

**Nos. 25-1236, 25-1413**

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**UNITED STATES COURT OF APPEALS  
FOR THE FIRST CIRCUIT**

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STATE OF NEW YORK; STATE OF CALIFORNIA; STATE OF ILLINOIS;  
STATE OF RHODE ISLAND; STATE OF NEW JERSEY; COMMONWEALTH  
OF MASSACHUSETTS; STATE OF ARIZONA; STATE OF COLORADO;  
STATE OF CONNECTICUT; STATE OF DELAWARE; DISTRICT OF  
COLUMBIA; STATE OF HAWAII; STATE OF MAINE; STATE OF  
MARYLAND; STATE OF MICHIGAN; STATE OF MINNESOTA; STATE OF  
NEVADA; STATE OF NORTH CAROLINA; STATE OF NEW MEXICO; STATE  
OF OREGON; STATE OF VERMONT; STATE OF WASHINGTON; STATE OF  
WISCONSIN; OFFICE OF THE GOVERNOR OF KENTUCKY, ex rel.  
ANDREW BESHEAR, in their official capacity as Governor of the  
Commonwealth of Kentucky,

Plaintiffs-Appellees,

*(caption continued on next page)*

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On Appeal from the United States District Court for the District of Rhode Island,  
No. 25-cv-39, Hon. John J. McConnell, Jr., United States District Judge

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**BRIEF OF AMICUS CURIAE NATURAL RESOURCES DEFENSE  
COUNCIL, INC., IN SUPPORT OF PLAINTIFFS-APPELLEES AND  
SUPPORTING AFFIRMANCE**

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*Counsel for Amicus Curiae  
Natural Resources Defense Council, Inc.*

v.

DONALD J. TRUMP, in their official capacity as President of the United States; U.S. OFFICE OF MANAGEMENT AND BUDGET; RUSSELL THURLOW VOUGHT, in their official capacity as Director of the U.S. Office of Management and Budget; U.S. DEPARTMENT OF THE TREASURY; SCOTT BESSENT, in their official capacity as Secretary of the Treasury; PATRICIA COLLINS, in their official capacity as Treasurer of the U.S.; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; ROBERT F. KENNEDY, JR., in their official capacity as Secretary of the Department of Health and Human Services; U.S. DEPARTMENT OF EDUCATION; LINDA MCMAHON, in their official capacity as Secretary of Education; U.S. FEDERAL EMERGENCY MANAGEMENT AGENCY; CAMERON HAMILTON, in their official capacity as Acting Administrator of the U.S. Federal Emergency Management Agency; U.S. DEPARTMENT OF TRANSPORTATION; SEAN P. DUFFY, in their official capacity as Secretary of Transportation; U.S. DEPARTMENT OF LABOR; LORI CHAVEZ-DEREMER, in their official capacity as Secretary of Labor; U.S. DEPARTMENT OF ENERGY; CHRISTOPHER ALLEN WRIGHT, in their official capacity as Secretary of the U.S. Department of Energy; U.S. ENVIRONMENTAL PROTECTION AGENCY; LEE M. ZELDIN, in their official capacity as Administrator of the U.S. Environmental Protection Agency; U.S. DEPARTMENT OF THE INTERIOR; DOUGLAS BURGUM, in their official capacity as Secretary of the Interior; U.S. DEPARTMENT OF HOMELAND SECURITY; KRISTI NOEM, in their official capacity as Secretary of the U.S. Department of Homeland Security; U.S. DEPARTMENT OF JUSTICE; PAMELA J. BONDI, in their official capacity as Attorney General; NATIONAL SCIENCE FOUNDATION; DR. SETHURAMAN PANCHANATHAN, in their official capacity as Director of the National Science Foundation; U.S. DEPARTMENT OF AGRICULTURE; BROOKE ROLLINS, in their official capacity as Secretary of Agriculture; U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT; SCOTT TURNER, in their official capacity as Secretary of Housing and Urban Development; U.S. DEPARTMENT OF STATE; MARCO RUBIO, in their official capacities as Secretary of State and Acting Administrator of the U.S. Agency for International Development; U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT; U.S. DEPARTMENT OF DEFENSE; PETER HEGSETH, in their official capacity as Secretary of Defense; U.S. DEPARTMENT OF VETERANS AFFAIRS; DOUGLAS COLLINS, in their official capacity as Secretary of Veterans Affairs; U.S. DEPARTMENT OF COMMERCE; HOWARD LUTNICK, in their official capacity as Secretary of Commerce; NATIONAL AERONAUTICS AND SPACE ADMINISTRATION;

JANET PETRO, in their official capacity as Acting Administrator of National Aeronautics and Space Administration; CORPORATION FOR NATIONAL AND COMMUNITY SERVICE; JENNIFER BASTRESS TAHMASEBI, in their official capacity as Interim Head of the Corporation for National and Community Service; U.S. SOCIAL SECURITY ADMINISTRATION; LELAND DUDEK, in their official capacity as Acting Commissioner of U.S. Social Security Administration; U.S. SMALL BUSINESS ADMINISTRATION; KELLY LOEFFLER, in their official capacity as Administrator of U.S. Small Business Administration,

Defendants-Appellants.

## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rules of Appellate Procedure 26.1(a) and 29(a)(4)(A), *amicus curiae* Natural Resources Defense Council, Inc. (NRDC) states that it is a nonprofit, non-governmental organization. NRDC has no parent corporation, and no publicly held corporation owns ten percent or more of its stock.

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## STATEMENT OF INTEREST AND SOURCE OF AUTHORITY TO FILE

The Natural Resources Defense Council (NRDC) is a nonprofit public health and environmental organization with hundreds of thousands of members nationwide. NRDC's mission is to safeguard the earth—its people, its plants and animals, and the natural systems on which all life depends.

As part of its work, NRDC encourages greater investment in disaster preparedness and resilience to extreme weather. This includes encouraging governments to assess the vulnerability of communities to extreme weather, address flood risk and sea-level rise, and use scarce resources more efficiently.<sup>1</sup> NRDC also litigates to enforce legally mandated disaster planning and preparedness requirements. *See Env'tl. Justice Health All. v. EPA*, No. 19-cv-2516 (S.D.N.Y. filed Mar. 21, 2019) (suing to enforce deadline for worst-case discharge response plan regulations under the Clean Water Act).

The Infrastructure Investment and Jobs Act (IIJA), Pub. L. No. 117-58, 135 Stat. 429 (2021), made historic investments in disaster preparation and resilience. It provided funding to tackle flooding, extreme rainfall, and threats to the utility grid, among other risks. Programs funded under IIJA protect lives, safety, and property, and it was Congress's judgment that such programs are in the public interest. The January 27, 2025 Directive from the Office of Management and

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<sup>1</sup> See NRDC, *Climate Adaptation*, <https://www.nrdc.org/issues/climate-adaptation>.



Budget (OMB) entitled “Temporary Pause of Agency Grant, Loan, and Other Financial Assistance Programs” (OMB Directive) and the ensuing federal funding freeze imperil those programs and threaten to harm communities around the country. NRDC submits this *amicus curiae* brief to explain why the public interest and balance of equities in this case favor the preliminary injunction entered by the district court.

NRDC affirms that no counsel for a party authored this brief in whole or in part and that no person other than NRDC or its counsel made any monetary contributions intended to fund the preparation or submission of this brief. Fed. R. App. P. 29(a)(4)(E). Plaintiffs-Appellees and Defendants-Appellants have consented to the filing of this brief.

## SUMMARY OF ARGUMENT

The Constitution authorizes Congress to appropriate money to promote the general welfare, U.S. Const., Art. I, § 8, cl. 1, and to set the priorities and limits of federal spending programs, *id.* Art. I, § 8, cl. 18. This case concerns an OMB Directive that purported to suspend federal spending programs while the new administration reviewed those programs for consistency with its priorities, and the Agency Defendants' freeze of federal funding to implement that Directive. The Directive and the funding freeze violated various federal funding statutes and the Administrative Procedure Act, and the district court properly concluded that a preliminary injunction prohibiting executive branch officials from implementing the freeze was necessary to avoid irreparable injury to the state plaintiffs, and that the equities also favor such an injunction.

As explained below, this injunction serves the public interest by ensuring that federal programs operate as Congress intended and that the public continues to benefit from those programs. This brief focuses on three programs that Congress funded in IIJA: the Federal Emergency Management Agency (FEMA)'s Hazard Mitigation Grants Program; FEMA's Flood Mitigation Assistance Grants Program; and the Department of Energy (DOE)'s State and Tribal Grid Resilience Grants Program. Each program provides state, local, and tribal governments funding to prepare for disasters and mitigate the damage that disasters inflict.

Recent events underscore the importance of investment in preparedness and resilience. In July 2023, catastrophic flooding struck Vermont, washing out roads and bridges, triggering mudslides, and inflicting significant property damage and at least two fatalities.<sup>2</sup> In the Pacific Northwest in 2021, a record-breaking heat wave and the resulting unprecedented stress on the utility grid caused a rolling blackout across the region.<sup>3</sup> Last year, Hurricanes Helene and Milton “caused widespread damage to infrastructure, including over 400 transmission element outages,” leaving “[m]ore than 4.7 million utility customers . . . without power due to a combination of transmission and distribution outages.”<sup>4</sup> And after Hurricane Beryl landed on the Texas Gulf Coast last year, “[m]ore than 2 million Texas utility customers were left without power due to a combination of transmission and distribution outages.”<sup>5</sup>

A preliminary injunction ensures that the funding Congress allocated to mitigate harm from disasters like these continues to be disbursed while this case proceeds. In ordering a preliminary injunction to avoid irreparable injury to

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<sup>2</sup> Peter Banacos, Nat’l Weather Serv., *The Great Vermont Flood of 10-11 July 2023: Preliminary Meteorological Summary* (Aug. 5, 2023), <https://tinyurl.com/2s3vxtbn> (last visited July 25, 2025).

<sup>3</sup> Sonal Patel, Power Magazine, *Rolling Blackouts Triggered as Historic Heatwave Grips Pacific Northwest* (June 30, 2021), <https://tinyurl.com/k6hx2ttz> (last visited July 25, 2025).

<sup>4</sup> N. Am. Elec. Reliability Corp., *2025 State of Reliability: Technical Assessment of 2024 Bulk Power System Performance* 4 (June 2025), <https://tinyurl.com/kvfhzuvc> (last visited July 25, 2025).

<sup>5</sup> *Id.*

plaintiffs, the district court correctly found that the public interest and the balance of equities also favored such an injunction. Prelim. Inj. Order, A42-43. This Court should affirm that order, which ensures that legally mandated programs continue to operate as Congress intended.

## ARGUMENT

### **I. The OMB Directive disrupted congressionally mandated spending programs**

Beginning January 20, 2025, President Trump issued a raft of executive orders purporting to revamp federal financial assistance programs. For example, section 7 of the executive order entitled “Unleashing American Energy” directed agencies to “pause the disbursement of funds appropriated through the Inflation Reduction Act of 2022 . . . or the Infrastructure Investment and Jobs Act.” Exec. Order No. 14,154, 90 Fed. Reg. 8,353, 8,357 (Jan. 29, 2025). The executive order also required agencies to “review their processes, policies, and programs for issuing grants, loans, contracts, or any other financial disbursements of such appropriated funds for consistency with the law and the policy outlined” earlier in the order, which broadly encourages the production and consumption of fossil fuels. *Id.* Section 7 also required all agency heads to submit a report by April 20, 2025, detailing their review and recommendations to “enhance their alignment with the policy set forth” in the order. *Id.* Finally, the order prohibited the disbursement of frozen funds until OMB had determined that such disbursements

“are consistent with any review recommendations they have chosen to adopt.” *Id.*

The President issued similar executive orders on other subjects. *See, e.g.*, Exec.

Order No. 14,151, *Ending Radical and Wasteful Government DEI Programs and*

*Preferencing*, 90 Fed. Reg. 8,339, 8,339-40 (Jan. 29, 2025); Exec. Order

No. 14,159, *Protecting the American People Against Invasion*, 90 Fed. Reg. 8,443,

8,447 (Jan. 29, 2025).

On January 27, OMB responded to the executive orders with its Directive, which paused many federal financial assistance programs. *See* OMB Directive, A115-16. The OMB Directive referenced the recent executive orders and directed federal departments and agencies to review their financial assistance programs for compliance with them. *Id.* at A116. While they undertake this analysis, “to the extent permissible under applicable law, Federal agencies *must temporarily pause* all activities related to obligation or disbursement of all Federal financial assistance, and other relevant agency activities that may be implicated by the executive orders, including, but not limited to, financial assistance for foreign aid, nongovernmental organizations, DEI, woke gender ideology, and the green new deal.” *Id.* (emphasis in original).

The Directive, and the underlying policy of freezing federal financial assistance because of changes in policy from the new administration, threw many cooperative federalism programs into chaos. Employees at state agencies that had

previously been allocated funding logged into federal payment systems and found that the money was no longer available. *See* Mohler Decl., A227-30; Calogero Decl., A232-37. Funding recipients were at risk of having to pay out of pocket to subcontractors who had done work on federally funded programs, Mohler Decl., A229, or of being unable to meet payroll obligations, Salem State Univ. Decl., A222. Beyond the impact on the operations of state agencies, valuable work on projects stopped. Mohler Decl., A229-30; Calogero Decl., A237.

## **II. The public interest and the balance of equities favor a preliminary injunction to prevent interference with legally required federal spending**

The final two factors of the preliminary injunction test require “a favorable balance of hardships” in favor of the injunction and “a fit (or lack of friction) between the injunction and the public interest.” *NuVasive, Inc. v. Day*, 954 F.3d 439, 443 (1st Cir. 2020) (cleaned up); *see also Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). In this case the inquiry is simpler because the balance of equities and public interest factors “merge when the Government is the opposing party.” *Nken v. Holder*, 556 U.S. 418, 435 (2009).

In addition to preventing irreparable injury to the plaintiffs, a preliminary injunction against the funding freeze is in the public interest. The funding freeze has disrupted many critical infrastructure and energy programs aimed at improving disaster preparedness for communities across the country. Disruptions to these programs jeopardize disaster recovery, slow down efforts to build a more resilient

grid, and halt initiatives that would lower energy costs. These disruptive impacts are not limited to plaintiff states. Far from “compel[ling] the government to continue” programs that “waste [] taxpayer dollars,” Appellants’ Opening Br. 52, the preliminary injunction protects vital public services—including much-needed investments aimed at mitigating disaster risks and saving consumers money—from arbitrary and illegal government actions that contravene congressional intent and intrude on Congress’s control over spending.

**A. The preliminary injunction is in the public interest as it prevents disruptions to critical disaster preparedness programs**

The aging infrastructure in the United States is “increasingly vulnerable to natural disasters and extreme weather events,” which have become more intense and more frequent due in part to climate change.<sup>6</sup> In 2024 alone, there were 27 extreme weather events with at least \$1 billion in damages each, and the record-setting year of 2023 saw 28 of such events.<sup>7</sup> The financial and human costs of these disasters are staggering: From 1980 to 2024, the nation faced over 400 disasters costing at least \$1 billion each, which caused a combined total of nearly

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<sup>6</sup> Am. Soc’y of Civil Eng’rs, *A Comprehensive Assessment of America’s Infrastructure, 2025 Report Card for America’s Infrastructure* 3 (2025) (hereinafter *Infrastructure Report Card*), <https://tinyurl.com/3x2bp5pj> (last visited July 25, 2025).

<sup>7</sup> Nat’l Ctrs. for Env’tl. Info., Nat’l Oceanic & Atmospheric Admin., *Billion-Dollar Weather and Climate Disasters*, <https://tinyurl.com/yk98jftm> (last visited July 25, 2025).

\$3 trillion in damages and claimed nearly 17,000 lives.<sup>8</sup> In addition to direct losses of life and property, disasters like flooding, wind, fire, and earthquakes can destroy the infrastructure network, further straining an already overburdened system.<sup>9</sup> No part of the country is left untouched, but states along the Gulf Coast have been particularly hard hit because of the devastating impacts of hurricanes. Florida, Texas, and Louisiana lead the country in total cumulative disaster costs since 1980.<sup>10</sup>

One of the most effective tools to manage the risks of natural hazards is to build stronger, more resilient infrastructure and to enhance disaster preparedness through hazard mitigation. Investments in disaster preparedness reduce costs in the long term by minimizing rebuilding needs and ensuring the efficient deployment of public resources. A study published by the U.S. Chamber of Commerce found that “every \$1 invested in resilience and disaster preparedness saves \$13” in post-disaster costs.<sup>11</sup> The report also found that these investments benefit “large cities and small communities alike” and can boost economic growth even if the disaster never occurs.<sup>12</sup>

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<sup>8</sup> *Id.*

<sup>9</sup> See *Infrastructure Report Card*, *supra* note 6, at 3, 11.

<sup>10</sup> Nat’l Ctrs. for Env’tl. Info., *supra* note 7.

<sup>11</sup> U.S. Chamber of Com. et al., *The Preparedness Payoff: The Economic Benefits of Investing in Climate Resilience* 4 (2024), <https://tinyurl.com/26sbp5bu> (last visited July 25, 2025).

<sup>12</sup> *Id.* at 8.



Recognizing the importance of disaster preparedness, Congress has funded many hazard mitigation programs, including those administered by FEMA discussed below. These programs have benefited communities throughout the country by helping them elevate flood-prone homes, retrofit buildings to protect against wildfires and earthquakes, and construct safe rooms for tornado protection, among many other things. They have also saved taxpayer money: In the past 23 years, federal mitigation grants have resulted in an average benefit of \$6 for every \$1 invested.<sup>13</sup> This is not surprising as cost-effectiveness is usually a central consideration in project selection.

Congress recently accelerated infrastructure investment by passing IIJA in 2021, which authorized significant federal spending. In addition to investment in clean energy and the infrastructure system in general, IIJA authorized billions of spending on disaster risk mitigation.<sup>14</sup> This unprecedented level of funding reflects Congress's judgment that it is time to make serious, sustained investment in disaster risk mitigation.<sup>15</sup>

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<sup>13</sup> Nat'l Inst. of Bldg. Scis., *Natural Hazard Mitigation Saves: 2019 Report 1* (2019), <https://tinyurl.com/2b8kpxau> (last visited July 25, 2025).

<sup>14</sup> The White House, *Fact Sheet: Biden-Harris Administration Makes Historic Investments to Build Community Climate Resilience* (June 19, 2023), <https://tinyurl.com/mu9ktv8u> (last visited July 25, 2025).

<sup>15</sup> While the recently enacted reconciliation bill scales back some infrastructure investments, it does not amend the disaster resilience programs discussed in this brief. *See generally* Reconciliation Act, Pub L. No. 119-21, 139 Stat. (2025).

Notwithstanding the recent increase in federal infrastructure investments, there is still a “substantial investment gap” that continues to “grow[] as existing infrastructure systems continue to age and demands on those systems increase,”<sup>16</sup> and as climate change brings more extreme weather events to more places.<sup>17</sup> The funding freeze widens that gap and hurts communities by halting ongoing infrastructure and disaster mitigation programs despite Congress’s decision to fund those programs. It also creates significant uncertainty for future projects and undermines partnerships with state and local governments. Below are three examples of disaster resilience programs disrupted by the funding freeze that illustrate how the funding freeze harms the public interest.

### **1. FEMA Hazard Mitigation Assistance Programs**

FEMA’s “manual review process” has held up grant funds under various hazard mitigation assistance programs, A52-53, including the Hazard Mitigation Grant Program and the Flood Mitigation Assistance grant program. McMahon Decl., SA139-40; McCombs Decl., SA201-03. Disruptions to those programs not only expose communities to increased risks from disasters in the face of intensifying extreme weather events but could also result in higher repair and recovery costs for taxpayers.

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<sup>16</sup> *Infrastructure Report Card*, *supra* note 6, at 2.

<sup>17</sup> *Id.* at 3.

**a. Hazard Mitigation Grant Program**

The Hazard Mitigation Grant Program administered by FEMA is a longstanding program that provides formula grants for long-term hazard mitigation projects following a presidential major disaster declaration. The program was first established in 1988 as part of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. 42 U.S.C. § 5170c.<sup>18</sup> Congress has amended the program several times over the past three decades, mostly reducing the cost-share requirement to make it easier for state and local governments to access the funding.<sup>19</sup> The general structure of the program remains unchanged.

As it stands, funding under the program may become available upon a presidential declaration of a major disaster. 42 U.S.C. § 5170c(a). The amount of funding is determined by a statutory formula based on the estimated total federal assistance for the disaster declaration, with a state cost-share requirement of 25%.<sup>20</sup> State and local governments work with FEMA to decide how to award the funds to localities and other eligible sub-applicants.

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<sup>18</sup> Cong. Rsch. Serv., R40471, *FEMA's Hazard Mitigation Grant Program: Overview and Issues 2* (2009), <https://tinyurl.com/3htz7c4t> (last visited July 25, 2025).

<sup>19</sup> *Id.* at 4-5.

<sup>20</sup> Specifically, the formula provides for up to 15% of the first \$2 billion of estimated aggregate amounts of disaster assistance, up to 10% for amounts between \$2 billion and \$10 billion, and up to 7.5% for amounts between \$10 billion and \$35.333 billion. 42 U.S.C. § 5170c.

The Hazard Mitigation Grant Program has been an indispensable resource to state and local governments. Mitigation activities “can be financially challenging,” and the program has allowed applicants “to undertake mitigation projects that they may otherwise not be able to afford.”<sup>21</sup> Since its inception in 1989, the program has provided over \$16 billion in federal funding for tens of thousands of projects, benefiting every state and territory.<sup>22</sup> Louisiana has received the most funding, totaling \$2.4 billion, followed by New York, California, Florida, and Texas, all of which have received more than \$1 billion.<sup>23</sup>

The Hazard Mitigation Grant Program has saved lives and prevented damage in countless ways. The types of projects supported by the program range from property acquisition to retrofits to development of hazard mitigation plans.<sup>24</sup> For example, the program provided funding to Delaware County, Ohio for the construction of a storm shelter at a busy state park after the Presidential Disaster Declaration for Hurricane Sandy in 2011.<sup>25</sup> After seven years of planning, designing, and construction, the shelter was successfully put to the test and

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<sup>21</sup> Cong. Rsch. Serv., *supra* note 18, at 10.

<sup>22</sup> See FEMA, *OpenFEMA Dataset: Hazard Mitigation Assistance Projects - v4* (July 23, 2025) (hereinafter *OpenFEMA Dataset*), <https://tinyurl.com/d5tdk847> (last visited July 25, 2025).

<sup>23</sup> *Id.*

<sup>24</sup> FEMA, *Hazard Mitigation Grant Program (HMGP)* (Apr. 24, 2025), <https://tinyurl.com/mr2kccae> (last visited July 25, 2025).

<sup>25</sup> FEMA, *Delaware State Park Tornado Shelter* (Aug. 8, 2024), <https://tinyurl.com/muycwd6h> (last visited July 25, 2025); FEMA, *Designated Areas: Disaster 4098*, <https://tinyurl.com/bdhsn8m9> (last visited July 25, 2025).

protected many campers during a particularly active tornado season in 2024.<sup>26</sup> The program has also helped relocate a native village in Alaska to a location safer from the risk of progressive coastal erosion.<sup>27</sup> And with funding from the program, some residents in Louisiana were able to elevate their homes, which allowed them to escape the floodwaters of Hurricane Ida.<sup>28</sup>

There are many guardrails built into the program to ensure its effectiveness. Most importantly, the statute and its implementing regulations provide that eligible mitigation projects must be “cost-effective” and must “substantially reduce the risk of future damage” from a major disaster. 44 C.F.R. § 206.434(c)(5); *see also* 42 U.S.C. § 5170c. For a cost-effectiveness determination, FEMA regulations require documentation that the project addresses a repetitive or significant public health and safety risk, that the benefits are greater than the cost, that the project is the best alternative, and that the project provides a long-term solution. 44 C.F.R. § 206.434(c)(5). FEMA also prohibits the use of any funds under the Hazard Mitigation Grant Program to supplant other federal funds that may be available for the same type of project. *Id.* § 206.434(f). Finally, the Stafford Act requires state

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<sup>26</sup> *Id.*

<sup>27</sup> FEMA, *Mitigation Minute: Native Village of Newtok* (Aug. 2, 2024), <https://tinyurl.com/3dvp7b77> (last visited July 25, 2025).

<sup>28</sup> FEMA, *Mandeville, Louisiana: A City that Stays Afloat by Promoting Elevations* (July 30, 2024), <https://tinyurl.com/37srz2a3> (last visited July 25, 2025).

and local governments to have a FEMA-approved hazard mitigation plan in place to be eligible for funding under the program. 42 U.S.C. § 5165.

**b. Flood Mitigation Assistance Grant Program**

Another pillar of FEMA’s hazard mitigation assistance program is the Flood Mitigation Assistance grant program, which provides competitive grants to states and communities for projects that reduce the risk of flood damage to structures insured by the National Flood Insurance Program, a congressionally created program to alleviate taxpayers’ financial exposure to flood damage.

Congress created the Flood Mitigation Assistance grant program in 1994 to encourage mitigation of flood risk. The National Flood Insurance Act provides that FEMA “shall carry out a program to provide financial assistance to States and communities . . . for planning and carrying out activities designed to reduce the risk of flood damage to structures covered under contracts for flood insurance.” 42 U.S.C. § 4104c(a). Congress appropriates funding for Flood Mitigation Assistance annually. Recently, IIJA quintupled funding for the program, providing it with an additional \$3.5 billion and increasing its total annual budget to \$800 million through Fiscal Year 2026. Pub. L. No. 117-58, div. J, tit. V, 135 Stat. 429, 1387-88 (2021).<sup>29</sup>

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<sup>29</sup> ATLAS Public Policy, *A Review of Federal Water Investments* 25-26 (Oct. 2024), <https://tinyurl.com/22wyt25s> (last visited July 25, 2025).

Flood Mitigation Assistance helps protect lives and property. Flooding is the “deadliest, costliest and most common form of natural disaster in the United States and in the world.”<sup>30</sup> Because floods are usually difficult to predict, hazard mitigation measures such as flood control, elevation, and relocation are particularly important.<sup>31</sup> Funding from the program has helped communities build and strengthen flood control infrastructure and has enabled property owners to elevate their homes.<sup>32</sup> It is also the “primary assistance available to mitigate repetitive loss.”<sup>33</sup> Pre-disaster mitigation funded by the program is expected to ease the severe financial burden on the taxpayer-backed National Flood Insurance Program.<sup>34</sup>

Some of the most devastating flooding damage is concentrated in the Gulf states of Texas, Louisiana, Mississippi, Alabama, and Florida. Indeed, Texas and Louisiana alone received more than half of all Flood Mitigation Assistance funding

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<sup>30</sup> Nat’l Conf. of State Legislatures, *Flood Mitigation* (Sept. 2019), <https://tinyurl.com/4db6e37f> (last visited July 25, 2025).

<sup>31</sup> *Id.*

<sup>32</sup> FEMA, *Flood Mitigation Assistance Competitive Selections: Project Overviews* (Apr. 7, 2025), <https://tinyurl.com/5n7nyn7b> (last visited July 25, 2025).

<sup>33</sup> Dep’t of Homeland Sec., Off. of Inspector Gen., OIG-20-68, *FEMA Is Not Effectively Administering a Program to Reduce or Eliminate Damage to Severe Repetitive Loss Properties* 4 (2020), <https://tinyurl.com/2fsk2e54> (last visited July 25, 2025).

<sup>34</sup> See U.S. Gov’t Accountability Off., GAO-20-508, *National Flood Insurance Program, Fiscal Exposure Persists Despite Property Acquisitions* 27 (2020), <https://tinyurl.com/33sv3ewx> (last visited July 25, 2025).

over the program’s lifespan.<sup>35</sup> In Fiscal Year 2020, Texas and Louisiana submitted applications for projects worth over \$200 million combined, and 80% of the total awards nationally went to Texas, Louisiana, Alabama, and Florida.<sup>36</sup> In Fiscal Year 2021, Louisiana alone submitted applications requesting over \$100 million in federal funding, which was more than 60% of the funds available.<sup>37</sup> Texas, Louisiana, Alabama, and Florida received more than 70% of the total awards that year.<sup>38</sup> The program has also been broadly popular: Dozens of states each year applied for the funding between Financial Years 2016 and 2022,<sup>39</sup> and the program was frequently oversubscribed.<sup>40</sup>

Like the Hazard Mitigation Grant Program, the Flood Mitigation Assistance program is governed by a set of statutory and regulatory criteria that help ensure its cost-effectiveness. For instance, participating states “must have a FEMA-approved mitigation plan . . . that provides for reduction of flood losses.” 44 C.F.R. § 77.6(b). Projects funded under the program must be “technically feasible and cost-

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<sup>35</sup> According to the official FEMA data, Flood Mitigation Assistance funding nationwide from 1996 to 2024 totaled around \$1.35 billion, close to \$700 million of which went to Texas and Louisiana. *See OpenFEMA Dataset*, *supra* note 22.

<sup>36</sup> *See* FEMA, *Flood Mitigation Assistance FY 2020 Subapplication Status* (Sept. 2024), <https://tinyurl.com/b4fsv34m> (last visited July 25, 2025).

<sup>37</sup> FEMA, *Flood Mitigation Assistance Fiscal Year 2021 Subapplication Status* (Sept. 2024), <https://tinyurl.com/5n96svyu> (last visited July 25, 2025).

<sup>38</sup> *See id.*

<sup>39</sup> *See* official FEMA data on the Hazard Mitigation Grant Program from 2016 to 2022. FEMA, *Previous Fiscal Year Subapplication Statuses* (Sept. 23, 2024), <https://tinyurl.com/2n6hc9n5> (last visited July 25, 2025).

<sup>40</sup> Dep’t of Homeland Sec., Off. of Inspector Gen., *supra* note 33, at 4-5.



effective.” *Id.* § 77.6(d). The regulations also require projects to “consider long-term changes to” the relevant areas and to plan for “continued maintenance needed to preserve the hazard mitigation benefits.” *Id.* And just like the Hazard Mitigation Grant Program, FEMA regulations do not allow projects to “duplicate benefits available from another source.” *Id.* Although there is room for improvement when it comes to FEMA’s administration of Flood Mitigation Assistance,<sup>41</sup> extended pauses in funding distribution can only hurt communities that urgently need the money.

## 2. Grid Resilience State and Tribal Formula Grants Program

The Grid Resilience State and Tribal Formula Grants Program, another important federal spending program aimed at enhancing disaster preparedness, has also been subject to funding freezes. Toor Decl., SA182-84. Congress created the program under IIJA section 40101, which requires DOE to make grants to states and tribes for projects that strengthen and modernize the power grid—the infrastructure network for electricity transmission and distribution—against natural

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<sup>41</sup> For example, Department of Homeland Security’s Office of Inspector General has found that, due to the lack of accurate information and FEMA’s grant application requirements, funding under Flood Mitigation Assistance does not always get to recipients in the most timely or equitable manner. Dep’t of Homeland Sec., Off. of Inspector Gen., *supra* note 33, at 6-14.

disasters. 42 U.S.C. § 18711(b)-(c). The program can distribute up to \$2.5 billion of total funding over five years.<sup>42</sup>

The program provides funding to states and tribes according to a statutory formula based on population size, land area, probability and severity of disruptive events, and historical expenditures on mitigation efforts. 42 U.S.C.

§ 18711(d)(3)(B). Working with DOE, local governments award the funds to individual projects. DOE must approve the project before construction can begin.<sup>43</sup> Congress also requires a biennial report by DOE with data on project costs and “the extent to which the ability of the power grid to withstand disruptive events has increased.” *Id.* § 18711(i).

IIJA’s significant investments in grid resilience come at a time when the nation’s grid faces an urgent need for modernization. Climate change related weather events have increased risks to every part of the grid.<sup>44</sup> For example, decreased water levels could pose challenge to hydroelectricity generation, and warmer temperature and heat waves may reduce power lines’ ability to transmit

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<sup>42</sup> U.S. Dep’t of Energy, *Biennial Report to Congress: Preventing Outages and Enhancing the Resilience of the Electric Grid* 12 (July 2024) (hereinafter *DOE Biennial Report*), <https://tinyurl.com/d46rn7n9> (last visited July 25, 2025).

<sup>43</sup> U.S. Dep’t of Energy, *Grid Resilience State/Tribal Formula Grants Program*, <https://tinyurl.com/y295vddz> (last visited July 25, 2025).

<sup>44</sup> U.S. Gov’t Accountability Off., GAO-21-423T, *Electricity Grid Resilience: Climate Change Is Expected to Have Far-reaching Effects and DOE and FERC Should Take Actions* 3 (Mar. 10, 2021), <https://tinyurl.com/ms42zvm5> (last visited July 24, 2025).

electricity and damage distribution lines.<sup>45</sup> Climate change could lead to billions of dollars in damages to the grid each year, including costs of power outages and storm damage.<sup>46</sup> The nation's power infrastructure is also old: The sprawling electric grid in the U.S.—most of which was built in the 1960s and 1970s—still largely relies on legacy systems.<sup>47</sup> Indeed, 70% of the over 600,000 miles of transmission lines are approaching the end of their lives.<sup>48</sup> As DOE states in its Report to Congress in July 2024,

The increased frequency of extreme events, advanced age of U.S. grid infrastructure, heightened risk of physical and cyber-attacks, and expanding dependence on electricity for vital services such as transportation, among other challenges, signal an urgent need for modernizing the U.S. electric grid.<sup>49</sup>

There has been a high level of interest in grid-resilience grants, and the projects that the grants fund can bring long-term improvements to the grid. As of October 2024, DOE has awarded nearly \$1.3 billion in funds under the program to 49 of the 50 states, in addition to D.C. and all five major U.S. territories.<sup>50</sup>

States have already used the grants to improve the reliability and resilience of their power infrastructure. Colorado, for example, is using formula grants funds

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<sup>45</sup> *Id.* at preface, 1 n.4, 3.

<sup>46</sup> *Id.* at 3.

<sup>47</sup> *DOE Biennial Report*, *supra* note 42, at 3-4.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 4.

<sup>50</sup> U.S. Dep't of Energy, *Grid Resilience State and Tribal Formula Grant Awards*, <https://tinyurl.com/2f3j4bct> (last visited July 25, 2025).

for microgrid deployment.<sup>51</sup> Microgrids are a form of distributed energy, which DOE has described as a way “to ensure continuous electricity regardless of the weather or an unforeseen event.”<sup>52</sup> Because they distribute energy produced near where it is consumed, “[c]ommunity-scale microgrids may provide resiliency and backup during and after disasters like hurricanes.”<sup>53</sup> Distributed solar, batteries, and microgrids also have another advantage: they “could provide substantial reliability benefits without locking in fossil fuel-fired infrastructure that will continue exacerbating the very climatic conditions that are contributing to weather extremes.”<sup>54</sup> Other projects funded by the formula grants include undergrounding of electrical equipment in Oregon and hardening electrical transmission lines in Wisconsin.<sup>55</sup> Grid hardening efforts, such as reinforcing physical grid infrastructure, results in “substantially reduced vulnerability to disruption from

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<sup>51</sup> Colo. Dep’t of Local Affairs, *Department of Local Affairs Announces Over \$2M Awarded through the U.S. Department of Energy’s Grid Resilience State and Tribal Formula Grant Program* (July 16, 2024), <https://tinyurl.com/va8p2t5f> (last visited July 25, 2025).

<sup>52</sup> U.S. Dep’t of Energy, *Solar Integration: Distributed Energy Resources and Microgrids*, <https://tinyurl.com/4bmwabkk> (last visited July 25, 2025).

<sup>53</sup> *Id.*

<sup>54</sup> Alexandra Klass et al., *Grid Reliability Through Clean Energy*, 74 Stan. L. Rev. 969, 1050 (2022).

<sup>55</sup> U.S. Dep’t of Energy, *Building a Better Grid Awards: January 2025* (Jan. 13, 2025), <https://tinyurl.com/mrynndzu> (last visited July 25, 2025).

extreme weather and wildfires” and creates “both reliability and resilience improvements.”<sup>56</sup>

Although the program is still in an early stage of implementation, the investments are expected to “benefit hundreds of communities across the country and help address risks [] unique to their service territories.”<sup>57</sup> Projects supported by the grants utilize a diverse set of technologies that will improve power restoration, protect the grid against extreme weather events, reduce wildfire risk, and increase energy storage capacity.<sup>58</sup> And funding from this program is particularly important to municipal utility and smaller grid operators because of the difficulties these entities face in securing alternate funding sources.<sup>59</sup>

\* \* \*

Congress established programs and appropriated funds to address disaster preparedness in recognition of the challenges that extreme weather events pose to communities and the nation’s infrastructure. These investments keep communities everywhere safe. They also make financial sense—hazard mitigation saves taxpayer money in the long term, and projects funded by these federal programs

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<sup>56</sup> U.S. Dep’t of Energy, *Undergrounding Transmission and Distribution Lines: Resilience Investment Guide* 3 (Sep. 2024), <https://tinyurl.com/bde22kmu> (last visited July 25, 2025).

<sup>57</sup> *DOE Biennial Report*, *supra* note 42, at vi.

<sup>58</sup> *Id.*

<sup>59</sup> *See, e.g.,* Am. Pub. Power Ass’n, *How Small Communities Are Harnessing Federal Funding Opportunities* (Nov. 15, 2024), <https://tinyurl.com/mpw2nsyp> (last visited July 25, 2025).

are commonly required to demonstrate their cost-effectiveness. Allowing disaster preparedness projects to access appropriated funds is not only necessary to avoid harm to the plaintiffs but is also in the broader public interest.

Against these harms, the government asserts that it has a countervailing interest in not being “compel[led] . . . to continue” programs that “waste [] taxpayer dollars,” Appellants’ Opening Br. 52. But the government has not identified anything in the record that substantiates its claim about wasteful spending. Indeed, what the government calls “waste” is simply the current administration’s disagreement with the programs that Congress enacted. *See* Exec. Order 14,154, 90 Fed. Reg. at 8,357 (ordering a review of federal financial assistance “for consistency” with the administration’s energy policy priorities). But Congress created these programs through law, and the administration has no power to override them because of its policy views. *Cf. City of Providence v. Barr*, 954 F.3d 23, 31 (1st Cir. 2020) (“When an executive agency administers a federal statute, the agency’s power to act is ‘authoritatively prescribed by Congress.’” (quoting *City of Arlington v. FCC*, 569 U.S. 290, 297 (2013))). Accordingly, the administration’s views about “waste” do not weigh in the public interest for this case.

## CONCLUSION

The district court correctly determined that the balance of equities and the public interest favored a preliminary injunction in this case, and the Court should affirm that preliminary injunction.

Dated: July 25, 2025

Respectfully submitted,

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## **CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief complies with the type-volume limitations of Federal Rules of Appellate Procedure 29(a)(5) and 32(b)(a)(7)(B)(i) because it contains a total of 5,144 words, excluding the parts of the brief exempted by Rule 32(f). This brief complies with the typeface requirement of Rule 32(a)(5) and the type-style requirement of Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface (14-point Times New Roman) using Microsoft Word.

/s/Thomas Zimpleman  
Thomas Zimpleman

July 25, 2025



### **CERTIFICATE OF SERVICE**

I hereby certify that on July 25, 2025, I electronically filed the foregoing Brief of the Natural Resources Defense Council, Inc. as Amicus Curiae Supporting Plaintiffs-Appellees and Supporting Affirmance with the Clerk of the Court of the United States Court of Appeals for the First Circuit using the CM/ECF system. I further certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/Thomas Zimpleman  
Thomas Zimpleman

July 25, 2025