

Policy Backgrounder

Universal Injunctions' Uncertain Future

The Supreme Court heard arguments in a case that likely affects the future of “universal” (nationwide) injunctions, where one US District Judge enjoins an action such as a regulation or Executive Order on a nationwide basis while litigation proceeds. The Court appeared divided on the question; each possible outcome has implications for businesses in regulated industries.

Key Insights

- The Supreme Court heard arguments in [Trump v. CASA, Inc.](#), a case challenging the President’s Executive Order on birthright citizenship. But the arguments concerned the extent of lower courts’ powers to issue nationwide injunctions to halt enforcement of an Executive Order or regulation instead of the substance of the Constitutional arguments on birthright citizenship.
 - The use of nationwide injunctions has grown significantly since 2015; they have been used against significant policies (including immigration) of Presidents of both parties.
 - Opponents of nationwide injunctions argue that injunctions should apply only to the parties in any litigation and thus only in the judicial district in which they are issued.
 - Proponents respond that issues of national application require that the laws be uniformly applied (including through injunction) while litigation is proceeding.
 - The Court is expected to rule on the issue this Term; any decision it makes will have significant implications for business.
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A Case on Birthright Citizenship

The Fourteenth Amendment [states](#) in part that “[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.” It overturned the Supreme Court’s 1857 decision in [Dred Scott v. Sandford](#) that denied citizenship to Blacks on the basis of race.

The current case arises from the President’s [Executive Order](#) attempting to end birthright citizenship to all children born in the US (*jus soli*), denying it to the children of aliens born here. (As such, the Order contradicts the direct holding of [US v. Wong Kim Ark](#) (1898) that the Fourteenth Amendment “affirms the ancient and fundamental rule of citizenship by birth within the territory, including all children here born of resident aliens.”)

This year, several US District Courts, including those in [Washington, Massachusetts](#), and Maryland, enjoined the Executive Order. A US District Judge in Seattle [called](#) the Order “blatantly unconstitutional” in a suit brought by a number of states, offering grounds for issuing a nationwide injunction.

Strictly speaking, if a judge finds an Executive Order or regulation invalid or enters a stay temporarily or permanently barring enforcement of it, the President is bound to comply with the decision under the doctrine of the separation of powers. Otherwise, the President would be taking on judicial functions that rightly belong to the courts. Of course, if an Order or regulation is barred by a US district judge, the Administration can appeal, and if a circuit court continues to block the action, it can then appeal to the Supreme Court, as has happened now.

However, in this emergency docket litigation at the Supreme Court, the Administration did not request that the Court review the substance of the decisions against the Executive Order. Instead, the Administration asked for review only on the narrower grounds of whether the courts exceeded their powers by issuing nationwide injunctions rather than injunctions applying only to the parties in the case. If the Administration were to win, then presumably the injunctions against the Order would apply only in those judicial districts, while in most of the country, the Executive Order restricting birthright citizenship would apply. Potentially, a decision in favor of the Administration’s position could affect other nationwide injunctions that have restricted Administration policies, such as those affecting termination of some Federal employees.

Injunctions and Presidential Power

From one perspective, courts have stated that injunctions are a “[drastic](#)” and even “[extraordinary](#)” remedy which should be used sparingly. They generally require some showing of irreversible harm (for a temporary restraining order if the injunction is not granted. From another perspective, however, when the issues the litigation raises are broader, there is a strong interest in ensuring that the law is uniformly applied to all similarly situated parties. To illustrate this, consider two situations. In the first, a judge might enjoin a particular action (for instance, construction of a highway) pending litigation because the actual construction of the

highway, were it to proceed, would cause irreparable harm to neighboring homeowners and because in the event the court eventually rules in favor of the plaintiffs, its remedies (for instance, removing the highway) would be limited or impractical. In the second case, absent a power to issue a universal injunction, a regulation of universal application (for instance a rule imposing a fee for obtaining a license or government permit) would be limited to the judicial district in which the injunction is granted, leading to a situation in which the regulation is valid in most districts and invalid in one.

Opponents [argue](#) that because the Constitution gives courts power only on “cases or controversies,” injunctions should apply only to the specific parties to litigation. Proponents respond that in cases which have nationwide application (for instance litigation challenging a regulation), the “case” has nationwide effects – particularly if the losing party is the Federal Government, which has nationwide authority, then a District Judge should be able to make these rulings in the interests of justice and uniformity while litigation proceeds.

Trends in Nationwide Injunctions

While there is [no](#) standard definition of a nationwide injunction, it is clear that the number of nationwide injunctions has expanded dramatically since 2015. While counts differ (based on different criteria used to analyze what constitutes an “injunction,” the overall trend has clearly been upwards. (The Department of Justice under the first Trump Administration [counted](#) 12 under George W. Bush, 19 under Obama, and 55 under the first Trump Administration (to February 2020); the Harvard Law Review counted six under Bush, 12 under Obama, 64 for the first Trump Administration, and 14 from the first three years of the Biden Administration. In March 2025, the Congressional Research Service [counted](#) a total of 86 from the first Trump Administration and 28 from the Biden Administration.)

As these figures imply, injunctions have been used against significant policy initiatives of Presidents of both parties; for instance, to [stop](#) the Obama Administration’s Deferred Action for Parents of Americans and Deferred Action for Childhood Arrivals (DACA) [programs](#). Later, Texas Attorney General Ken Paxton [requested](#) a nationwide injunction against DACA. Injunctions were used to prevent the Biden Administration enforcing its [overtime](#) regulations, its proposed [student loan forgiveness](#), and the FCC to stop its regulations on [net neutrality](#). Notably, a nationwide injunction was used as well in the [injunction](#) against the FDA’s decades-old approval of mifepristone, issued in the Northern District of Texas, which was followed by a separate [injunction](#) in the Eastern District of Washington in support of the FDA.

Nationwide injunctions have also been issued frequently in the current Administration, not only in birthright citizenship cases but also in cases involving the work of the Department of Government Efficiency (DOGE), and proposed terminations of Federal employees (many agencies have employees posted in multiple judicial districts, an argument in favor of a nationwide injunction).

Oral Argument

At oral argument, the Court appeared divided, though less so when the discussion strayed into the underlying substance of birthright citizenship.

States opposing the Executive Order argued in contrast that forbidding universal injunctions in this context would lead to a “patchwork” system of citizenship, with the potential result that a person could be a citizen in one judicial district or state but not in another. Solicitor General Sauer [took](#) a strong stance against universal injunctions, saying that the district judges went beyond their authority. In addition, the Solicitor General stated that the Administration would only “generally” follow orders of appellate courts rather than automatically following them, a position that angered Justice Amy Comey Barrett.

While Justice Clarence Thomas [noted](#) that “[w]e survived until the 1960s without universal injunctions,” other Justices expressed concern about the “patchwork” of citizenship that could result if the Court accepts the Administration’s position (a parallel to the concerns of many businesses arguing against state regulation of new technologies on the grounds that this would lead to a “patchwork” of regulation rather than one regulation applicable to the entire country).

Class-Action Lawsuits as an Alternative?

The Solicitor General suggested that class-action lawsuits could be an alternative to the broad use of nationwide injunctions. But as many businesses have [experienced](#), class-action litigation is generally slow and expensive – it takes time to identify and [certify](#) a class – and the result would essentially be to forbid emergency relief in favor of a potential permanent decision, considerably later. In this instance, forcing a class-action remedy would dramatically expand the President’s powers and leave the Order intact (with questions as to who holds citizenship despite the precedent of *Wong Kim Ark*) while litigation proceeds. This concern led to Justice Elena Kagan [noting](#) that “untold number of people” might not receive US citizenship despite direct Supreme Court precedent, a position echoed even more strongly by Justice Sonia Sotomayor.

The Substance of the Underlying Case

Given *Wong Kim Ark*, many observers expect the Court ultimately to reaffirm the traditional doctrine of birthright citizenship as *jus soli*. The Administration has lost in every court that has considered the issue; as Justice Kagan [asked](#) the Solicitor General, “Why would you ever take this case to us?” The Fourteenth Amendment was adopted in part to have a national standard for citizenship rather than permitting it to be determined by state – it defines citizens as citizens of both the US “and of the State wherein they reside.” (Both sides agree that the Amendment was adopted to overturn *Dred Scott*, but the Administration contends that it was only intended to apply to those formerly enslaved and their descendants.)

Regulatory Implications of Banning Nationwide Injunctions

While the current system can be unwieldy, nationwide injunctions have been issued with favorable results for business organizations that have brought litigation (as with the overtime regulation). If that decision had not been accompanied by a nationwide injunction, then businesses would have had to give more favorable overtime provisions to different employees in different districts – which would be quite burdensome.

Further with no nationwide injunctions, and the Administration seemingly determined to repeal many regulations directly without using regular notice-and-comment proceedings, instead of putting repeal on a nationwide hold, the situation would be flipped, and the regulation would presumably be repealed in all judicial districts except the one in which the injunction was issued, raising difficulties for businesses or business organizations that might wish to challenge the repeal on Administrative Procedure Act or other grounds.

In short, a decision against nationwide injunctions still provides little certainty for business: the possibility always exists that a court could decide that the repeal was invalid, leaving the old regulation still in force. And in the meantime, it is clearly in force in that one judicial district. Using the overtime rule as an example, a restaurant chain would still be subject to differing wage rules based on each of the judicial districts in which it has restaurants -- a confusing situation, in which similarly situated employees would be subject to different Federal wage regulations.

Conclusion

The proliferation of nationwide injunctions does raise serious concerns, including the potential for the seeming politicization of the courts. Plaintiffs are often tempted to engage in “[forum shopping](#),” seeking to find a court likely to be more favorable to their case. Legal scholar Erwin Chermensky [comments](#) that “[l]itigants should not be able to handpick a judge who can then issue a nationwide injunction throwing the entire country into chaos.” But reforming forum shopping is quite difficult, and even the Supreme Court was [skeptical](#) earlier this year of arguments based on forum shopping concerns rather than the text of a law under review, even as it accepted a case from the Fifth Circuit that raised those concerns.

While the Administration characterized its request to let enforcement of the Order proceed in most of the country as “modest,” in fact it raises quite substantial issues on both procedure and substance. The Court itself showed the importance of the case by agreeing to hear oral arguments unusually late in its Term.

There are clearly cases that raise significant Constitutional concerns and those in which anything other than a universal injunction is both impractical and would lead to unjust results, including on those not a party to the litigation. So, it seems unlikely that the Court would issue a sweeping rule against universal injunctions and would likely prefer to keep its holding narrow.

What should rightly be a case about the extent of judicial powers and the practice of the Judicial Branch is in effect becoming a case about the powers of the Executive Branch. Whether these injunctions concern a regulation, Executive Order, or other action, at base, this case is about the extent of Presidential powers and specifically on whether the President's determination must remain in place until any associated litigation ends.

If the Administration takes the position that Congress or the judiciary cannot intrude on its powers, and that Congress [cannot](#) delegate its powers, so the Court could easily take the position that the Judicial Branch cannot simply, in effect, delegate *its* powers to the Executive Branch. The Court's decision will have significant implications for business and business organizations that have been active in using the courts to seek clarity in regulation as well as for those groups that have challenged the Administration on other grounds.

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