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SYMPOSIUM ESSAY

Leveraging Institutions: Imposing Unconstitutional Constraints on Individual Speech through State and Private Organizations

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I. Conditions on States and Private Institutions

During his first administration, President Trump often deployed presidential power to reallocate funds or to threaten to withdraw them entirely: He pursued the project of building a border wall by shifting around moneys Congress had authorized for other purposes,[1] and he attempted to withhold funds from "sanctuary cities" for failure to share immigration information with federal authorities.[2] These efforts were only partially successful. Mired in judicial proceedings, their constitutionality was largely left unresolved and mooted after his first term.[3]

From the beginning of his second term in office, President Trump has made clear that he will continue to use financial leverage to accomplish policy goals. Whether attempting to undo protections for transgender athletes, forcing state and local cooperation on immigration enforcement, restricting the promotion of vaccines, or limiting student protests, Trump has used the power of the purse

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1. *See* Sierra Club v. Trump, 929 F.3d 670, 678-79 (9th Cir. 2019); Ctr. for Biological Diversity v. Trump, 453 F. Supp. 3d 11, 22-23 (D.D.C. 2020).

2. *See* City and County of San Francisco v. Trump, 897 F.3d 1225, 1232-33 (9th Cir. 2018); City of Chicago v. Sessions, 888 F.3d 272, 278-79 (7th Cir. 2018); City of Chicago v. Barr, 961 F.3d 882, 902-03 (7th Cir. 2020).

3. *See, e.g.*, Edward A. Fitzgerald, Sierra Club v. Trump, California v. Trump: *Border Wall Funding Knocked Down*, 12 ARIZ. J. ENV'T. L. & POL'Y 179, 230-231 (describing the Biden Administration's efforts to stop using funds diverted from other sources to fund construction of the border wall).

to obtain his desired outcomes.[4] These actions raise many questions, including the extent of presidential—as opposed to congressional—control over spending and the constitutionality of imposing new conditions on spending or conditions unrelated to the object of the grant.

This Essay focuses on a problem seldom examined outside of the context of states—whether the federal government can condition funds on an entity's agreement to suppress the constitutional rights of individuals subject to its governance, particularly their speech rights. This issue is a subset of the notoriously difficult problem of unconstitutional conditions, or, as Mitchell Berman has put it, "the difficulty of properly analyzing governmental offers of benefits that it is not constitutionally obligated to provide conditioned on the offeree's waiver or non-exercise of a constitutional right."[5] The particular variety of condition at issue here, however, frustrates the logic undergirding many of the decisions permitting waivers of constitutional rights. Those cases generally emphasize the consent of the state or of the party receiving funding.[6] But when conditions leverage state or private institutions to suppress the constitutional rights of individuals at least partially subject to their control, the individuals in question never have the opportunity to grant or withhold their consent.[7]

As discussed in Part II, longstanding judicial precedents restrain the federal government from requiring that *states* restrict individual rights in order to

4. *See* Alana Wise, *Trump Suspends $175 Million in Funding to University of Pennsylvania over Trans Athletes*, NPR (Mar. 20, 2025), https://perma.cc/C5Q5-UNBF; Nate Raymond, *Twenty States Sue over Trump's Push to Link Grants to Immigration Enforcement*, REUTERS (May 13, 2025), https://perma.cc/H54B-BSJA; Sara Reardon, *NIH to Ax Grants on Vaccine Hesitancy*, SCI. (Mar. 10, 2025), https://perma.cc/3ALW-6LKZ; Marina Dunbar & Joseph Gedeon, *Trump Administration Cancels $400 Million in Funds to Columbia University*, GUARDIAN (Mar. 7, 2025), https://perma.cc/V242-27F2.

5. Mitchell N. Berman, *Coercion, Compulsion, and the Medicaid Expansion: A Study in the Doctrine of Unconstitutional Conditions*, 91 TEX. L. REV. 1283, 1316 (2013).

6. *See generally* Richard A. Epstein, *Unconstitutional Conditions, State Power, and the Limits of Consent*, 102 HARV. L. REV. 4, 14-15 (1988) (treating the consent theory of conditions on government funding and the boundaries of acceptable consent); Pace v. Bogalusa City Sch. Bd., 403 F.3d 272, 277-89 (5th Cir. 2005) (elaborating on a state's consent to waive sovereign immunity through accepting federal funds).

7. *See* Kathleen M. Sullivan, *Unconstitutional Conditions*, 102 HARV. L. REV. 1413, 1491 (1989) (explaining that "[i]ndividuals lack both the information and the stake necessary to assess the value of their own exercise of rights to third parties and to the polity as a whole" and that her proposed "systemic approach" would address this issue by "bar[ring] government from redistributing rights even if affected individuals consent"); Epstein, *supra* note 6, at 14 (explaining that a "bargain" does not "respect the interests of third persons who are not parties to the bargain" when it "contemplate[s] the use or threat of coercion . . . against third parties"); Ryan C. Williams, *Unconstitutional Conditions and the Constitutional Text*, 172 U. PA. L. REV. 747, 798 (2024) (identifying a limitation on conditions based on inalienable rights and contending that, in Founding Era legal practice, courts would not "enforce an agreement or compact in a manner that would prejudice the rights of third parties").

obtain federal funds, under what has been called the "independent constitutional bar" test.[8] Precedents regarding federal grants to private entities, however, fail to systematically disaggregate the harms of curtailing the speech of institutions and limiting that of their members. This means that claims can usually be articulated only in terms of the rights of the institution itself, rather than the rights of those in some way subject to its protocols and jurisdiction. As I argue below, courts should, in these kinds of cases, adopt a standard similar to that used in relation to conditions placed upon states. The principal advantage of this approach over the one currently employed by courts evaluating the constitutionality of conditions on federal grants to private parties is that it clearly identifies the objects of the relevant constitutional harm.

Take, for example, the Trump Administration's demands that Columbia prohibit students from wearing masks "to conceal identity"[9] and that Harvard end its recognition and support of certain student groups.[10] While these steps would probably be constitutional if imposed by a private entity of its own accord, there are significant First Amendment arguments against each if undertaken by the government.[11] Furthermore, the principal harm involved is not to the university as such but to individual students and student organizations affected by the measures. Extending the independent constitutional bar test from states to private entities would recognize that an important underlying concern of the test is not simply whether the state itself would be harmed by being forced into unconstitutional action but whether the federal government is concealing its own role in promoting unconstitutional restrictions of rights, a concealment equally possible in the context of private

8. *See infra* text accompanying note 17.

9. Letter from Josh Gruenbaum, Comm'r of the Fed. Acquisition Serv., Gen. Servs. Admin., Sean R. Keveney, Acting Gen. Couns., U.S. Dep't of Health & Hum. Servs., & Thomas E. Wheeler, Acting Gen. Couns., U.S. Dept. of Educ., to Katrina Armstrong, Interim President, Columbia Univ. (Mar. 13, 2025), https://perma.cc/4LYD-NMGA.

10. Letter from Josh Gruenbaum, Comm'r of the Fed. Acquisition Serv., Gen. Servs. Admin., Sean R. Keveney, Acting Gen. Couns., U.S. Dep't of Health & Hum. Servs., & Thomas E. Wheeler, Acting Gen. Couns., U.S. Dept. of Educ., to Alan M. Garber, President, Harvard Univ. (Apr. 11, 2025), https://perma.cc/TF74-BT5N.

11. Courts have decided First Amendment-based challenges to mask bans in various ways, but at least some have expressed concerns that mask bans would constrain anonymous speech. *See, e.g.*, Austin Vining, *Trick or Treat?: Mississippi County Doesn't Clown Around with Halloween Costumes*, 36 MISS. COLL. L. REV. 350, 355-57 (2018). Likewise, it would raise freedom of association concerns if a public university were to ban certain student organizations on the basis of viewpoint. *See, e.g.*, Christian Legal Soc. Chapter of the Univ. of Calif., Hastings Coll. of the L. v. Martinez, 561 U.S. 661, 685 (2010) (stating that student groups cannot be excluded on account of their viewpoint from the limited public forum created by a public university).

entities.[12] As Adam Shinar has recently emphasized in the international context, threats to democracy have increasingly taken the form not of prohibiting disfavored speech outright but instead of limiting state spending on it.[13] This approach allows the government to obfuscate its role. Such concealment is only heightened when the relevant condition is imposed on individuals via a state or other institution.[14]

While the independent constitutional bar test at least acknowledges the existence of several sets of rights holders, its implementation in protecting third-party rights has been somewhat sparse.[15] Cases involving an independent constitutional bar have largely been brought by state entities rather than the affected private parties. The latter should be given standing to pursue claims of an independent constitutional bar under *South Dakota v. Dole* in order to effectuate the purpose of the test. Full recognition of the importance of the independent constitutional bar would suggest the need to protect individuals more rigorously against the imposition of rights constraints through intermediary institutions, whether states or private entities.

II. Independent Constitutional Bars

Modern analysis of whether conditions on federal grants of funds to states are constitutional often refers to a multi-prong test from *South Dakota v. Dole*.[16] The final prong evaluates whether "other constitutional provisions . . . provide an independent bar to the conditional grant of federal funds."[17] As *Dole* explains, the independent constitutional bar at issue is not one grounded in federalism, such as limitations based on the Tenth or Eleventh (or even Twenty-First) Amendments. Instead, the Court's examples suggest that the relevant restriction

12. A further consideration with respect to the educational context is uniformity of the interpretation of federal statutes across public and private education. If Title VI were interpreted to prohibit students' constitutionally protected speech, it could not be implemented fully in public institutions. *See* Gartenberg v. Cooper Union for the Advancement of Sci. & Art, 765 F. Supp. 3d 245, 261 (S.D.N.Y. 2025) ("Title VI, contrary to Gartenberg's suggestion, is not 'a chameleon, its meaning subject to change depending on' whether the defendant is [a] private or public institution." (quoting Clark v. Martinez, 543 U.S. 371, 382 (2005))).

13. Adam Shinar, *Democratic Backsliding, Subsidized Speech, and the New Majoritarian Entrenchment*, 69 Am. J. Compar. L. 335, 336, 342 (2021).

14. The U.S. Supreme Court has acknowledged similar concerns about government accountability when the federal government commandeers state officers or the state legislature. *See, e.g.*, New York v. United States, 505 U.S. 144, 168 (1992) ("[W]here the Federal Government compels States to regulate, the accountability of both state and federal officials is diminished.").

15. *See infra* note 28 and accompanying text.

16. South Dakota v. Dole, 483 U.S. 203, 207-08 (1987).

17. *Id.* at 208.

emanates from individual rights. Further emphasizing the role of individual rights in its analysis, the Court explains that, "[w]ere South Dakota to succumb to the blandishments offered by Congress and raise its drinking age to 21, the State's action in so doing would not violate the constitutional rights of anyone."[18]

Nevertheless, other parts of the passage articulating the independent constitutional bar test are phrased somewhat confusingly.[19] In particular, the *Dole* Court insists that various "cases establish that the 'independent constitutional bar' limitation on the spending power is not . . . a prohibition on the indirect achievement of objectives which Congress is not empowered to achieve directly."[20] The best way to read this qualification, I would suggest, is to interpret it as permitting Congress to use financial leverage over states to accomplish ends that would otherwise violate federalism principles but drawing a clear line when the relevant constraints impinge on constitutionally protected individual rights. Indeed, the principal example of a violation of the independent constitutional bar that the Court furnishes involves using the states as a means to violate individual rights: "[A] grant of federal funds conditioned on invidiously discriminatory state action or the infliction of cruel and unusual punishment would be an illegitimate exercise of the Congress' broad spending power."[21]

Furthermore, the independent constitutional bar does not entail that the federal statute itself commit an independent constitutional violation, but instead that it work through the states to induce them to violate individual rights. This distinction appears most clearly in cases involving challenges to the Religious Land Use and Institutionalized Persons Act (RLUIPA), a congressional statute that increased protections against violations of First Amendment free-exercise-of-religion rights in the wake of the Supreme Court's decisions in *Employment Division v. Smith* and *City of Boerne v. Flores*.[22] RLUIPA applies to programs or activities that receive federal funds. Opponents of RLUIPA have argued that, by raising the floor for protecting the free exercise of religion above what the Supreme Court has mandated, the statute creates an "establishment of religion" in violation of the First Amendment.[23] Such claims have been raised in the context of inquiring whether RLUIPA-imposed conditions on federal

18. *Id.* at 210-11.

19. Others have noted the puzzling nature of the analysis in *Dole*. *See, e.g.*, Douglas A. Wick, Note, *Rethinking Conditional Federal Grants and the Independent Constitutional Bar Test*, 83 S. CAL. L. REV. 1359, 1375-76 (2010).

20. *Dole*, 483 U.S. at 210.

21. *Dole*, 483 U.S. at 210-11.

22. *See* Emp. Div. v. Smith, 485 U.S. 660 (1988); City of Boerne v. Flores, 521 U.S. 507 (1997); Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. §§ 2000cc-2000cc-5; *see also* Charles v. Verhagen, 220 F. Supp. 2d 955, 958-59 (W.D. Wis. 2002).

23. *See, e.g.*, *Verhagen*, 220 F. Supp. at 958-59.

funding are constitutional.[24] However, as at least one court has determined, such an Establishment Clause challenge does not fall within *Dole*'s independent constitutional bar inquiry because the argument is that RLUIPA itself violates the Establishment Clause, not that it forces states to do so.[25]

Since *Dole*, few courts have considered the existence of an independent constitutional bar on conditions for federal funding. One recent example where the test proved determinative is the Fifth Circuit case of *Abbott v. Biden*.[26] The *Abbott* court decided that the Organizing Clause pertaining to state militias[27] presented an independent constitutional bar to penalizing Texan members of the National Guard who had not been called into national service for not being vaccinated against COVID-19.[28]

A First Amendment opinion applying *Dole* may be even more instructive for analogies with the private sector because it arose from a challenge by a locality rather than a state. In *ACLU v. Mineta*, a district court invalidated a restriction on a federal grant to the Washington, D.C. mass transit system that prohibited any direct or indirect support for legalizing controlled substances.[29] As the Conference Report on the relevant statute explained, it was designed to prevent grant recipients from "displaying or permitting to be displayed advertisements on its land, equipment, or in its facilities, that promote the

24. *Id.* at 965.

25. *Id.* ("Although defendants argue separately that the act itself violates . . . the First Amendment's establishment clause, they do not contend that compliance with the act induces Wisconsin to engage in unconstitutional activity. Accordingly, the act does not violate the independent constitutional bar limitation on the spending power.").

26. 70 F.4th 817 (5th Cir. 2023).

27. U.S. CONST. art. I, § 8, cl. 16.

28. *Abbott*, 70 F.4th at 845. In some ways, this case seems a less than apposite one for application of the independent constitutional bar principle because the constitutional provision at issue is federalism-related and therefore might not raise the kind of constitutional objection contemplated by *Dole*. For instances in which the parties raised the possibility of an independent constitutional bar, but the courts disagreed, see *United States v. Am. Library Ass'n*, 539 U.S. 194, 201, 203, 214 (2003) (holding that, by conditioning Internet access funding to local libraries on installing filtering software to block obscenity and child pornography, the federal Children's Internet Protection Act did not offend *Dole* and "'induce' the recipient [of federal funds] 'to engage in activities that would themselves be unconstitutional'" because content-based restrictions on the objects of public funding were acceptable under the First Amendment (quotation omitted)); *Kansas v. United States*, 214 F.3d 1196, 1197-98, 1200 (10th Cir. 2000) (determining that the state had not sufficiently demonstrated that the conditions on welfare funding imposed by the Personal Responsibility and Work Opportunity Reconciliation Act would infringe on its citizens' privacy and procedural due process rights); and *New York v. U.S. Dep't of Health & Hum. Servs.*, 414 F. Supp. 3d 475, 496, 572 (S.D.N.Y. 2019) (finding the Department of Health and Human Services' "conscience rule," permitting individuals to abstain from providing health care services, did not, as a facial matter, cause states to violate the Establishment Clause).

29. ACLU v. Mineta, 319 F. Supp. 2d 69, 75, 86-87 (D.D.C. 2004), *voluntarily dismissed by the parties*, No. 04-5285, 2005 WL 263924 (D.C. Cir. Feb. 2, 2005).

legalization or medical use of substances listed in schedule I of section 202 of the Controlled Substance Act."[30]

Even though the case involved a local transit system in Washington, D.C. rather than a state-run enterprise, the district court applied *Dole*'s independent constitutional bar test and determined that the relevant condition on the grant represented unconstitutional discrimination based on viewpoint.[31] Distinguishing scenarios in which the government is deciding whether or not to fund particular kinds of programs, such as that at issue in *Rust v. Sullivan*[32] and similar cases, the court emphasized that the grant pertained to funding transit systems and had nothing to do with speech, with the exception of the strings attached.[33] Because the restriction on promoting legalization of controlled substances discriminated based on viewpoint (and did not merely restrict what content could be discussed), the court determined that it was unconstitutional.[34]

III. Spending-Mediated Restrictions on Individuals' Speech

Within the context of government grants to private entities conditioned on restrictions of speech, scholars and courts have been grasping for something like an extension of *Dole*'s independent constitutional bar test. In these instances, the federal government is using private entities to restrict individuals' constitutional rights, just as it would employ states to do so in violation of the independent constitutional bar inquiry in *Dole*.

Taken together, two Supreme Court decisions can begin to create the outlines of a similar doctrine regarding government impositions of conditions on private institutions. In the 2013 *Agency for International Development v. Alliance for Open Society International, Inc.*, the Court considered whether organizations receiving funding through the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act could be required to maintain a policy explicitly opposing prostitution.[35] The Act also prohibited the funds it provided from being used "to promote or advocate the legalization or practice of prostitution or sex trafficking."[36] The issue therefore was whether Congress could control the message being delivered by a recipient as a whole, even apart from any

30. *Id.* at 76 (quoting H.R. REP. NO. 108-401, at 982 (2003) (Conf. Rep.)).
31. *Mineta*, 319 F. Supp. 2d at 86-87.
32. 500 U.S. 173, 192-97 (1991).
33. *Mineta*, 319 F. Supp. 2d at 84.
34. *Id.* at 85-87. The court in *Mineta* distinguished the Supreme Court's decision in *United States v. Am. Library Ass'n*, 539 U.S. 194, 209-10 (2003), which came out the other way, because the latter involved simply content restrictions rather than viewpoint discrimination. *Mineta*, 319 F. Supp. 2d at 86.
35. 570 U.S. 205, 208 (2013).
36. *Id.* at 210 (quoting 22 U.S.C. § 7631(e)).

directly funded activities. In an opinion by Chief Justice Roberts, the Court held that Congress's requirement violated the First Amendment, explaining that:

> [T]he relevant distinction that has emerged from our cases is between conditions that define the limits of the government spending program—those that specify the activities Congress wants to subsidize—and conditions that seek to leverage funding to regulate speech outside the contours of the program itself. The line is hardly clear, in part because the definition of a particular program can always be manipulated to subsume the challenged condition. We have held, however, that "Congress cannot recast a condition on funding as a mere definition of its program in every case, lest the First Amendment be reduced to a simple semantic exercise."[37]

The inquiry here still focuses on the institution, however, rather than the individuals whom it controls. Another form of division between the limits of a government spending program and speech outside its contours can be between the institution's own speech—as well as that which it subsidizes—and third-party speech that it is asked to shape or restrain. For example, Title VI conditions funding for educational institutions on compliance with certain antidiscrimination provisions that can affect the speech not simply of the university but of faculty and students as well.[38] The speech at issue here might be occurring within a government-subsidized program (i.e., the university) at the same time as the speech of the relevant actors (faculty and students) is not being directly or indirectly subsidized by the government.[39] The independent constitutional bar test would better address this kind of leveraging of funding "to regulate speech outside the contours of the program itself" by acknowledging

37. *Id.* at 214-15 (quoting Legal Servs. Corp. v. Velasquez, 531 U.S. 533, 547 (2001)).

38. For analysis of potential First Amendment problems with Title VI in its recent applications, see Evelyn Douek and Genevieve Lakier, *Title VI as a Jawbone*, KNIGHT FIRST AMEND. INST. AT COLUMBIA UNIV.: STUDENT PROTESTS, TITLE VI, AND THE FIRST AMEND. (Sep. 26, 2024), https://perma.cc/M6SG-M5GB. *Gartenberg* drew out some First Amendment limitations upon Title VI, Gartenberg v. Cooper Union for the Advancement of Sci. & Art, 765 F. Supp. 3d 245, 264-65 (S.D.N.Y. 2025), including reading Title VI not to cover pure speech on matters of public concern, such as pro-Palestinian students' chants of "slogans concerning the Israeli-Palestinian conflict." *Id.* at 270. In doing so, the court noted both "that a private institution like Cooper Union is generally free to regulate its students' speech without regard for the First Amendment . . . is irrelevant to the question of whether Congress may compel it to do so via the threat of civil liability under Title VI," and that "the First Amendment concerns . . . cannot be brushed aside in the Title VI context merely because Congress enacted the statute pursuant to its power under the Spending Clause." *Id.* at 261, 263.

39. Philip Hamburger has made a similar point in relation to government contracting: "[E]ven when the First Amendment allows the government to restrict the speech of a contractor, this does not always mean that the government thereby can restrict the speech of the contractor's employees. At least in some instances, the restriction on the employees will be overbroad, not narrowly tailored, and unsupported by a compelling government interest." Philip Hamburger, *Unconstitutional Conditions: The Irrelevance of Consent*, 98 VA. L. REV. 479, 551-52 (2012).

that the constitutional interests of both the institution and its members are at stake.[40]

Even more recently, the Supreme Court held unanimously in *National Rifle Ass'n of America v. Vullo* that New York's Department of Financial Services had violated the First Amendment by issuing guidance letters to insurance companies encouraging them to discontinue their relationships with the NRA.[41] By "threaten[ing] enforcement actions against DFS-regulated entities in order to punish or suppress the NRA's gun promoting advocacy," the agency's superintendent had infringed the NRA's First Amendment rights, because "[a] government official cannot coerce a private party to punish or suppress disfavored speech on her behalf."[42] While *Vullo* involved the threat of enforcement actions, threats of defunding are similarly coercive.[43]

The principal problem with how these cases have been applied pertains to who can sue whom for constitutional infringements. Recently, a district court dismissed *American Ass'n of University Professors v. United States Department of Justice* on the grounds that the plaintiffs lacked standing and were simply "inserting themselves into a quarrel between the Executive Branch and non-party Columbia [University], which, Plaintiffs' own submissions make clear, Columbia wishes to resolve . . . without resorting to litigation that might further imperil Columbia's resources and reputation."[44] Similarly, several cases in which individuals sued private entities for infringing on their speech—allegedly at the government's behest—failed to find state action.[45]

Although issues of standing have not been extensively litigated in the context of *Dole*'s independent constitutional bar test, at least one court has permitted the third parties affected by the constitutional bar to participate in

40. The *Gartenberg* court acknowledges the several rights at issue in conditional funding cases like the one it considers, noting that, "as relevant here, requiring schools to censor or punish political speech to avoid liability for a hostile environment would burden not only their students' freedom of expression, but the academic freedom of the institution itself to create an educational environment centered around the free exchange of ideas." *Gartenberg*, 765 F. Supp. 3d at 261.

41. 144 S.Ct. 1316, 1322 (2024).

42. *Id.* at 1326, 1328.

43. For an analysis of the significance of *Vullo* for this scenario, see Evelyn Douek, *Federal Funding as a Jawbone*, KNIGHT FIRST AMEND. INST. AT COLUMBIA UNIV.: FED. FUNDING AND THE FIRST AMEND. (June 10, 2025), https://perma.cc/7EYP-JSMM.

44. No. 25-CV-2429, 2025 WL 1684817, at *11 (June 25, 2025).

45. *See, e.g.*, Kennedy v. Meta Platforms, Inc., No. 24-CV-02869, 2024 WL 4031486, at *3-4 (N.D. Cal. 2024); Kennedy v. Google LLC, 688 F. Supp. 3d 951, 958 (N.D. Cal. 2023), *appeal dismissed*, No. 23-16141, 2023 WL 9843154 (9th Cir. 2023). The latter case does emphasize that the test for state action "will be satisfied when government officials threaten adverse action to coerce a private party into performing a particular act." *Id.*

challenging the federal government's actions.[46] This is not surprising because the independent constitutional bar test depends on the government's interference with the rights of third parties. To grant those third parties standing should not, therefore, be a stretch. Using an independent constitutional bar analysis within other private conditional funding contexts could thus bolster the argument for the standing of those subject to the restrictions private entities adopt to obtain or retain funding.

IV. Conclusion: Leveraging Institutions

Many of the Trump Administration's efforts to change cultural attitudes and social outcomes have been mediated by private institutions and the threat of withholding grants or removing funding from these entities under a variety of federal statutes.[47] While these entities are not states or state actors, they may function quite similarly in relation to individuals subject to their rules and protocols. Importing the independent constitutional bar test from *Dole* into these contexts could valuably serve to identify and label one harm that the Trump Administration is producing through its spending-related activity—that of coercing private entities into actions affecting their members that would be unconstitutional if undertaken by the government. Although courts so far have grasped at various precedents to explain why the Trump Administration's actions are unconstitutional, analogizing with *Dole*'s independent constitutional bar might illuminate the relevant stakes more consistently and clearly.

46. *See* Am. Library Ass'n v. United States, 201 F. Supp. 2d 401, 415, 450-51 (E.D. Pa. 2022), *rev'd on other grounds*, United States v. Am. Library Ass'n, 539 U.S. 194 (2003).

47. *See supra* note 4 and accompanying text.