e.g.*, *Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 456 (1985) (Marshall, J., concurring in part and dissenting in part) (arguing that, under the guise of rational-basis review, the majority actually relied on "searching review" or "heightened scrutiny" to invalidate the zoning ordinance at issue).

[43] *Lawrence v. Texas*, 539 U.S. 558, 580 (2003) (O'Connor, J., concurring in the judgment).

[44] *Windsor v. United States*, 570 U.S. 744, 770 (2013) (quoting *Moreno*, 413 U.S. at 534-35); *see Lawrence*, 539 U.S. at 583 (O'Connor, J., concurring in the judgment) ("Moral disapproval of a group cannot be a legitimate governmental interest under the Equal Protection Clause because legal classifications must not be 'drawn for the purpose of disadvantaging the group burdened by the law.'" (quoting *Romer*, 517 U.S. at 633)).

[45] Reply in Supp. of Pls.' Mot. for P.I. & Consolidation Under Rule 65(a)(2) at 12, *Saint Paul v. Wright*, No. 25-cv-3899 (D.D.C. filed Dec. 9, 2025); *see also* Pls.' Mot. for P.I. & Prov. Class Cert. at 19-23, *Thakur v. Trump*, No. 3:25-cv-4737 (N.D. Cal. filed Nov. 24, 2025),

sustained an equal protection challenge against differential treatment based on a litigant's association with political opponents of the Trump administration.[46] In a challenge to an executive order targeting a law firm, the court agreed that the order "serve[d] no legitimate government interest, but only the interest of retaliation" against a "'politically unpopular group.'"[47] "Some of [the law firm's] current and former clients and employment practices are unpopular with President Trump and his administration—due to the speech and associations, real or perceived, reflected in those relationships and policies—and [the order] was issued to harm [the firm]."[48] That, the court held, offended equal protection: "targeting a disliked business or individual for punitive government action is not a legitimate use of the powers of the U.S. government or an American President."[49]

"To plead animus, a plaintiff must raise a plausible inference that an 'invidious discriminatory purpose was a motivating factor' in the relevant decision."[50] And to demonstrate animus, litigants might highlight evidence including "disparate impact on a particular group, '[d]epartures from the normal procedural sequence,' and 'contemporary statements by members of the decisionmaking body.'"[51] Litigants who organize their allegations and evidence by these factors might better distinguish their animus claims from mere political favoritism,[52] which at least some courts consider to be inherent to democratic politics.[53] For example, litigants challenging politicized funding cuts might offer evidence showing, for example, that awards in a particular grant program were cut only in jurisdictions with certain politics, in order to demonstrate disparate impact and the unorthodox nature of the cuts. Additionally, because "[a]nimus is ill will or hostility … and is not simply the converse of favoritism towards another,"[54] litigants might emphasize the retaliatory and punitive nature of

https://storage.courtlistener.com/recap/gov.uscourts.cand.450653/gov.uscourts.cand.450653.156.0.pdf.

[46] *Perkins Coie LLP v. U.S. Dep't of Just.*, 783 F. Supp. 3d 105, 166-68 (D.D.C. 2025), *appeal pending*, No. 25-5241 (D.C. Cir.).

[47] *Id.* at 168 (quoting *Cleburne*, 473 U.S. at 447).

[48] *Id.*

[49] *Id.*

[50] *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 34 (2020) (quoting *Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977)).

[51] *Id.* (quoting *Arlington Heights*, 429 U.S. at 266-68) (alterations in the original).

[52] *See, e.g.*, Mem. in Support of Pls.' Mot. for P.I. & Consolidation Under Rule 65(a)(2) at 13-17, *Saint Paul v. Wright*, No. 25-cv-3899 (D.D.C. filed Nov. 14, 2025).

[53] *See, e.g., Walker*, 705 F.3d at 654.

[54] *Desoto CAB Co. v. Picker*, 228 F. Supp. 3d 950, 959 (N.D. Cal. 2017), *aff'd*, 714 F. App'x 783 (9th Cir. 2018) (citing Black's Law Dictionary at 97 (8th ed. 2004)).

politicized funding cuts, referencing statements from the President and others in his administration.[55]

Litigants might also find support in *United States v. Windsor*, where the Court highlighted that, "[i]n determining whether a law is motivated by an improper animus or purpose, '[d]iscriminations of an unusual character' especially require careful consideration."[56] There, the "unusual character" stemmed from the Defense of Marriage Act's "unusual deviation from the usual tradition of recognizing and accepting state definitions of marriage."[57] Here, litigants might explain how free political expression, especially in the context of elections, is a core constitutional and American value,[58] and reprisal for it is likewise "discrimination of an unusual character" that should raise concerns. And to the extent that such retribution is based on voting patterns or the political affiliation of local and state officials, those topics, like marriage, are historically regulated at the state and local level,[59] making federal retaliation all the more suspect.

Especially if plaintiffs do not establish their entitlement to a heightened form of rational basis review, they might attempt to invalidate alternative justifications for politicized funding cuts apart from the desire to harm political opponents.[60] Outside the context of the animus cases noted above, however, courts have offered very little guidance on what does and does not count as a legitimate government interest.[61] So litigants might have more luck attempting to break the link between the differential treatment and any conceivable legitimate government interest. This is a tall order itself because, under rational basis review, a classification need not be "made with mathematical nicety" and may be overinclusive or underinclusive.[62] But the Court has offered some clues, described below, about how litigants might proceed. (Note the tension between the general rational basis review rule that a court may credit *any*

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[55] *See, e.g.,* George Chidi, *Trump threatens to cut funds if 'communist' Mamdani wins mayoral election*, The Guardian (Nov. 3, 2025), https://www.theguardian.com/us-news/2025/nov/03/trump-mamdani-new-york-election-mayor-cuomo; Jacob Wendler, *Trump weighs in on Mamdani's win: 'a 100% Communist Lunatic'*, Politico (June 25, 2025), https://www.politico.com/news/2025/06/25/trump-zohran-mamdani-reaction-00423933 (quoting President Trump as describing then-candidate Mamdani as a "100% Communist Lunatic" who "looks TERRIBLE" and is "not very smart").

[56] 570 U.S. at 770 (quoting *Romer*, 517 U.S. at 633) (alterations in the original).

[57] *Id.* ("This is strong evidence of a law having the purpose and effect of disapproval of that class.").

[58] *See, e.g.*, *Buckley v. Valeo*, 424 U.S. 1, 39 (1976).

[59] *See, e.g.*, *Gregory v. Ashcroft*, 501 U.S. 452, 461-62 (1991).

[60] *See F.C.C. v. Beach Commc'ns, Inc.*, 508 U.S. 307, 315 (1993) ("[T]hose attacking the rationality of the legislative classification have the burden to negative every conceivable basis which might support it[.]" (quotation omitted)).

[61] Thomas B. Nachbar, *The Rationality of Rational Basis Review*, 102 Va. L. Rev. 1627, 1654 (2016).

[62] *Dallas v. Stanglin*, 490 U.S. 19, 26 (1989) (quotation omitted); *see Gregory*, 501 U.S. at 473.

"conceivable" government interest[63] and that apparently in operation in some cases where the Court seemed to cabin its review to the government's proffered justifications.[64] To err on the side of caution, litigants might therefore attempt to invalidate potential justifications for differential treatment beyond those provided by the government.)

First, litigants might assert that the connection between the differential treatment and any or all of the alternative government interests are actually themselves grounded in an illegitimate motive. In *Cleburne v. Cleburne Living Center*, the Supreme Court examined a city council's reasons for objecting to the location of a home for the mentally disabled and found that each was actually based on indefensible animus toward that group.[65] For example, the council objected to the placement across from a local public school because "the students might harass the occupants of the" home.[66] The Court rejected this concern because the connection between the differential treatment of mentally-disabled persons and the government interest in protecting the residents' safety was premised on students' supposed animus. As the Court explained, "mere negative attitudes or fear" should not "permit[] some portion of the community to validate what would otherwise be an equal protection violation."[67] In the context of politicized funding cuts, this principle might apply if the government, for example, attempts to justify cuts based on stereotypes about the business savvy or financial responsibility of individuals of a certain political persuasion or the business-friendliness of states dominated by a particular party.

Second, litigants might argue that the differential treatment is poorly suited to further an otherwise legitimate government interest, and in fact may undermine that interest. In *Moreno*, for example, the Court rejected several potential legitimate government interests because the classification at issue would not further them. For all three potential government interests that the Court considered — stimulating the agricultural economy, ensuring adequate nutritional levels, and minimizing fraud in the food stamp program — the Court found that distinguishing between households based on the relationships within them was not rationally related because it was actually counterproductive to those goals.[68] The first two goals would not be furthered by reducing the population served by the food stamp program and the court found no plausible connection between the types of relationships within a

[63] *Heller v. Doe*, 509 U.S. 312, 320 (1993).

[64] *See, e.g.*, *Cleburne*, 473 U.S. at 449; *see also Moreno*, 413 U.S. at 534 (searching the legislative history for the statute's purpose).

[65] 473 U.S. at 449.

[66] *Id.*

[67] *Id.* at 448-49.

[68] *Moreno*, 413 U.S. at 534-36.

household and the household's tendency toward committing fraud.[69] Litigants might similarly emphasize how politicized funding cuts can frustrate various purposes of federal spending. For example, if one conceivable reason for a cut is efficiency, litigants might highlight how disrupted funding can actually cost the government more money than it saves.[70]

Finally, litigants might point to other potential policy solutions and contrast their connection to a given legitimate government interest with that of the differential treatment at issue. For example, the Court in *Moreno* discounted the idea that the differential treatment at issue was rationally related to preventing fraud in part because there were already separate provisions of the law that imposed strict penalties for food stamp fraud, explaining that "[t]he existence of these provisions necessarily casts considerable doubt upon the proposition that the [classification] could rationally have been intended to prevent those very same abuses."[71]

V. SPENDING CLAUSE

To the extent that the administration cuts federal funding to state and local governments in retaliation for the political views of the citizens or elected officials of those states and localities, litigants might consider bringing claims under the Constitution's Spending Clause. Just as the federal government may not coerce or induce a *private* party to violate an individual's First Amendment rights, as described above, nor may it condition spending to "induce the States to engage in activities that would themselves be unconstitutional."[72]

Accordingly, litigants might allege that terminating federal funding to state and local governments unless they withhold services or passthrough funding from entities, geographies, or individuals that engage hold particular political views violates the Spending Clause. And as a doctrine that protects the principles of federalism,

[69] *Id.*

[70] *See, e.g.*, Cara Jackson, et al., *Cutting research funding would make education less effective and efficient*, Brookings (Feb. 24, 2025), https://www.brookings.edu/articles/cutting-research-funding-would-make-education-less-effective-and-efficient/.

[71] 413 U.S. at 536-37.

[72] *S. Dakota v. Dole*, 483 U.S. 203, 210 (1987); *see, e.g.*, *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 604 (2013) ("[T]he government may not deny a benefit to a person because he exercises a constitutional right." (quotation omitted)); *see generally* GFI, Challenging Funding Conditions, *supra* note 3.

eligible litigants might stretch beyond the state and local governments themselves to include individual citizens and public officials.[73]

VI. EQUAL SOVEREIGNTY OF THE STATES

Litigants might also allege that politicized funding cuts violate the "fundamental principle of equal sovereignty among the States."[74] The Supreme Court most recently addressed this doctrine in *Shelby County v. Holder*, where it considered the statutory formula in the Voting Rights Act's preclearance provision, which subjected certain states and localities with a history of racial discrimination in voting to stringent requirements before they were allowed to change their election laws.[75] In tracing the decisions underlying this doctrine, the Court quoted its prior decision in *Northwest Austin Municipal Utility District Number One v. Holder* to explain that "'a departure from the fundamental principle of equal sovereignty requires a showing that a statute's disparate geographic coverage is sufficiently related to the problem that it targets.'"[76] Litigants challenging politicized funding cuts might argue that the cuts' "disparate geographic" nature — the fact that some states' funds have been cut while others remain untouched — is unrelated to any "problem" the administration is theoretically trying to address, and that they have therefore been impermissibly singled out.

In doing so, they might take care to distinguish their claims from those that have mostly failed in lower courts since *Shelby County* — which, as the lower courts have emphasized, might have been driven by the Court's view that the Voting Rights Act represented "an uncommon exercise of congressional power."[77] For example, the

[73] *See Bond v. United States*, 564 U.S. 211, 220 (2011) ("The individual, in a proper case, can assert injury from governmental action taken in excess of the authority that federalism defines. Her rights in this regard do not belong to a State.").

[74] *Shelby Cnty.*, 570 U.S. at 544 (quotation and emphasis omitted).

[75] *See id.* The Court has considered this principle in other contexts as well. *See, e.g.*, *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 388 (2023) (citing *Shelby County* in upholding a state law against a dormant Commerce Clause challenge).

[76] *Shelby Cnty.*, 570 U.S. at 542 (quoting *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193, 203 (2009)).

[77] *NCAA v. Governor of New Jersey*, 730 F.3d 208, 238 (3d Cir. 2013) (quoting *Shelby Cnty.*, 570 U.S. at 545), *abrogated by Murphy v. NCAA*, 584 U.S. 453 (2018).

First Circuit in *Mayhew v. Burwell* rejected an "equal sovereignty" claim against a Medicaid amendment on several bases: the statute at issue did not "single[] out" certain states for disparate treatment (it merely had disparate effects); the statute marked neither an "extraordinary departure from the traditional course of relations between the States and the Federal Government" nor an "intrusion into sensitive areas of state and local policymaking" (like voting and elections, at issue in *Shelby County*); and the statute was "sufficiently related to the problem it target[ed]" because it was based on "current conditions and address[ed] real problems."[78] Accordingly, litigants might emphasize the intentional discrimination evident in politicized funding cuts; the fact that targeting a state based on its citizens' political views arguably intrudes into states' traditional role in regulating voting and elections;[79] and the notion that the different political opinions of a state or locality's residents is not likely an acceptable "real problem[]" that the federal government can address through funding cuts.

Lower courts have also turned away *Shelby County*-style arguments against the classification of marijuana under the Controlled Substances Act. In those cases, courts emphasized that, regardless of how states were *impacted* by the marijuana classification due to their own laws on the matter, the Act itself applied uniformly across the country and therefore did not raise an equal sovereignty problem.[80] The Second Circuit reached a similar conclusion in a challenge to a federal law capping state and local tax deductions, holding that the fact that a state chooses to have higher or lower taxes—and therefore experiences federal tax law differently than other states—does not mean that the federal law treats that state differently.[81] Politicized funding cuts, though, depending on how they are enacted, *do* "appl[y] to some States but not others."[82] Litigants might therefore emphasize that the cuts intentionally discriminate against states perceived as political opponents of the administration, as exemplified by the administration's statements to that effect.

Additionally, several appellate courts have held that the "equal sovereignty" principle may not apply to legislation authorized by amendments other than the Fourteenth and Fifteenth or to Article I powers like the Commerce Clause. In *United States v. Leahy*, the Eleventh Circuit declined to extend *Shelby County* to a challenge

[78] 772 F.3d 80, 93-96 (1st Cir. 2014) (quotations omitted).

[79] *Gregory*, 501 U.S. at 461.

[80] *See, e.g.*, *United States v. Green*, No. 14-CR-6038, 2016 WL 11483508, at *7 (W.D.N.Y. June 27, 2016), *report and recommendation adopted*, 222 F. Supp. 3d 267 (W.D.N.Y. 2016), *aff'd but criticized on other grounds sub nom. United States v. Amalfi*, 47 F.4th 114 (2d Cir. 2022); *United States v. Olea*, No. CR 14-10304, 2016 WL 8730167, at *4 (D. Mass. Aug. 12, 2016).

[81] *New York v. Yellen*, 15 F.4th 569, 584 (2d Cir. 2021).

[82] *Id.*

to a Thirteenth Amendment-based statute because that amendment lacks a "specific focus on the states."[83] The D.C. and Third circuits have expressed skepticism that the "equal sovereignty" principle applies at all to legislation enacted under the Commerce Clause because of the principle's focus on "sensitive areas of state and local policymaking" and the Commerce Clause's broad grant of authority that "does not require geographic uniformity."[84] We are aware of no case holding that the "equal sovereignty" principle does not apply to Spending Clause legislation like that authorizing federal grants, although the D.C. Circuit suggested that the First Circuit held as such in *Mayhew*.[85] In any event, litigants might therefore emphasize that, just like with the Fourteenth and Fifteenth amendments, federalism concerns run throughout Spending Clause jurisprudence[86] and argue that politicized funding cuts based on voting patterns and the political affiliation of local officials fit within *Shelby County*'s focus on sensitive areas of state and local policymaking.[87]

Finally, the D.C. Circuit has emphasized that, where *Shelby County*'s equal sovereignty principle applies, it does not impose "a categorical bar against … leaving states with different levels of sovereignty," but instead, as noted above, "require[s] only that the disparate treatment is sufficiently related to the problem that" is being

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[83] 152 F.4th 1356, 1399 (11th Cir. 2025); *see United States v. Roof*, 10 F.4th 314, 392-95 (4th Cir. 2021); *United States v. Cannon*, 750 F.3d 492, 504-05 (5th Cir. 2014).

[84] *NCAA,* 730 F.3d at 238 (quotation omitted); *see Ohio v. Env't Prot. Agency*, 98 F.4th 288, 312 (D.C. Cir.) (noting that the Constitution explicitly requires other Article I powers to be exercised uniformly across the states, and observing that "[t]he fact that some constitutional clauses explicitly contain an equality-based guarantee … supports a negative inference—though perhaps only a mild one—that the Commerce Clause is not so constrained"), *rev'd and remanded on other grounds sub nom. Diamond Alternative Energy, LLC v. Env't Prot. Agency*, 606 U.S. 100 (2025).

[85] *Ohio*, 98 F.4th at 309 ("The First and Third Circuits—the only appellate courts to have considered similar arguments—have found Shelby County's discussion of the equal sovereignty principle inapplicable to Commerce Clause and Spending Clause legislation for similar reasons. *See NCAA*, 730 F.3d at 238-39 (Commerce Clause); *Mayhew*, 772 F.3d at 95 (Spending Clause)."). Arguably, however, *Mayhew* rejected an application of the equal sovereignty principle not because the statute at issue was grounded in the Spending Clause but rather for the reasons surveyed above—*i.e.*, it did not question that the doctrine applied and instead found the plaintiffs' arguments lacking. *See* 772 F.3d at 94-96.

[86] *See, e.g.*, *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 535-36 (2012) (plurality opinion); *Dole*, 483 U.S. at 210.

[87] As this discussion has indicated, the "equal sovereignty" principle has developed in the context of challenges to legislation, not administrative action. That might not be a barrier to invoking it against politicized funding cuts, however. As described above, the reasoning behind the doctrine would seem to apply equally to challenges to administrative action. And by analogy, while Spending Clause jurisprudence has likewise developed in the context of challenges to legislation, courts have frequently applied it in challenges to funding conditions imposed by the executive branch. *See, e.g.*, *New York v. United States Dep't of Health & Hum. Servs.*, 414 F. Supp. 3d 475, 565-72 (S.D.N.Y. 2019); *see generally* GFI, Challenging Funding Conditions, *supra* note 3.

targeted.[88] Litigants might account for this by arguing, along the lines described above, that politicized funding cuts bear no relationship to any legitimate government purpose.

One additional note: Despite the doctrine's focus on "equal sovereignty among the *States*,"[89] potential litigants for these claims may not be limited to state governments. Other potential litigants with standing would seem able to invoke the doctrine. For example, local governments could likely bring suit—indeed, *Shelby County* itself was brought by, well, a county, and *Northwest Austin* was brought by a utility district. And the Supreme Court has indicated that individuals may sue to protect principles of federalism,[90] like those at issue in *Shelby County* and, arguably, in the context of politicized funding cuts.

VII. ADMINISTRATIVE PROCEDURE ACT CLAIMS AND LITIGATION CONSIDERATIONS

Finally, litigants challenging an agency's politicized funding cuts might also assert that the cuts are arbitrary and capricious under the APA[91] First, if the agency neglected to give any reasons for the cut, litigants might argue that the agency failed to "articulate a satisfactory explanation for its action."[92] Second, if the agency identifies political animus as its motivation, litigants might argue that the agency "relied on factors which Congress has not intended it to consider."[93] Yet as the Supreme Court recently emphasized, "a court may not set aside an agency's policymaking decision solely because it might have been influenced by political

[88] *Ohio*, 98 F.4th at 310 (quotation omitted); *see Mayhew*, 772 F.3d at 96-97.

[89] *Shelby Cnty.*, 570 U.S. at 544 (quotation omitted, emphasis altered).

[90] *Bond*, 564 U.S. at 221.

[91] 5 U.S.C. § 706(2); *see generally* GFI, Arbitrary-and-Capricious Challenges (May 2025), https://governingforimpact.org/wp-content/uploads/2025/05/Arbitrary-and-Capricious-Challenges.pdf.

[92] *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 43 (1983).

[93] *Id.*

considerations."[94] So litigants might highlight not just that political considerations played a role in an agency's decisionmaking, but that they did so at the expense of factors that Congress directed the agency to consider.[95] Finally, if evidence indicates that a funding cut was primarily motivated by politics but the agency provided a different explanation, litigants might argue that the agency's reason was pretextual — again, cognizant that "a court may not reject an agency's stated reasons for acting simply because the agency might also have had other unstated reasons," including political considerations.[96]

Litigants should also be prepared for the government to argue that arbitrary-and-capricious claims against grant terminations must be brought not in federal district court but rather, pursuant to the Tucker Act, in the Court of Federal Claims (CFC), which presents certain challenges.[97] To avoid the CFC and those challenges, litigants might eschew APA claims in favor of constitutional claims, like those described above, brought pursuant to nonstatutory review.[98] Or litigators might seek plaintiffs without a direct contractual relationship with the government — such as the beneficiaries, rather than the recipients, of grant funding — in an effort to mitigate any arguments in favor of exclusive CFC jurisdiction.[99] Finally, rather than challenging specific grant terminations, litigants might instead challenge a written or unwritten agency policy of not funding grantees with certain political affiliations,

[94] *Dep't of Com. v. New York*, 588 U.S. 752, 781 (2019).

[95] *See Gresham v. Azar*, 950 F.3d 93, 104 (D.C. Cir. 2020) (criticizing agency action for "prioritiz[ing] non-statutory objectives to the exclusion of the statutory purpose"), *vacated as moot & remanded sub nom. Arkansas v. Gresham*, 142 S. Ct. 1665 (Mem.) (2022) (citing *United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950)).

[96] *New York*, 588 U.S. at 781; *see id.* at 783-85; *see generally* GFI, Challenging Agency Action Based on Pretextual Reasons (May 2025), https://governingforimpact.org/wp-content/uploads/2025/05/Challenging-Agency-Action-Based-on-Pretextual-Reasons.pdf.

[97] *See* GFI, Seeking Recovery for Unlawful Grant Terminations in the Court of Federal Claims (Oct. 2025), https://governingforimpact.org/wp-content/uploads/2025/10/CFC-Issue-Brief.pdf; *see also* John Lewis, *Litigating in the Shadows: Federal Funding and the Supreme Court*, Lawfare (Dec. 2, 2025), https://www.lawfaremedia.org/article/litigating-in-the-shadows--federal-funding-and-the-supreme-court.

[98] *See* GFI, Nonstatutory Review (May 2025), https://governingforimpact.org/wp-content/uploads/2025/05/Nonstatutory-Review.pdf.

[99] *Cmty. Legal Servs. in E. Palo Alto v. United States Dep't of Health & Hum. Servs.*, 155 F.4th 1099, 1106 (9th Cir. 2025) ("Under the Tucker Act, the Court of Federal Claims has jurisdiction only if there is privity of contract between plaintiffs and the government." (quotation omitted)); *see, e.g.*, *Am. Ass'n of Univ. Professors v. Trump*, No. 25-cv-07864, 2025 WL 3187762, at *21 (N.D. Cal. Nov. 14, 2025).

following the lead of Justice Barrett's controlling concurrence in *National Institutes of Health v. American Public Health Association*.[100]

VIII. CONCLUSION

Although the Trump administration seems likely to continue to weaponize federal funding decisions against its perceived enemies, litigants might challenge such efforts, particularly under the First Amendment and the Fifth Amendment's equal protection guarantee.

[100] 145 S. Ct. 2658, 2661-62 (2025) (Barrett, J., concurring in the partial grant of the application for stay).