Jurisdiction Argument In USAID Dissent Is Up For Debate

By **Steven Gordon** (March 25, 2025)

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On March 5, the U.S. Supreme Court, by a 5-4 vote, let stand a district court order directing the U.S. Agency for International Development and the U.S. Department of State to pay $2 billion in frozen foreign aid for work already completed.[1]

As is customary for cases on the Supreme Court's emergency docket, the court did not issue an opinion explaining its decision. However, the four dissenters wrote a sharply worded opinion, which raised several interesting legal issues.

This article focuses on one of those issues: What federal court has jurisdiction over a challenge by a contractor or grantee to an action taken by the U.S. government?

The dissenting justices argued that the district courts lack jurisdiction over claims relating to work already completed, and that such claims belong instead in the U.S. Court of Federal Claims. This conclusion is debatable, but the issue is an important one.

The Instant Suit

The USAID suit, AIDS Vaccine Advocacy Coalition v. Department of State, was brought in the U.S. District Court for the District of Columbia on Feb. 10 by foreign aid grantees challenging the suspension of their grant funding and the issuance of stop-work orders. They alleged that these actions violate the U.S. Constitution and various federal statutes, and they sought immediate injunctive relief under the Administrative Procedure Act.

The district court issued a temporary restraining order on Feb. 13, enjoining the agencies from continuing a blanket freeze of the congressionally appropriated funds. It ordered them "to take all necessary steps to honor the terms of contracts, grants, cooperative agreements, loans, and other federal foreign assistance awards that were in existence as of January 19, 2025, including but not limited to disbursing all funds payable under those terms."[2]

On Feb. 23, the plaintiffs filed an emergency motion to enforce the temporary restraining order. The district court then ordered the agencies, within 48 hours, to pay all invoices on contracts for work completed prior to the entry of the temporary restraining order on Feb. 13. The government unsuccessfully appealed this order to the U.S. Court of Appeals for the District of Columbia Circuit, and then filed an emergency application for relief with the Supreme Court, which resulted in the March 5 decision.

The Legal Background

Generally, federal contractors or grantees that engage in litigation with the government must proceed under the Tucker Act[3] or the Contract Disputes Act,[4] which waive sovereign immunity — and so authorize suit — with respect to contract claims against the U.S. Any suit in federal court under these acts must be brought in the Court of Federal Claims, which can award money damages, but lacks any general authority to grant

equitable (injunctive) relief.

However, in 1988, the Supreme Court held in Bowen v. Massachusetts[5] that a state could sue in federal district court pursuant to the APA, seeking specific relief to obtain money to which it claimed entitlement under the Medicaid statute. This ruling was somewhat surprising because the APA only authorizes relief "other than money damages" against a federal agency that has acted unlawfully.[6] Further, it authorizes judicial review of agency actions only in situations where the plaintiff has no other adequate remedy in a court.[7]

Bowen arguably opened the door to bringing APA suits in federal district court in any case where the plaintiff seeks specific performance of the government's obligation to pay an amount allegedly owed under a federal statute or contract. This is not the result that the Supreme Court envisioned, and it has limited Bowen in subsequent decisions.

In the 2002 decision in Great-West Life and Annuity Insurance Co. v. Knudson,[8] the Supreme Court articulated two limitations on its holding in Bowen.

First, it said that Bowen involved a statutory obligation to pay money, not a contractual obligation. The court noted that injunctive relief to compel the payment of money past due under a contract was not typically available in equity, and that "Bowen has no bearing" on that rule.[9] Second, the court noted that the suit in Bowen sought not merely past due sums, but also an injunction to correct the method of calculating payments going forward. Such prospective relief is unavailable in the Court of Federal Claims, but is appropriate under the APA in federal district courts.[10]

Furthermore, as noted above, the APA can be invoked only where the plaintiff has no other adequate remedy. The federal courts of appeals have held that the Contract Disputes Act and the Tucker Act provide an adequate remedy for contract disputes with the government and thus "impliedly forbid" an APA action in federal district court.[11]

However, several federal courts of appeals, including the D.C. Circuit in 1992's Transohio Savings Bank v. Director, Office of Thrift Supervision, have ruled that "litigants may bring statutory and constitutional claims in federal district court even when the claims depend on the existence and terms of a contract with the government," and "even where the relief sought is ... specific performance" of the contract.[12]

The complaint in the USAID case is patterned on this construction of the APA. It alleges statutory and constitutional claims that are tied to the plaintiffs' contracts or grants with the government, and seek specific performance of those contracts or grants.

The USAID Dissent

The USAID dissent argues that sovereign immunity "appears to bar the sort of compensatory relief that the District Court ordered here," which was limited to payments for work already completed.[13] The dissent reasons that "the relief here more closely resembles a compensatory money judgment rather than an order for specific relief that might have been available in equity."[14] Therefore, "the proper remedy for an agency's recalcitrant failure to pay out may be to 'seek specific sums already calculated' and 'past due' in the Court of Federal Claims."[15]

The dissent does not argue that the district court lacks jurisdiction over the entire suit, but rather that it cannot grant monetary relief with respect to work already performed. A statute waiving sovereign immunity may limit the remedies that are available and, as

discussed above, the APA only authorizes district courts to provide relief other than money damages. The dissent contends that the remedy ordered here is tantamount to money damages.

This position is in some tension with Bowen on two scores. First, Bowen upheld an order for the payment of money as a form of specific relief under the APA, rather than money damages. However, the claims in Bowen were based on the Medicaid statute. The USAID dissent contends that a different result should be obtained when the claims are based on a contract, but this is certainly debatable.

Second, Bowen held that a "District Court's jurisdiction to award complete relief in [an APA case] is not barred by the possibility that a purely monetary judgment may be entered in the [Court of Federal Claims]."[16] The USAID dissent construes the APA in a manner that would instead multiply litigation by requiring plaintiffs to file two separate suits — one in the Court of Federal Claims and another in federal district court — when seeking relief for both past and ongoing work.

In addition, the "two separate suits" requirement would be further complicated by another statute, Title 28 of the U.S. Code, Section 1500, which bars Court of Federal Claims jurisdiction over a claim if the plaintiff has another suit "for or in respect to" that claim pending against the U.S. in another court. The Supreme Court has ruled that this statute precludes jurisdiction in the Court of Federal Claims whenever the two suits are based on substantially the same operative facts, even if they seek different relief.[17]

Accordingly, this statute would bar the plaintiffs in the USAID suit from filing a separate suit in the Court of Federal Claims, so long as their APA suit remains pending. More generally, it creates a trap for unwary plaintiffs because it allows them to prosecute two parallel suits only if they file first in the Court of Federal Claims and then in district court, but not vice versa.

It remains to be seen whether a majority of the Supreme Court will ultimately adopt the construction of the APA espoused by the four dissenting justices. But the issue will recur, and is likely to come before the court again.

The dissenters conceded that the plaintiffs had raised "serious concerns about nonpayment for completed work."[18] Even if the district court is exceeding its jurisdiction in the USAID case, as the dissent contends, there is no real doubt that the payments it has ordered are owed to the plaintiffs.

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[1] Department of State v. AIDs Vaccine Advocacy Coalition, 604 U.S. ----, 2025 WL 698083 (March 5, 2025) (Mem).

[2] AIDs Vaccine Advocacy Coalition v. U.S. Dep't of State, C.A. No. 25-00400 (D.D.C.), ECF No. 34 at 2; ECF No. 30 at 5.

[3] 28 U.S.C. § 1491.

[4] 41 U.S.C. § 7101, et seq.

[5] Bowen v. Massachusetts, 487 U.S. 879 (1988).

[6] 5 U.S.C. § 702.

[7] 5 U.S.C. § 704.

[8] Great-West Life & Annuity Insurance Co. v. Knudson, 534 U.S. 204 (2002).

[9] 487 U.S. at 212.

[10] Id.

[11] See, e.g., United Aeronautical Corp. v. United States Air Force, 80 F.4th 1017, 1028 (9th Cir. 2023) (Contract Disputes Act implied forbids APA suit); Robbins v. U.S. Bureau of Land Mgmt., 438 F.3d 1074, 1082-83 (10th Cir. 2006) (Tucker Act implied forbids APA suit).

[12] Transohio Sav. Bank v. Director, Off. of Thrift Supervision, 967 F.2d 598, 610 (D.C. Cir. 1992); see also Robbins, supra, 438 F.3d at 1083-85.

[13] Department of State v. AIDs Vaccine Advocacy Coalition, 2025 WL 698083, at *2.

[14] Id.

[15] Id. at 3.

[16] 487 U.S. at 910.

[17] See United States v. Tohono O'odham Nation, 563 U.S. 307 (2011).

[18] Department of State v. AIDs Vaccine Advocacy Coalition, 2025 WL 698083, at *4.