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6 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
7 AT SEATTLE

8 STATE OF WASHINGTON, et al.,

9 Plaintiff(s),

10 v.

11 UNITED STATES DEPARTMENT OF  
EDUCATION, et al.,

12 Defendant(s).

CASE NO. C25-1228-KKE

ORDER DENYING DEFENDANTS'  
MOTION TO DISMISS

13 In 2018 and 2020, Congress established and funded two grant programs via the United  
14 States Department of Education (“the Department”) to support mental health services at  
15 elementary and secondary schools throughout the country. Recognizing the prevalence of violence  
16 and traumatic crises in schools, and the negative impact of these disruptions on the learning  
17 environment, Congress allocated appropriations to the Department to “support learning  
18 environments where students feel safe, supported, and ready to learn.” Dkt. No. 1 ¶ 44 (citation  
19 modified). The Department funded hundreds of multi-year grants via these programs.

20 But in April 2025, the Department notified certain grant recipients that their funding would  
21 not be renewed at the end of their current budget period, which expires December 31, 2025.  
22 Sixteen states filed this lawsuit against the Department and its secretary to challenge the  
23 Department’s decision to discontinue funding to their grantees, seeking a court order that would  
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1 enjoin implementation of that decision and require the Department to issue legally compliant  
2 continuation decisions before the next budget period. Dkt. No. 1 at 44–45.

3 Defendants filed a motion to dismiss the complaint for lack of subject matter jurisdiction  
4 and for failure to state a claim. Dkt. No. 161. After considering the parties’ briefing, the relevant  
5 record, and the oral argument of counsel, the Court finds that the complaint’s allegations are  
6 sufficient to withstand a challenge to Plaintiffs’ standing as well as to this Court’s subject matter  
7 jurisdiction. Therefore, the Court will deny Defendants’ motion to dismiss.

## 8 I. BACKGROUND

### 9 A. Congress Identified the Need to Increase School-Based Mental Health Services.

10 In 2018, following the tragic shooting deaths of 14 students and three staff members at  
11 Marjory Stoneman Douglas High School in Parkland, Florida, Congress created the Mental Health  
12 Service Professional Demonstration Grant Program (“MHSP”) in the Department to increase the  
13 number of mental health professionals serving the nation’s public schools. Dkt. No. 1 ¶ 41.  
14 Congress appropriated no more than \$10 million to this program to

15 test and evaluate innovative partnerships between institutions of higher learning  
16 and States or high-need local educational agencies to train ... mental health  
17 professionals qualified to provide school-based mental health services, with the  
18 goal of expanding the pipeline of these workers into low-income public elementary  
19 schools and secondary schools in order to address the shortages of mental-health  
20 service professionals in such schools.

21 *Id.* (quoting H.R. Rep. No. 115-952, at 543 (2018) (Conf. Rep.), *available at*  
22 <https://www.congress.gov/115/crpt/hrpt952/CRPT-115hrpt952.pdf>).

23 Shortly thereafter, President Trump established a Federal Commission on School Safety to  
24 make recommendations for improving school safety. Dkt. No. 1 ¶ 42 (citing Applications for New  
Awards; Mental Health Service Professional Demonstration Grant Program, 84 Fed. Reg. 29180,  
29181 (June 21, 2019)). Noting the lack of access to mental health professionals in high-poverty

1 districts and schools where needs are the greatest, this commission made a series of  
2 recommendations, including expanding access to mental health care services in schools, where  
3 treatment is much more likely to be effective and completed. *Id.* (citing Betsy DeVos, et al.,  
4 Federal Commission on School Safety, Final Report of the Federal Commission on School Safety  
5 37 (Dec. 18, 2018), *available at* [https://www2.ed.gov/documents/school-safety/school-safety-](https://www2.ed.gov/documents/school-safety/school-safety-report.pdf)  
6 [report.pdf](https://www2.ed.gov/documents/school-safety/school-safety-report.pdf)).

7 For fiscal year 2020, Congress expanded this effort and appropriated \$10 million to  
8 establish the Department’s School-Based Mental Health Services Grant Program (“SBMH”), to  
9 “increase the number of qualified, well-trained ... mental health professionals that provide school-  
10 based mental health services to students.” Dkt. No. 1 ¶ 44 (citing Explanatory Statement, DIVISION  
11 A-DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED  
12 AGENCIES APPROPRIATIONS ACT, 2020, at 134 (Dec. 16, 2019), *available at*  
13 <https://docs.house.gov/billsthisweek/20191216/BILLS-116HR1865SA-JES-DIVISION-A.pdf>).

14 For fiscal year 2021, Congress maintained MHSP funding at \$10 million and increased  
15 SBMH funding to \$11 million. Dkt. No. 1 ¶ 45. In fiscal year 2022, Congress increased the  
16 appropriations for the MHSP to \$55 million and for SBMH to \$56 million. *Id.*

17 In May 2022, school violence again shook the nation as a former student shot and killed  
18 19 students and two teachers at an elementary school in Uvalde, Texas. Dkt. No. 1 ¶ 46. In  
19 response, Congress dramatically increased the funding for both programs, appropriating an  
20 additional \$100 million per year for each program for fiscal years 2022 through 2026 via the  
21 Bipartisan Safer Communities Act. *Id.* ¶ 47.

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**B. The Department Established Grant Program Priorities and Awarded Multi-Year Grants.**

Beginning in 2019 and 2020, when the first MHSP and SBMH grant applications were invited (respectively), and in subsequent years when grant applications were solicited, the Department set forth in the Federal Register the priorities that would be used to judge grant applications for that year. Dkt. No. 1 ¶¶ 58–66. Each set of priorities was published only after completing notice-and-comment rulemaking, as required by statute. *Id.* ¶¶ 50–51.

The 2019 notice published for the MHSP grant competition stated one “absolute priority” that all applicants were required to meet:

Expand the capacity of high-need [local educational agencies (“LEAs”)] in partnership with [institutes of higher education (“IHEs”)] to train school-based mental health services providers ... with the goal of expanding the pipeline of these professionals into high-need public elementary schools and secondary schools in order to address the shortages of school-based mental health service providers in such schools.

Dkt. No. 1 ¶ 59 (quoting 84 Fed. Reg. 29180, 29181 (June 21, 2019)). In 2022, the Department again engaged in rulemaking to establish priorities for future MHSP grants. After providing notice and reviewing comments, the Department announced four final priorities:

(1) expand the number of school-based mental health services providers in high-need LEAs through partnerships with IHEs, wherein IHE graduate students would be placed in high-need LEAs; (2) increase the number of school-based mental health services providers in high-need LEAs that reflect the diverse communities served by the high-need LEAs; (3) provide evidence-based pedagogical practices in mental health services provider preparation programs or professional development programs that are inclusive and that prepare school-based mental health services providers to create culturally and linguistically inclusive and identity-safe environments for students when providing services; and (4) partner with historically black colleges and universities; tribal colleges and universities; and minority-serving institutions.

*Id.* ¶ 61 (citing 87 Fed. Reg. 60083 (Oct. 4, 2022)).

The Department engaged in the same priority-setting process for the SBMH, beginning in 2020 and again in 2022. The four “final priorities” announced in 2022 were:

(1) proposals from [state educational agencies (“SEAs”)] to increase the number of credentialed school-based mental health services providers in LEAs with demonstrated need through recruitment and retention; (2) proposals from LEAs with demonstrated need to increase the number of credentialed school-based mental health services providers through recruitment and retention; (3) proposals prioritizing respecialization, professional retraining, or other preparation plan that leads to a state credential as a school-based mental health services provider and that is designed to increase the number of services providers qualified to serve in LEAs with demonstrated need; and (4) proposals to increase the number of credentialed school-based mental health services providers in LEAs with demonstrated need who are from diverse backgrounds or who are from communities served by the LEAs with demonstrated need.

Dkt. No. 1 ¶ 65 (citing 87 Fed. Reg. 60092, 60097 (Oct. 4, 2022)).

When the Department awarded new MHSP/SBMH grants, it approved them for a five-year project period: providing funds for the first year and stating its intention to fund the remainder of the project through one-year continuation awards. Dkt. No. 1 ¶ 4. Department regulations provide that grantees approved for multi-year projects do not apply and compete to receive continuation awards after that first year; instead, the Department reviews information relevant to a grantee’s performance for that year to evaluate whether the project made substantial progress. *Id.* ¶ 55. According to Department regulations, priority should be given to funding continuation awards over new grant applications. *Id.* ¶ 113.

**C. The Department Awarded Multi-Year MHSP and SBMH Grants in Plaintiff States.**

Plaintiffs are 16 states whose elementary and secondary schools have offered mental health services supported by grants awarded via the MHSP and the SBMH. In furtherance of the priorities published by the Department, grantees in Plaintiff States (“Grantees”) applied for and were awarded multi-year MHSP/SBMH grants. For example, the Department awarded a five-year SBMH grant to Educational Service District 189 (“NWESD”), an LEA that serves as regional liaison between Washington state and 35 school districts in northwest Washington. Dkt. No. 1 ¶ 70. Forty percent of NWESD’s schools were unable to access critical mental health services for

1 students due to barriers such as high student-to-provider ratios, attrition, complexity and intensity  
2 of mental health challenges, and geographic isolation. *Id.* Notably, two of the counties in  
3 NWESD’s service area are located on islands and three other counties are in remote mountain  
4 areas far from urban corridors. *Id.* NWESD was able to use the SBMH grant to develop a  
5 recruiting package that allowed it to fill positions more quickly than anticipated. *Id.* ¶ 72. By the  
6 second year of its five-year project, NWESD had exceeded its early recruitment and retention  
7 goals. *Id.* The increase in staffing has already allowed NWESD to improve its mental health  
8 provider-to-student ratio by 60%—from 1:1,160 to 1:656. *Id.*

9 Similarly, the Department awarded a five-year MHSP grant to the University of  
10 Washington’s SMART Center for its Workforce for Student Well-Being Initiative (“WSW”). Dkt.  
11 No. 1 ¶ 74. The WSW funds competitive conditional scholarships to graduate students enrolled  
12 in six schools of social work across Washington, and requires these students to work in a high-  
13 need school district in Washington for a minimum of two years after graduation. *Id.* ¶¶ 75–76. As  
14 of halfway through the third year of the grant program period, the WSW project has recruited and  
15 trained 27 graduate students committed to maintaining employment as school social workers in  
16 high-need school districts across Washington state. *Id.* ¶ 77.

17 The complaint also describes grant-funded programs in other Plaintiff States. For example,  
18 the Michigan Department of Education was awarded a five-year MHSP grant. Dkt. No. 1 ¶ 78.  
19 This grant funded the Michigan Earn, Learn, and Serve in Schools program, which aims to create  
20 jobs for 165 new school mental health providers working in high-need schools across Michigan to  
21 combat a critical shortage of school-based mental health professionals. *Id.* Similarly, Oregon  
22 State University received grant funds to train school counselors in partnership with four central  
23 Oregon school districts that had experienced a significant decline in available mental health  
24 services. *Id.* ¶ 93. The complaint further alleges multiple grant programs in California, including

1 partnerships between numerous county offices of education and local agencies, the University of  
 2 California, and five California State University campuses aimed at increasing the availability of  
 3 mental health professionals serving California communities. *Id.* ¶¶ 88–91.

4 The complaint alleges these programs have been successful at increasing school-based  
 5 mental health services across the Plaintiff States. Dkt. No. 1 ¶ 79. Specifically, Plaintiffs cite a  
 6 finding from the National Association of School Psychologists that “during the Programs’ first  
 7 year under Congress’s transformative funding appropriation, grantees served nearly 775,000  
 8 elementary and secondary students and hired nearly 1,300 school mental health professionals.” *Id.*  
 9 Plaintiffs further allege these programs have resulted in decreased suicide risk, absenteeism and  
 10 behavioral issues at high-need schools; significantly reduced student wait time for services; and  
 11 allowed schools to successfully recruit and retain mental health professionals in underserved  
 12 communities throughout Plaintiff States. *Id.* ¶ 5.

13 **D. The Department Notified Grantees of Discontinuation.**

14 On April 29, 2025, the Department notified “most or all” Grantees in Plaintiff States that  
 15 their grants (hereinafter “Grants”) would be discontinued at the end of the current budget period  
 16 (December 31, 2025). Dkt. No. 1 ¶ 80. Plaintiff States allege the discontinuation notices were  
 17 identical and stated:

18 This letter provides notice that the United States Department of Education has  
 19 determined not to continue your federal award, S184xxxxxxx, in its entirety,  
 effective at the end of your current grant budget period. See, inter alia, 34 C.F.R.  
 § 75.253(a)(5) and (f)(1). ...

20 The Department has undertaken a review of grants and determined that the grant  
 21 specified above provides funding for programs that reflect the prior  
 22 Administration’s priorities and policy preferences and conflict with those of the  
 current Administration, in that the programs: violate the letter or purpose of Federal  
 23 civil rights law; conflict with the Department’s policy of prioritizing merit, fairness,  
 and excellence in education; undermine the well-being of the students these  
 24 programs are intended to help; or constitute an inappropriate use of federal funds.

1 The grant is therefore inconsistent with, and no longer effectuates, the best interest  
2 of the Federal Government and will not be continued.

3 *Id.* In conjunction with sending the notices, the Department informed Congress that it was  
4 discontinuing approximately \$1 billion in awards, and that it planned to re-compete those funds  
5 with different priorities. *Id.* ¶¶ 6, 81.

6 Plaintiff States filed this action on June 30, 2025, claiming that the Department did not  
7 comply with its own regulations or the Administrative Procedure Act (“APA”) in discontinuing  
8 the Grants, and that its actions also violate the Constitution’s Spending Clause and Separation of  
9 Powers and are *ultra vires*. Dkt. No. 1. Specifically, Plaintiff States allege the discontinuation  
10 “notices providing the same boilerplate explanations untethered to specific grants and the  
11 performance of specific grantees” lack the reasoned explanation required by the APA. *Id.* ¶¶ 100,  
12 103. Plaintiff States further allege that the Department violated the APA by implementing new  
13 priorities without engaging in the statutorily required notice-and-comment rulemaking, and that  
14 the Department acted contrary to its regulations by failing to consider grantee performance in  
15 making continuation awards, failing to prioritize continuation awards over new grants, and  
16 retroactively applying new priorities to previously approved grants. *Id.* ¶¶ 104, 111–13. The same  
17 allegations form the basis for Plaintiff States’ constitutional and *ultra vires* claims. *Id.* ¶¶ 130–56.

18 Plaintiff States subsequently filed a motion for preliminary injunction. Dkt. No. 49. After  
19 the briefing on the motion was complete, the parties filed notices of supplemental authority, and  
20 the Court ordered the parties to provide supplemental briefing. Dkt. Nos. 154, 155, 156, 157, 158,  
21 159. The Court held oral argument on the motion for preliminary injunction, during which the  
22 Department’s counsel indicated that Defendants would be filing a motion to dismiss later that day.  
23 Dkt. No. 167 at 24.  
24

1 Defendants indeed filed a motion to dismiss, and the Court held oral argument on that  
2 motion after the close of briefing. Dkt. Nos. 161, 172, 187. The motion to dismiss is now ripe for  
3 resolution and will be denied for the following reasons.

## 4 II. ANALYSIS

### 5 A. The Complaint's Allegations Establish That Plaintiff States Have Standing and the 6 Authority to Bring the Claims Asserted.

7 Article III of the United States Constitution limits the jurisdiction of federal courts to  
8 deciding "Cases" and "Controversies," which in turn requires that "at least one plaintiff must have  
9 standing to sue." *Dep't of Com. v. New York*, 588 U.S. 752, 766 (2019). "To have standing, a  
10 plaintiff must allege an injury in fact 'that is concrete, particularized, and actual or imminent; fairly  
11 traceable to the defendant's challenged behavior; and likely to be redressed by a favorable ruling.'"  
12 *Id.* (quoting *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 733 (2008)). Requiring a plaintiff to  
13 establish an injury in fact "helps to ensure that the plaintiff has a 'personal stake in the outcome of  
14 the controversy.'" *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) (quoting *Warth*  
15 *v. Seldin*, 422 U.S. 490, 498 (1975)).

16 A defendant may challenge a plaintiff's lack of standing via a motion to dismiss under  
17 Federal Rule of Civil Procedure 12(b)(1). *Bowen v. Energizer Holdings, Inc.*, 118 F.4th 1134,  
18 1142–43 (9th Cir. 2024). Where, as here, a defendant brings a facial attack on jurisdiction in a  
19 Rule 12(b)(1) motion, the court is confined to resolving the motion based on the allegations in the  
20 complaint. *Savage v. Glendale Union High Sch., Dist. No. 205, Maricopa Cnty.*, 343 F.3d 1036,  
21 1039 n.2 (9th Cir. 2003). "For purposes of ruling on a motion to dismiss for want of standing,  
22 both the trial and reviewing courts must accept as true all material allegations of the complaint and  
23 must construe the complaint in favor of the complaining party." *Warth*, 422 U.S. at 501.  
24

1 Defendants claim Plaintiff States lack standing to challenge the discontinuation decisions.  
2 Dkt. No. 161 at 7–8. They contend that only two paragraphs in the complaint describe the  
3 relationship between Plaintiff States and Grantees:

4 Defendants’ unlawful actions have already caused and will cause immediate and  
5 devastating harm to Plaintiffs. Starting this fall, many schools in Plaintiff states  
6 will no longer be able to reliably provide mental health services to kids that need  
7 them most. These discontinuances threaten the very purpose of these Programs—  
8 to protect the safety of our children by permanently increasing the number of mental  
9 health professionals providing mental health services to students in low-income and  
10 rural schools.

11 If the discontinuances are not rescinded, Plaintiff educational agencies will be  
12 forced to lay off the very same professionals they recruited and hired to provide  
13 mental health services at their rural and low-income schools using Program funds.  
14 Plaintiff institutes of higher education will be forced to terminate financial support  
15 for graduate student internships to provide mental health services to rural and low-  
16 income schools. As a result, hundreds of graduate students will make the difficult  
17 choice whether they should enter or continue a graduate program no longer able to  
18 offer tuition assistance—drying up a workforce pipeline Congress recognized  
19 needed development.

20 Dkt. No. 1 ¶¶ 15–16. In their briefing, Defendants argue that these allegations are insufficient to  
21 establish that any Plaintiff State has standing to represent the interest of any Grantee. Dkt. No.  
22 161 at 7–8. Defendants note that although the complaint references “Plaintiff educational  
23 agencies” and “Plaintiff institutes of higher education,” Plaintiffs are in fact states rather than  
24 educational agencies or institutes of higher education. *Id.* Defendants also question whether the  
attorneys general for Plaintiff States may pursue an action on behalf of “unnamed third parties”  
that are merely located in those states without an official connection to them. *Id.* at 9.

Notwithstanding these arguments, Defendants clarified at oral argument that they do not  
challenge Plaintiff States’ standing as to their own state-component Grantees, such as the  
University of Washington or the Michigan Department of Education. The Department’s  
concession that Plaintiff States have standing via their instrumentalities is fatal to Defendants’  
motion to dismiss for want of standing. The Ninth Circuit recognizes that “[a]s a general rule, in

1 an injunctive case this court need not address standing of each plaintiff if it concludes that one  
2 plaintiff has standing.” *Nat’l Ass’n of Optometrists & Opticians LensCrafters, Inc. v. Brown*, 567  
3 F.3d 521, 523 (9th Cir. 2009) (citing *Preminger v. Peake*, 552 F.3d 757, 764 (9th Cir. 2008)). The  
4 Ninth Circuit has also held, more broadly, that “[t]he general rule applicable to federal court suits  
5 with multiple plaintiffs is that once the court determines that one of the plaintiffs has standing, it  
6 need not decide the standing of the others.” *Leonard v. Clark*, 12 F.3d 885, 888 (9th Cir. 1993).  
7 Thus, Defendants’ concession that Plaintiff States have standing via their instrumentalities is  
8 sufficient to permit this case to proceed.

9 Even if Defendants had not so conceded, the Court finds that the complaint adequately  
10 pleads a fiscal harm to *each* Plaintiff State resulting from Defendants’ actions, even as to Grantees  
11 that are not instrumentalities of Plaintiff States, such as private universities training mental health  
12 providers to work in public schools. *See, e.g.*, Dkt. No. 1 ¶ 94. While Defendants argue that  
13 Plaintiff States have neither standing nor authority to bring claims on behalf of non-State entity  
14 Grantees, at oral argument, counsel for Plaintiff States emphasized that they are not bringing  
15 claims “on behalf of” third-party Grantees at all, but rather, the States are suing to protect their  
16 *own interests* in light of the harm that results to them due to the discontinuation decisions. For  
17 example, the complaint alleges that:

18 If Defendants are not enjoined from implementing the Non-Continuation Decision,  
19 [G]rantees in Plaintiff states will be forced to lay off school-based mental health  
20 service providers, reducing access to much-needed mental health services to their  
21 rural and low-income schools. These [G]rantees will lose qualified mental health  
22 service providers; and the benefits of the relationships their students have  
23 developed with these providers. The spillover effect of students turning to  
24 community mental health services—to the extent they are available—will tax  
Plaintiffs’ already-strained mental health care system.

Dkt. No. 1 ¶ 86. This allegation adequately identifies a fiscal harm to Plaintiff States that will flow  
from Defendants’ actions: whether a particular Grantee is a State entity or not, the discontinuation

1 of any Grant will decrease student access to school-based services and lead students in each  
 2 Plaintiff State to seek needed mental health services elsewhere, namely “Plaintiffs’ already-  
 3 strained mental health care system.” *Id.* The complaint further alleges that the discontinuation of  
 4 the Grant-funded partnerships in Plaintiff States will dry up the pipeline of trained mental health  
 5 providers willing to work in rural and low-income communities, and that “Plaintiffs’ relationships  
 6 with community partners will be irreparably damaged because Plaintiffs can no longer honor the  
 7 commitments they made to provide mental health services to the children in these communities.”  
 8 *Id.* ¶ 87.

9 Defendants characterize these allegations as conclusory or speculative (Dkt. No. 180 at 4),  
 10 but “[a]t the pleading stage, general factual allegations of injury resulting from the defendant’s  
 11 conduct may suffice, for on a motion to dismiss we ‘presum[e] that general allegations embrace  
 12 those specific facts that are necessary to support the claim.’” *Lujan v. Defs. of Wildlife*, 504 U.S.  
 13 555, 561 (1992) (quoting *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 889 (1990)). The Court  
 14 finds that Plaintiff States’ allegations adequately identify a general injury to the States that  
 15 logically follows from the discontinuation of any Grantee’s funding. *See Washington v. U.S. Food*  
 16 *& Drug Admin.*, 108 F.4th 1163, 1175 (9th Cir. 2024) (noting that while an “injury need not be  
 17 direct, there must be a strong ‘causal chain’ that ‘links’ the federal action to the alleged harm”  
 18 (quoting *California v. Azar*, 911 F.3d 558, 571–72 (9th Cir. 2018)); *see also Diamond Alt. Energy,*  
 19 *LLC v. Env’tl Prot. Agency*, 606 U.S. \_\_\_, 145 S. Ct. 2121, 2136 (2025) (explaining that where  
 20 standing depends on “predictable” behavior of third parties, “commonsense inferences may be  
 21 drawn”). Because Grantees generally seek to provide mental health services for students with high  
 22 need in low-income and rural areas, any services students seek after discontinuation of school-  
 23 based services will likely be provided by Plaintiff States, where those services are available at all.  
 24 *See* Dkt. No. 1 ¶¶ 86, 89, 94. As the students who would benefit from continuation of the Grants

1 are currently receiving services and have therefore demonstrated a need for them, and are also  
2 located in rural or low-income areas with few (if any) private providers available to them, there is  
3 only one link in the chain between discontinuing Grants and an increased use of State-funded  
4 providers. *Id.* The Court does not find this link to be so attenuated or unpredictable that a  
5 reasonable inference cannot be drawn.

6 Finally, the complaint also alleges that each Plaintiff State’s attorney general has authority  
7 to bring this action to redress harms suffered by Plaintiff States. Dkt. No. 1 ¶¶ 21–36. Therefore,  
8 because the complaint adequately alleges an injury to Plaintiff States, and the authority of the  
9 attorneys general to bring claims to redress those injuries, the Court denies Defendants’ motion to  
10 dismiss the complaint for want of standing.

11 **B. The Defendants’ Motion to Dismiss for Lack of Subject Matter Jurisdiction Is Denied.**

12 A complaint must be dismissed under Rule 12(b)(1) if the court lacks subject matter  
13 jurisdiction. *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). In this case,  
14 Defendants contend that the Court lacks subject matter jurisdiction over Plaintiff States’ claims  
15 because they are contract-based and jurisdiction lies only in the Court of Federal Claims. Dkt. No.  
16 161 at 10–19.

17 “Sovereign immunity shields the United States from suit absent a consent to be sued that  
18 is ‘unequivocally expressed.’” *United States v. Bormes*, 568 U.S. 6, 9–10 (2012) (quoting *United*  
19 *States v. Nordic Vill., Inc.*, 503 U.S. 30, 33–34 (1992)). “Congress has enacted several broad  
20 waivers of the United States’ sovereign immunity.” *Navajo Nation v. Dep’t of the Interior*, 876  
21 F.3d 1144, 1168 (9th Cir. 2017). A plaintiff “may sue the United States only if Congress has  
22 waived sovereign immunity for the lawsuit, and may bring its claim in federal district court only  
23 if Congress has provided for jurisdiction there.” *North Star Alaska v. United States*, 9 F.3d 1430,  
24 1432 (9th Cir. 1993) (en banc). The APA waives sovereign immunity for suits “seeking relief

1 other than money damages” against a federal agency, so long as no other statute “expressly or  
2 impliedly forbids the relief which is sought.” 5 U.S.C. § 702.

3 Even if an APA action does not seek money damages, it may nonetheless contain a contract  
4 claim mischaracterized as an APA claim, which would fall outside the APA’s waiver of sovereign  
5 immunity. *Nat’l Insts. of Health v. Am. Pub. Health Ass’n*, 606 U.S. \_\_\_, 2025 WL 2415669 (2025);  
6 *Dep’t of Educ. v. California*, 604 U.S. 650, 651 (2025). Per the Tucker Act, the exclusive  
7 jurisdiction for such claims is found in the Court of Federal Claims:

8 The United States Court of Federal Claims shall have jurisdiction to render  
9 judgment upon any claim against the United States founded either upon the  
10 Constitution, or any Act of Congress or any regulation of an executive department,  
or upon any express or implied contract with the United States, or for liquidated or  
unliquidated damages in cases not sounding in tort.

11 28 U.S.C. § 1491(a)(1). But the Tucker Act “‘impliedly forbid[s]’ an APA action seeking  
12 injunctive and declaratory relief only if the action is a ‘disguised’ breach-of-contract claim.”  
13 *United Aeronautical Corp. v. U.S. Air Force*, 80 F.4th 1017, 1026 (9th Cir. 2023) (quoting  
14 *Megapulse, Inc. v. Lewis*, 672 F.2d 959, 968 (D.C. Cir. 1982)).

15 The Tucker Act likewise deprives district courts of jurisdiction to hear contract claims  
16 disguised as constitutional claims. *Tucson Airport Auth. v. Gen. Dynamics Corp.*, 136 F.3d 641,  
17 647–48 (9th Cir. 1998). Although sovereign immunity does not bar claims against federal officials  
18 whose actions “go beyond limitations” on “powers [] limited by statute” or the Constitution, that  
19 *ultra vires* exception to sovereign immunity does not apply to contract-based claims. *Larson v.*  
20 *Domestic & Foreign Com. Corp.*, 337 U.S. 682, 689, 704 (1949) (“The Government as  
21 representative of the community as a whole, cannot be stopped in its tracks by any plaintiff who  
22 presents a disputed question of property or contract right.”).

23 Courts, including those in the Ninth Circuit, look to factors first identified in *Megapulse* to  
24 determine whether a claim against the United States is a contract claim in disguise:

1 The classification of a particular action as one which is or is not “at its essence” a  
2 contract action depends both on the source of the rights upon which the plaintiff  
3 bases its claims, and upon the type of relief sought (or appropriate). Where ... there  
4 is a possible alternative basis for jurisdiction independent of the Tucker Act, such  
5 as is arguably the case before us, we must be more deliberate in our examination.  
Although it is important on the one hand to preserve the Tucker Act’s limited and  
conditioned waiver of sovereign immunity in contract actions, we must not do so  
in terms so broad as to deny a court jurisdiction to consider a claim that is validly  
based on grounds other than a contractual relationship with the government.

6 672 F.2d at 968. Post-*Megapulse*, the Supreme Court explained that a district court has jurisdiction  
7 to set aside an agency action under the APA, even if that judgment eventually results in the agency  
8 paying sums of money, if that “outcome is a mere by-product of that court’s primary function of  
9 reviewing the Secretary’s interpretation of federal law.” *Bowen v. Massachusetts*, 487 U.S. 879,  
10 910 (1988).

11 In this case, Defendants contend that Plaintiff States’ APA and constitutional claims are  
12 contract claims in disguise, seeking to enforce the Grants as contracts in order to compel the  
13 Department to continue funding the Grants. Dkt. No. 161 at 13. But for their part, Plaintiff States  
14 insist that their injury arises from violations of statutes, regulations, and the Constitution, rather  
15 than any breach of the Grant terms, and note that their complaint does not “seek an order requiring  
16 Defendants pay pursuant to their grants.” Dkt. No. 174 at 23. Plaintiff States point to their  
17 complaint’s prayer for relief, seeking a procedural rather than a contractual remedy: new decisions  
18 on continuation that comply with both the APA and the Constitution. *Id.* (citing Dkt. No. 1 at 44–  
19 45). Plaintiff States also emphasize that the Grants will be discontinued in the future rather than  
20 terminated, and that the Grantees are still receiving funds (for now), and thus no contract to pay  
21 has been breached. *Id.*

22 The Court agrees that none of Plaintiff States’ claims sounds in contract, considering first  
23 the source of their claims. Plaintiff States’ claims allege violations of the APA, the Department’s  
24 regulations, and the Constitution, without any reference to the terms of the Grants. Specifically,

1 Plaintiffs allege that the Department adopted new regulatory priorities without engaging in notice  
 2 and comment rulemaking as required by the General Education Provisions Act (20 U.S.C. §§  
 3 1221e-4, 1232(a)(2), (d)) and then retroactively applied the new priorities to discontinue the  
 4 existing programs in Plaintiff States. Dkt. No. 1 ¶¶121-129. Plaintiffs further allege that  
 5 Defendants violated Department regulations by unlawfully relying on the new priorities in making  
 6 continuation decisions and failing to give priority to continuation awards over new grants. *Id.* ¶¶  
 7 112-113. The Ninth Circuit recently found similar allegations to present statutory, not contract,  
 8 claims.<sup>1</sup> *See Cmty. Legal Servs. in E. Palo Alto v. U.S. Dep’t of Health & Human Servs.*, \_\_ F.4th  
 9 \_\_, 2025 WL 2884805, at \*4-6 (9th Cir. Oct. 10, 2025) (“Plaintiffs advance standard APA claims  
 10 that the Government violated statutory (TVPRA) and regulatory (Foundational Rule) obligations  
 11 and acted arbitrarily and capriciously by changing position without reasoned explanation.”);<sup>2</sup> *see*  
 12 *also, e.g., Maryland v. Corp. for Nat’l & Cmty. Serv.*, 785 F. Supp. 3d 68, 105 (D. Md. 2025)  
 13 (“The source of the rights for the States’ notice-and-comment claims is a federal statute, not the  
 14 grants.”).

15 Moreover, Plaintiffs do not allege a violation of any grant term, either as the source of their  
 16 claims or in their request for relief. That the Department continues to pay out on the Grants and  
 17 did not terminate them also undermines the availability of contract remedies. Finally, though many  
 18 Grantees are state instrumentalities, some are not. As the Ninth Circuit recently reiterated, where

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19  
 20 <sup>1</sup> Moreover, such a challenge could be analogized to the vacatur of agency guidance in *NIH*, which was not at issue in  
 21 the Supreme Court’s order. *See NIH*, 2025 WL 2414669, at \*2–3 (Barrett, J., concurring). As Justice Barrett explained  
 22 there, “[v]acating [internal agency guidance explaining new priorities for awarding grants] does not reinstate  
 23 terminated grants[.]” and therefore a challenge to that agency guidance would not necessarily be funneled to the Court  
 24 of Federal Claims as a disguised contract claim. *Id.*

<sup>2</sup> Defendants argue that the Supreme Court’s interim decisions in *California* and *NIH* undermine this Court’s  
 jurisdiction. As the Ninth Circuit has now interpreted both *California* and *NIH* to permit a district court’s exercise of  
 jurisdiction over APA claims arising from grant-related scenarios similar to the Grants at issue here, this Court is  
 required to do the same. *See Yong v. I.N.S.*, 208 F.3d 1116, 1119 n.2 (9th Cir. 2000) (“[O]nce a federal circuit court  
 issues a decision, the district courts within that circuit are bound to follow it[.]”).

1 no privity exists between the plaintiffs and the government, “the Court of Federal Claims’s  
2 jurisdiction does not cover this dispute.” *Cnty. Legal Servs.*, WL 2884805, at \*7. Under these  
3 circumstances, the Court finds that the source of Plaintiff States’ claims supports the exercise of  
4 jurisdiction.

5 The Court reaches a similar conclusion after considering the type of relief Plaintiff States  
6 seek. Defendants’ repeated characterizations in briefing and at oral argument notwithstanding, the  
7 complaint does not seek monetary relief either explicitly or implicitly. *See* Dkt. No. 1 at 44–45.  
8 Instead, Plaintiff States seek an injunction setting aside the discontinuation decisions based upon  
9 the new priorities, preventing the Department’s re-competing of the Grant funds, and requiring the  
10 Department to make new continuation decisions consistent with 34 C.F.R. § 75.253(b) before the  
11 next budget period. *Id.* Plaintiff States acknowledge that new decisions must be made, but seek  
12 only to require the Department to make “lawful” decisions, rather than to require continuation of  
13 Grantee funding. *See* Dkt. No. 167 at 51–52. The Ninth Circuit has characterized such claims as  
14 “garden-variety APA claims.” *See Cnty. Legal Servs.*, 2025 WL 2884805, at \*3.

15 Further, even if some or all of the Grantees’ funding would be continued via new decisions,  
16 that would not transform Plaintiff States’ claims into claims for “money damages” under  
17 discontinued Grant contracts. *See, e.g., Perry Cap. LLC v. Mnuchin*, 864 F.3d 591, 619 (D.C. Cir.  
18 2017) (finding that where plaintiffs seek relief that “would not be determined by reference to the  
19 terms of the contract[,]” the claims are not in essence contract claims). Thus, because Plaintiff  
20 States request that Defendants issue new continuation decisions consistent with their statutory,  
21 regulatory, and constitutional obligations, rather than seeking to enforce any particular term of the  
22 Grants themselves, the Court finds that the relief sought by Plaintiff States confirms the Court’s  
23 jurisdiction here. *See Cnty. Legal Servs.*, 2025 WL 2884805, at \*6–7 (discussing the second  
24

1 *Megapulse* prong). Because both *Megapulse* prongs favor the Court’s exercise of jurisdiction, the  
 2 Court will deny Defendants’ motion for lack of subject matter jurisdiction.

3 In so doing, the Court acknowledges that Defendants cite two recent cases where courts  
 4 have found, in grant-related scenarios, that plaintiffs’ APA claims were in fact contractual in nature  
 5 and therefore forbidden under the Tucker Act. Dkt. No. 161 at 15 (citing *Climate United Fund v.*  
 6 *Citibank, N.A.*, \_\_ F.4th \_\_, 2025 WL 2502881 (D.C. Cir. Sep. 2, 2025); *Sustainability Inst. v.*  
 7 *Trump*, No. 25-1575, 2025 WL 1587100 (4th Cir. June 5, 2025)). These out-of-circuit decisions  
 8 are not binding on this Court and are, moreover, distinguishable as involving terminated grants  
 9 that plaintiffs sought to reinstate, rather than future discontinuances that plaintiffs sought to set  
 10 aside. Here, where Plaintiff States request “a process correction, not a payment direction” (Dkt.  
 11 No. 167 at 16), the Court finds that, under binding Ninth Circuit authority, Plaintiff States’ claims  
 12 “fall outside the jurisdictional bounds of the Tucker Act[.]” *Cnty. Leg. Servs.*, 2025 WL 2884805,  
 13 at \*8.

14 **C. The Defendants’ Motion To Dismiss for Failure to State a Claim is Denied.**

15 Defendants’ motion seeks dismissal on two additional grounds under Federal Rule of Civil  
 16 Procedure 12(b)(6): (1) that the Grantees, rather than Plaintiff States, are the real parties in interest;  
 17 and (2) the Department’s discontinuation decision is not subject to judicial review.

18 In deciding a motion to dismiss under Rule 12(b)(6), a court examines the complaint to  
 19 determine whether, if the facts alleged are true, the plaintiff has stated “a claim to relief that is  
 20 plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v.*  
 21 *Twombly*, 550 U.S. 544, 570 (2007)). To state a plausible claim, a plaintiff must plead “factual  
 22 content that allows the court to draw the reasonable inference that the defendant is liable for the  
 23 misconduct alleged.” *Id.*

24 The Court will address each of Defendants’ arguments in turn.

1           *1. Plaintiff States Are the Real Parties in Interest.*

2           Federal Rule of Civil Procedure 17(a)(1) requires that an action “must be prosecuted in the  
3 name of the real party in interest.” Defendants’ motion argues that Grantees, rather than Plaintiff  
4 States, are the real parties in interest here, although they note that “[t]he federal rules do not contain  
5 a specific procedure for raising an objection that a plaintiff is not a real party in interest.” Dkt.  
6 No. 161 at 6.

7           Defendants’ concession at oral argument that Plaintiff States have standing to seek redress  
8 of injuries flowing from the discontinuation of grants to State instrumentalities guts most of  
9 Defendants’ “real party in interest” argument. Plaintiff States are the real party in interest when  
10 their instrumentalities have been injured. *See State of Alaska v. Chevron Chem. Co.*, 669 F.2d  
11 1299, 1302 (9th Cir. 1982) (rejecting a “real party in interest” challenge where a state attorney  
12 general was authorized to bring a suit on behalf of state instrumentalities); *Corp. for Nat’l &*  
13 *Comm. Serv.*, 785 F. Supp. 3d at 98 (finding that states have standing to challenge the “loss of  
14 federal funding for grants awarded to state service commissions and state instrumentalities”).

15           Moreover, because the Court has found that the complaint alleges that Plaintiff States will  
16 suffer fiscal harm via their State-funded mental health services due to Defendants’ discontinuation  
17 of any Grant, Plaintiff States seek to redress their own harms in this action with respect to Grantees  
18 that are not State instrumentalities as well. Accordingly, the Court will deny Defendants’ motion  
19 to dismiss this action for lack of a real party in interest.

20           *2. The Non-Continuation Decision is Reviewable Under the APA.*

21           Defendants raise an additional challenge to the Court’s exercise of jurisdiction here,  
22 contending that the Department’s decision to discontinue the Grants constitutes a discretionary  
23 agency decision not subject to judicial review. Dkt. No. 147 at 14–16, Dkt. No. 161 at 3.  
24 Defendants’ argument relies on *Lincoln v. Vigil*, 508 U.S. 182 (1993), which involved yearly lump-

1 sum appropriations from Congress to the Indian Health Service (“IHS”). From 1978 to 1985, IHS  
2 funded the Indian Children’s Program (“ICP”) using those appropriations, but in 1985 announced  
3 that it would discontinue funding ICP’s direct clinical services in favor of funding nationwide  
4 treatment efforts. *Id.* at 187–88. Children eligible for ICP services sued, arguing that IHS’  
5 “decision to discontinue direct clinical services” violated several statutes (including the APA),  
6 regulations, and the Due Process Clause of the Fifth Amendment to the United States Constitution.  
7 *Id.* at 189. The Supreme Court reasoned that “[t]he allocation of funds from a lump-sum  
8 appropriation is [an] administrative decision traditionally regarded as committed to agency  
9 discretion” because “the very point of a lump-sum appropriation is to give an agency the capacity  
10 to adapt to changing circumstances and meet its statutory responsibilities in what it sees as the  
11 most effective or desirable way.” *Id.* at 192. Accordingly, the *Lincoln* court concluded that judicial  
12 review of IHS’ decision under the APA was unavailable. *Id.* at 193–94.

13 Although Defendants urge the Court to find that *Lincoln* is analogous, the Court finds the  
14 facts here distinguishable because, as even Defendants acknowledge, *Lincoln* did not involve  
15 grants with regulatory criteria for continuation. Accordingly, this case does not present the “rare  
16 circumstance[]” at issue in *Lincoln* where a court would have “no meaningful standard against  
17 which to judge the agency’s exercise of discretion.” *Lincoln*, 508 U.S. at 191. The Department  
18 must comply with its own regulations when determining whether to renew a grant award for  
19 another budget year. *Confederated Tribes & Bands of Yakima Indian Nation v. Fed. Energy Reg.*  
20 *Comm’n*, 746 F.2d 466, 474 (9th Cir. 1984) (“It is a well-known maxim that agencies must comply  
21 with their own regulations.”). The existence of these regulations means that, unlike the IHS in  
22 *Lincoln*, the Department does not have unfettered discretion to discontinue grant funding for any  
23 reason or no reason at all, but that it must comply with regulatory requirements. *See* 34 C.F.R. §  
24 75.253(a). Because this regulation cabins the Department’s authority to discontinue funding,

1 *Lincoln* is distinguishable. See, e.g., *Planned Parenthood of Greater Wash. & N. Idaho v. U.S.*  
2 *Dep't of Health & Hum. Servs.*, 328 F. Supp. 3d 1133, 1147 (E.D. Wash. 2018) (finding that 34  
3 C.F.R. § 75.253(a) governs an agency's ability to terminate a grant and therefore creates "a  
4 meaningful standard of review" under the APA). Accordingly, the Court rejects Defendants'  
5 argument that the discontinuation decisions are not subject to judicial review.

### 6 III. CONCLUSION

7 For these reasons, the Court DENIES Defendants' motion to dismiss. Dkt. No. 161. The  
8 Courtroom Deputy is directed to issue an order requiring the parties to file a joint status report to  
9 assist in setting a case schedule no later than October 31, 2025.

10 Dated this 21st day of October, 2025.

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13 Kymberly K. Evanson  
14 United States District Judge  
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