The Heritage Foundation

LEGAL MEMORANDUM

No. 375 | MARCH 14, 2025

EDWIN MEESE III CENTER FOR LEGAL & JUDICIAL STUDIES

The Unitary Executive Meets the Unitary Judiciary: The Use of Nationwide Injunctions by U.S. District Courts

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KEY TAKEAWAYS

Supplying complete relief to a victorious party can be done without granting strangers the same judicially enforceable rights that a successful litigant enjoys.

Nationwide injunctions both cross that line and prevent the federal government from enforcing an act of Congress, executive order, or agency rule against nonparties.

Unless and until Congress endorses that practice, the federal courts should limit the reach of their judgments to only the parties to a lawsuit.

Introduction: The Practice of Issuing Nationwide Injunctions

The Unitary Executive Theory[1] posits that, by virtue of Article II of the U.S. Constitution, the President possesses "the executive Power"[2]—"all of it, in fact," as John Roberts, Chief Justice of the Supreme Court of the United States, once explained[3]—and that neither Congress nor the federal courts may interfere with his or her[4] authority except as necessary to ensure that the President complies with the Constitution or any applicable, constitutional acts of Congress.[5] Under that theory, the President alone may exercise whatever power the Constitution vests in him (such as the pardon power) and whatever powers Congress has granted him or anyone below him in the executive branch (any management power). In addition, as recent events demonstrate,[6] the President may

remove any "Officer of the United States"[7] (except for the Vice President[8]) without cause whenever the President chooses to replace him for any reason that he finds sufficient.[9]

Some federal courts have created their own version of that thesis—let's call it a Unitary Judiciary Theory—in cases involving injunctive relief. Ordinarily, when a plaintiff believes that damages awarded after the fact would not fully compensate for the harm that he might suffer, the plaintiff will seek an injunction to prevent the irreparable injury from occurring.[10] Injunctions entered in such cases identify the parties who may benefit from, and who are subject to, the injunction, and only those parties are subject to its commands.[11] But there is a category of cases—known as "public law litigation" or "institutional reform litigation"[12]—in which the plaintiff seeks not merely to avoid personal harm, but also and more importantly to reform a government institution, such as a school system, a penitentiary, a mental institution, or something else.[13] In some cases brought against a state or the federal government, a plaintiff might urge a federal district court to certify a statewide or nationwide class of parties under Rule 23 of the Federal Rules of Civil Procedure and, if a class is certified and the award is appropriate, seek an injunction benefitting the entire class.[14]

Over the past decade or so, however, some district courts, without certifying a nationwide class, have nonetheless entered nationwide relief against the federal government that is available to third parties.[15] That practice is an oddity in the law of equity. Nationwide injunctions have arisen, if not without any justification, at least without a settled consensus rationale for their use.[16] Known as "nationwide," "universal," or even (albeit playfully) "cosmic" injunctions, those orders bind the government to act (or refrain from acting) in any case against any party, including ones who were not parties to the lawsuit before the district court.[17] The justification for this extraordinary measure is that, once a court has ruled that the government will act unlawfully, the strong value in the even-handed administration of the law, supported by powerful judicial efficiency considerations, strongly militates in favor of allowing nonparties to secure the same legal protection as the successful plaintiff without the need for a separate lawsuit to secure that right.

That practice has given rise to an oddity in the law of remedies.[18] An injunction is an order to do or refrain from doing a particular unlawful activity or category of unlawful activities, a remedy that traces its lineage to the English Court of Chancery.[19] A plaintiff who has proven his case on the merits and established that he is at risk of suffering irremediable harm may ask a district court to enjoin the defendant, whether a private party or

government official, from causing such injury. Every federal district court injunction is "nationwide" in its scope because a victorious plaintiff can obtain relief wherever the defendant places the plaintiff at risk of harm. But the injunction applies only to the party identified in the judgment, not to strangers to the litigation. Yet that is what district courts have done in cases involving so-called nationwide injunctions: "[F]ederal courts are issuing injunctions that are universal in scope—injunctions that prohibit the enforcement of a federal statute, regulation, or order *not only against the plaintiff, but also against anyone*," even people who were not parties to the original case and therefore were not identified in the complaint.[20]

The legitimacy of that practice has become the subject of considerable controversy over the past few Administrations because some district courts regularly enjoined the federal government from applying a new legal interpretation or policy to anyone once the court had ruled it unlawful.[21] The use of nationwide injunctions reached its zenith during the first Trump Administration and continued during the Biden Administration,[22] albeit with lesser fury.[23] But the subject has resurfaced early in the second Trump Administration as parties affected by the blizzard of executive orders issued since January 20, 2025,[24] have resorted to court for relief.[25] Already, district judges have granted nationwide injunctions with respect to several of Trump's executive orders.[26]

These injunctions purport to cover nonparties on both sides of the "v."—that is, they protect non-plaintiffs from actions by non-defendants. For example, a district court judge in Maryland granted a nationwide injunction against parts of Trump's orders directing agencies to require federal contractors to certify that none of their diversity, equity, and inclusion programs violate federal civil rights laws.[27] The court purported to enjoin the defendants and "any other persons who are in active concert or participation with Defendants" from enforcing any requirements flowing from the enjoined portions of the orders against the plaintiffs and any "similarly situated" non-plaintiffs.[28] In other words, it enjoined everyone from "participating" in the enforcement of the order against everyone "similar" to the plaintiffs. Three other district courts granted comparable injunctions with respect to Trump's order on birthright citizenship,[29] order suspending a migrant resettlement program,[30] and order instructing agencies not to give grants to organizations that promote gender ideology.[31]

A month into Trump's first term, judges have already issued almost as many nationwide injunctions as they did during all eight years of the George W. Bush Administration.[32] "Nationwide injunctions are undeniably on the rise" regardless of which party occupies the White House,[33] and the

discussion about their use has not generated a consensus on their permissibility, utility, or wisdom.[34]

The rationale for the rise of nationwide injunctions is likely based on multiple factors,[35] such as the rise of a never-ending political campaign season;[36] the inability of Congress to compromise on legislation because of the nation's extreme political, economic, and social polarization, particularly in this century;[37] the increasing frequency of Presidents' unilateral attempts to fill the public policymaking void by issuing executive orders rather than negotiating with Congress over legislation;[38] and the evolution of "intellectual fashion regarding law and the judicial role."[39] Whatever the provenance of this development might be, no solution is preferable to a bad one, and the arguments in favor of nationwide injunctions are quite unpersuasive as a matter of law and policy.[40] In short, the effect of that practice is to place any of the 600-plus authorized federal district court judges[41] temporarily on a par with the Supreme Court of the United States because each one can halt a practice nationwide unless and until a higher court revises, reverses, or vacates its order or Congress modifies the underlying substantive law. Regardless of how attractive it might appear in our current political straits, that practice finds no support in the Constitution, the federal Judicial Code, or common law principles of issue or claim preclusion. Atop that, the issuance of nationwide injunctions for the benefit of strangers to litigation conflicts with the holdings and rationales of two Supreme court decisions: *Williams v. Zbaraz*[42] and *United States v. Mendoza*.[43] It is just a misguided attempt to use the federal judiciary to craft a judicial solution to a political problem.

Multiple Supreme Court Justices have noted that the issue is an important and recurring one that needs to be resolved.[44] It is likely that a case presenting that question will make its way to First Street, Northeast, over the next four years. When that occurs, the Supreme Court should admonish the federal courts to provide all appropriate relief to the successful party or parties in a particular lawsuit but should also direct the courts to refrain from legislating for the rest of the nation.[45] This type of relief is not among the ones that Mae West intended to include when she said, "Too much of a good thing can be wonderful."

The Constitution

Most of the Constitution's text, like much of the Convention of 1787 that created it,[46] is devoted to the creation, empowerment, and regulation of the Article I and II branches: Congress and the President. Article III occupies a

smaller place in the architecture of the new government. It says little that is relevant to the issue discussed here, but what it says does not support the practice of issuing nationwide injunctions of the type recently issued.

The Article III Vesting Clause authorizes federal courts to exercise the "judicial Power" to adjudicate specified "Cases" and "Controversies" in both "Law and Equity."[47] The Framers were familiar with the English legal system,[48] which the colonies had brought with them to the New World,[49] and the historical practices of the English common-law and equity courts give meaning to those terms.[50] That is, the new federal courts were responsible for answering questions of "Law and Equity" that would arise when they preside over "Trial[s]" in "criminal prosecutions" or "Suits at common law."[51] As James Madison, the father of the Constitution, explained, the federal courts were to resolve matters "of a Judiciary Nature."[52] With respect to "Equity," which was a separate judicial system in England dealing with (among other things) injunctive relief, "[t]he jurisdiction thus conferred," in the words of Justice Antonin Scalia, is the power "to administer in equity suits the principles of the system of judicial remedies...administered by the English Court of Chancery" at this nation's Founding.[53] The type of nationwide injunctions that district courts have issued against the Trump Administration lacks a pedigree in the equity courts of merry ol' England.[54]

Cognate provisions in the Constitution are helpful in defining what matters are "of a Judiciary nature."[55] Why? Because they grant exclusive lawmaking authority to Congress and the President, thereby impliedly foreclosing any exercise of "the judicial Power" in a manner that would replicate what only they may do.

Article I vests "[a]ll legislative Powers herein granted" in Congress, which textually distinguishes what Congress can produce from the type of "judgments" that courts may enter; creates requirements to hold office in that institution, none of which apply to federal judges;[56] and defines the Bicameralism and Presentment requirements necessary for a "Bill" to become a "Law."[57] That provision shows that the Framers distinguished between the "Law[s]" that Congress passes and the "judgments" that courts enter. The former are legislative products that govern the nation; the latter merely represent the adjudication by a court of the conflicting claims between two parties.[58] Judgments that closely resemble "Law[s]"—the infamous *Miranda* warnings spring readily to mind[59]—exceed the authority of the courts, whose remedial power is limited to entry of a judgment resolving a specific case[60] rather than the promulgation of rules for the overall governance of society.[61] As Professor Samuel Bray has put it, "Article III gives the federal courts the 'judicial Power,' which is a power to decide cases for parties, not questions for everyone."[62]

The Supreme Court's 1923 decision in *Frothingham v. Melon*[63] makes that point.[64] *Frothingham* involved a Tenth Amendment challenge, brought by the state of Massachusetts and a private party, to the Maternity Act, which created and funded a joint federal–state program to reduce maternal and infant mortality.[65] After concluding that Massachusetts could not bring that lawsuit,[66] the Court turned to the claim by the private party, Harriet Frothingham. The Court held unanimously that a court of equity could not entertain her lawsuit because the injury to her from the collection of a federal tax was so minimal as to be *de minimis*.[67] Allowing the lawsuit to go forward in equity, the Court noted, would permit anyone to bring such a claim, a result that not only had no precedent in its jurisprudence,[68] but also would result in the courts trespassing on Congress's legislative power.[69] Article III, the Court held, does not extend that far.

In creating this limited assignment of Article III responsibilities, the Framers rejected alternatives that would have allowed the federal courts to play a role in the Article I legislative and Article II managerial processes. England had a long history of courts serving in multiple governmental roles before the Framers assembled in Philadelphia in 1787.[70] Before William I's 1066 conquest of England, the Anglo–Saxon kings relied on a council of elders, called the *Witan*, to determine the governing tribal customs.[71] After William became king, the *Witan* became the *Curia Regis* (the King's Court), which could exercise legislative, executive, and judicial power.[72] Four centuries later, the Star Chamber, a court of general jurisdiction consisting of the king's councilors and common-law judges, emerged within the Privy Council, a collection of the king's general advisors.[73] Even after Parliament stripped the Privy Council of its domestic adjudicative authority during the Civil War, the council still dispensed justice and reviewed local colonial legislation like the bills adopted in America's 13 colonies.[74] The House of Lords also exercised both judicial and legislative power by serving as the highest court in England and one branch of a bicameral Parliament.[75] English law saw nothing improper in the same body wearing more than one lawmaking, law-enforcing, and law-adjudicating hat.[76]

The Framers also knew a local example of a system in which judges also functioned as legislators. The New York Constitution of 1777 established a Council of Revision containing judges as members even though the council rather than the governor had veto and revisionary power over legislation.[77] Persuaded by Montesquieu's separation-of-powers design, the Framers rejected that approach at the Constitutional Convention.[78] That is important because a universal injunction has more features in common with a "Law" than it has with a judgment in a "Case" or "Controversy." An

injunction is a coercive remedy used to enforce a court's judgment,[79] while "Law" governs everyone to whom its terms reach.[80]

Yes, a trial or appellate court's resolution of a dispute often requires the judge to make new law or to apply settled law to different facts, and the judgment entered in the case establishes the law between the partes. But that lawmaking occurs only at the micro level—that is, only for the parties to the case. That is what Justice Oliver Wendell Holmes meant by saying that "judges do and must legislate, but they can do so only interstitially; they are confined from molar to molecular motions."[81] By contrast, an act of Congress is an example of macro lawmaking because it governs everyone to whom its terms apply and is the product of old fashioned politicking from which the federal courts must abjure.[82] Said differently, an injunction is a coercive remedy used to enforce a court's judgment[83] and, as the Supreme Court has made clear, "should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs."[84] A nationwide injunction is certainly far more burdensome than an injunction limited to one or more plaintiffs, and it certainly shares more in common with a "Law" passed by Congress than it does with a judgment entered by a court in a particular case.[85]

Keep in mind that it is not the judgment that generates the law affecting other parties; the court's rulings on pure issues of law and mixed questions of law and fact, along with the doctrine of *stare decisis*, accomplish that result. That doctrine (generally speaking) treats established law as binding on everyone within a particular jurisdiction. A rule given *stare decisis* effect can benefit nonparties, and it might entitle them to prevail readily in a new lawsuit. But the law of judgments and the law of *stare decisis* do not completely overlap.[86] Most importantly, nonparties can invoke *stare decisis* principles to prevail in a case, but they cannot seek to hold a defendant in contempt of court, which can lead to fines or incarceration[87] for failing to follow the law in a particular jurisdiction; that requires a judgment the defendant has violated. For example, a circuit court's ruling not only gives rise to a judgment in favor of the prevailing party, but also serves as a binding precedent for all district courts in that circuit under standard *stare decisis* principles. But one circuit's ruling does not establish the law in any other circuit; the government may continue to litigate elsewhere to establish favorable law.[88] In fact, it is not uncommon for the circuit courts to disagree among each other over an issue of law or a mixed question of fact and law. By contrast, district court opinions have no *stare decisis* effect at all; they do not even bind the judge who issued the opinion, let alone any other court in that district or elsewhere.[89] The Framers' decision to limit

the federal courts to the micro-lawmaking that was the traditional work of the common-law courts—rather than the macro-lawmaking that is the responsibility of legislatures—is powerful evidence that federal courts may use an injunction to remedy only the injury suffered by the parties, not the nation.[90]

The Judicial Code

The Judicial Code does not grant the federal courts the power to transform "judgments" into "Laws," despite what some judges have concluded. None of the statutes creating federal jurisdiction to implement the "Case" or "Controversy" limitations in Article III authorize the courts to grant relief to third parties in the same manner that courts may award to parties or that Congress may accomplish through a generally applicable "Law."[91] Nor does Rule 65 of the Federal Rules of Civil Procedure, which addresses "Injunctions and Restraining Orders," fix necessary and sufficient criteria for entry of a nationwide injunction.[92] Consider also that declaratory relief was unknown to the common law[93] and that Congress had to pass the Declaratory Judgment Act to offer courts that opportunity.[94] Yet that statute makes the point that a federal court may declare rights and remedies only for the parties in a case by providing that "[i]n a case of actual controversy within its jurisdiction," a federal court "may declare the rights and other legal relations of any *interested party seeking such declaration*," thereby limiting equitable relief to the parties to a lawsuit.[95] Beyond that lies the realm of nationwide lawmaking, which, as explained above, is the exclusive responsibility of Congress.

Remember: As the Supreme Court has noted, Congress is under no obligation to grant federal courts the full extent of the jurisdiction or authority that Article III would permit.[96] Neither the Judiciary Act of 1789 nor any of its offspring granted federal courts the full extent of the judicial power available to them under Article III.[97] Congress also may limit the remedies that an Article III court may employ.[98] Those omissions are significant because they indicate that the ability to award nationwide injunctions is in no way a historic incident of the power of the federal judiciary to resolve cases and controversies. Nonparties can seek the same judicial relief that is awarded to a successful party in *Case A*, but strangers to that case must file their own lawsuit, *Case B*, to be able to receive the same injunctive relief.

In addition, the congressionally created architecture of the federal judiciary undermines any argument that nationwide injunctions are indispensable to the Article III "judicial Power."[99] Congress created one or more

district courts in each state[100] and collected those districts into 12 geographically defined circuits.[101] District courts are triers of fact, while circuit courts resolve appeals, but only over the districts within each respective circuit.[102] That dispersion is important for *stare decisis* purposes. A loss by the government in any one circuit does not bind the government nationwide, barring it from seeking to persuade other circuits that the first one to decide an issue got it wrong.[103] It may continue to defend its position in the other circuits and ultimately before the Supreme Court. That vertical and horizontal arrangement of the courts gives rise to a comfortable development of the law of *stare decisis* only within each circuit to maximize the opportunity for every aspect of an issue to be considered, an opportunity for development of the law that would be eliminated if any one district court could issue a decision binding across the nation just because the government was the losing party.

Allowing district courts to enter nationwide injunctions also would effectively nullify the class action certification requirements of Rule 23 of the Federal Rules of Civil Procedure.[104] One of the values of following Rule 23 is that it announces to the world that "This case is it, the case that will resolve this issue for everyone." Potential plaintiffs and the government both know that a particular case is Armageddon on a particular subject. District courts disregard Rule 23's requirements at their peril. The Supreme Court so ruled in *Baxter v. Palmigiano,* concluding that the district court erred by entering a judgment granting class-wide relief without first certifying a nationwide class.[105] If courts cannot grant class-wide judgments to an uncertified class, "it is nonsensical to allow them to grant the same relief to an uncertified class of everyone, everywhere."[106]

Some parties have argued that the Administrative Procedure Act (APA) authorizes district courts to issue nationwide injunctions against the government because it directs courts to "set aside" unlawful agency action.[107] That term, the argument goes, impliedly authorizes courts to invalidate an agency rule nationwide by vacating the rule.[108] That argument reads far too much into that two-word phrase, as Professor Bray has explained. Nationwide injunctions "were not contemplated when the APA was enacted" in 1946.[109] Moreover, in 1946, adjudications, not rulemaking, were the principal mechanism for agency lawmaking, and the choice of "set aside" is consistent with reversing adjudications because that was how "prior judicial usage" employed the phrase when reversing judgments.[110] Finally, it was settled law in 1946 that nonparties to a lawsuit did not benefit from a judgment entered in a party's favor.[111] Even in APA cases, therefore, the two-word phrase "set aside" is no support for the power to issue nationwide injunctions.

The Supreme Court's Case Law

Two Supreme Court decisions—*Williams v. Zbaraz*[112] and *United States v. Mendoza*[113]—also reveal that courts may not enter nationwide judgments benefitting nonparties absent express authority to that effect from Congress. Each case involved a factual pattern often seen in cases involving nationwide injunctions. One approached this problem from the front; the other, from the back. *Zbaraz* undermined the case for nationwide injunctions by recognizing that Article III requires a concrete dispute between identified parties in an actual "Case" or "Controversy;" *Mendoza* undermined the case for nationwide injunctions by creating a doctrine that prevented the federal government from suffering a playoff-like "One and done" outcome if it loses a lawsuit.

The plaintiffs in *Zbaraz* challenged the constitutionality of an Illinois law that declined to fund elective abortions[114] on the ground that the statute denied an indigent woman the right to obtain an abortion under the law created in *Roe v. Wade*.[115] The plaintiffs did not claim that the federal Hyde Amendment also infringed on their rights even though it imposed a parallel limit on federal reimbursement for elective abortions.[116] Nevertheless, the district court believed that the two statutes were closely interrelated and held both laws unconstitutional. The Supreme Court reversed, ruling that the district court "lacked jurisdiction to consider the constitutionality of the Hyde Amendment" for two reasons: None of the plaintiffs in *Zbaraz* had challenged the constitutionality of the Hyde Amendment, and the district court could have awarded the plaintiffs complete relief by entering an order that said nothing about the validity of the Hyde Amendment.[117] Under those circumstances, the Court reasoned, there was no "case or controversy sufficient to permit an exercise" of the Article III judicial power. *Zbaraz* therefore stands for the proposition that a district court lacks jurisdiction to grant relief to a prevailing party on an issue not in dispute in the case and unnecessary to fully remedy the plaintiff's injury.[118]

It follows logically that a district court lacks jurisdiction to award relief to a nonparty as to whom there is, by definition, no "Case" or "Controversy" with anyone before that party enters or files a lawsuit. If there was no controversy in *Zbaraz* between the plaintiffs and the federal government, as the Supreme Court held, there also would be no controversy between anyone on the sidelines of a lawsuit and the federal government. To be sure, third parties might object to whatever action the government is taking toward a party to litigation, and they might even have a legitimate claim of injury. But unless and until they become a party to an ongoing lawsuit or file an action

of their own, they have no greater entitlement to an injunction resting on the judgment of an Article III court than they would have if they bested a government representative in a law school debate.[119]

Mendoza involved the preclusive effect of a judgment entered against the federal government in an earlier lawsuit involving the same legal issue but different parties. The issue in dispute centered on the doctrines of issue and claim preclusion, historically known as collateral estoppel and *res judicata*. Each rule sought to simplify and reduce litigation by preventing identical parties from relitigating a final judgment entered in a lawsuit between them. For example, if *Party A* prevailed against *Party B* in a lawsuit, the final judgment resolved their dispute. That judgment, however, did not affect the rights of *Party C* (or *D* through *Z*) unless *C* had a relationship with *A* or *B (*known as being in "privity" with *A* or *B)* that was close enough to justify treating *C* as the alter ego of one of them.[120] Over time, critics argued that the issue and preclusion doctrines should apply more broadly,[121] and the Supreme Court ultimately agreed to revise the issue and claim preclusion doctrines under federal common law. In 1971, the Court decided in *Blonder-Tongue Laboratories v. University of Illinois Foundation*[122] that, in suit by *Party A* against *Party C*, *Party C* could make defensive use of a judgment against *A* in *A*'s prior suit against *Party B*. Eight years later, in *Parklane Hosiery Co. v. Shore*,[123] the Court allowed *Party C* to make "offensive" use of a judgment against *Party B* that was obtained in a prior suit brought by *Party A* against *Party B*.

Mendoza involved a 1942 amendment to the Nationality Act of 1940 that made it easier for foreigners who had served honorably in the U.S. military during World War II to become American citizens by, for example, waiving any residency requirement and permitting qualified applicants to be naturalized overseas rather than within the United States.[124] Unfortunately, the World War II Japanese occupation of the Philippines scuppered that plan, making naturalizations impossible until 1945.[125] Moreover, after gaining its independence from the United States in 1946, the Philippine government did not want to lose its citizens to this nation.[126] As a result, the Immigration and Naturalization Service (INS) did not send a representative to the Philippines until 1945 and even then temporarily halted all such naturalizations from October 1945 until August 1946.[127] The eligibility window under the amended Nationality Act of 1940, however, closed at the end of 1946.[128] Sergio Mendoza sued, arguing that his inability to apply for citizenship deprived him of due process of law. Pointing to the judgment entered against the government in an earlier lawsuit involving the same claim, the district court held that the government was precluded from

relitigating that issue in *Mendoza*. The district court entered judgment in Mendoza's favor on that ground.[129] The court of appeals affirmed, but the Supreme Court reversed.

Recognizing that the preclusive effect of a federal court judgment was a matter of federal law, the Court approached the issue in *Mendoza* by using the same common-law, cost-benefit, balancing decision-making process it had followed in *Blonder-Tongue* and *Parklane*. The Court noted, however, that the federal government is a unique litigant in federal court for two reasons: It was a party to a far larger number of cases than any private party was, and many constitutional issues arise only in the context of public litigation.[130] Those factors persuaded the Court that allowing a nonparty to bind the federal government whenever it lost a case would have serious adverse consequences for the legal system.

Allowing a nonparty to preclude the federal government from relitigating a claim that it has lost in a different court would severely hamper the Supreme Court's own decision-making ability.[131] Ordinarily, the Court declines to review an issue until after it has "percolated" in the lower courts, the legal profession, and the academy. Only after an issue has been fully thrashed out will the Court choose to decide it, because only then does the Court have the confidence that every argument on each side, every sub-issue that could potentially change the issue, has been identified and aired and every consequence, positive and negative, has been identified. That approach enables the Court to select the correct (or at least the best) answer to the issue.[132] Binding the government everywhere and forever once it loses an issue—particularly an issue of constitutional law—would jeopardize that approach, pithily described by Professor Bray as "[m]easure twice, cut once."[133] In addition, precluding the federal government from relitigating any adverse ruling would compel the government to appeal every adverse ruling, even if wisdom counseled against doing so in particular cases, to avoid having one district court judge set the law for the entire nation.[134] Finally, rather than leave the preclusive effect of a judgment adverse to the government to a case-by-case balancing of the equities associated with each lower court decision, given the uncertainty that such an approach would generate, the Court decided that a per se rule was necessary.[135] Accordingly, the Court held unanimously that a party cannot make offensive collateral estoppel use of an adverse final judgment against the federal government.[136]

Zbaraz distinguishes very practical lawsuits from academic debates. *Zbaraz* also makes it clear that a court may not enter judgment on an issue that is not in dispute between the parties. That being so, it should be immaterial whether that judgment embraces issues or people outside of the

original dispute. The Court made that point in *Hansberry v. Lee*,[137] holding that it is a violation of due process when a judgment binds a person who is not designated a party to the lawsuit outside the limited exception for class actions.[138] When a court purports to do that, it is no longer deciding a case or controversy; it is exercising Congress's power to make laws of general concern. But unlike Congress, the courts are not accountable to the people when they exercise legislative power. That choice is for Congress to undertake by passing a generally applicable "Law."

Mendoza complements *Zbaraz*. *Mendoza* ensures that no one adverse judgment can foreclose the federal government from implementing a statute or operating a program in connection with individuals not named in the judgment. *Mendoza* also avoids the unseemly forum shopping and asymmetric development of the law that a contrary rule would encourage. Keep in mind that there are hundreds of federal district court judges, and institutional litigants have every incentive to find one to rule in their favor. Congress has the power to decide whether to overrule or modify the *Mendoza* decision, because Congress can change the rules of issue or claim preclusion for the federal courts. We believe now, as we have concluded previously, that it would be a mistake for Congress to change the *Mendoza* rule.[139] But that would require Congress to legislate, to pass a "Law," which it has not yet done.

The legal and policy rationales that the Court found compelling in *Zbaraz* and *Mendoza* apply in any case involving a universal injunction. Little could be added to the Court's discussions in those cases to demonstrate why universal injunctions are inappropriate as a matter of law and unsound as a matter of policy. There is one point, however, that also needs to be made.

The ability to persuade a district judge to enter a nationwide injunction without certification of a nationwide class action exposes the federal judicial system to the criticism that it is susceptible to "judge shopping" to obtain "one ring to rule them all," as we have previously noted.[140] That problem is a serious one. "As a consequence of increased forum shopping and political gamesmanship, the increase in nationwide injunctions on highly politicized issues fuels the public's perception that the courts themselves are politicized and that federal judges are political actors."[141] It also is likely to prove corrosive over time. "Inserting the judiciary into quintessentially political fights, even when there is a substantial legal issue to be decided on recognizably legal grounds, plainly risks the perception that judges base decisions on political preferences, or at least are affected by those preferences," former Dean Ron Cass has warned.[142] "When 'judges in the "red state" of Texas halt Obama's policies, and judges in the "blue state" of

Hawaii enjoin Trump's,' it tests the limits of the public's imagination to argue that the federal judiciary is impartial, nonpartisan, and legitimate."[143]

As we learned from the federal government's actions during the COVID-19 pandemic, it can take very little to erode the trust gained over a lifetime of regulation, and once it is gone, it is exceptionally difficult to earn it back.[144] As a result, even if all of the policy arguments in favor of and against nationwide injunctions were in equipoise, the need to avoid their politicking effect on the federal courts should tip the scales against their approval.

Conclusion

Neither the Constitution, nor the Judicial Code, nor common-law principles of issue or claim preclusion authorize a federal court to award relief to individuals who are not parties to a particular "Case" or "Controversy." In fact, the Constitution implicitly prohibits any such practice by denying the judiciary the power to enter a judgment that is tantamount to a "Law," which only Congress may pass, or to exceed the "Case" or "Controversy" limitations placed on the federal courts by granting nonparties injunctive relief.

Federal courts may—and should—supply complete relief to a victorious party, but that can be done without granting strangers the same judicially enforceable rights that a judgment provides to a successful litigant. Nationwide injunctions not only cross that line, but also prevent the federal government from enforcing an act of Congress, executive order, or agency rule against nonparties. Unless and until Congress endorses that practice, the federal courts should limit the reach of their judgments to only the parties to a lawsuit. The Supreme Court would need to overrule its unanimous decision (on this point) in *Zbaraz* and its unanimous decision in *Mendoza* to uphold a nationwide injunction like the ones that have been entered against the government. That is as unlikely as it would be unwise.

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Appendix

Rule 65 of the Federal Rules of Civil Procedure provides as follows:

Rule 65. Injunctions and Restraining Orders

Currentness

(a) Preliminary Injunction.

(1) ***Notice.*** The court may issue a preliminary injunction only on notice to the adverse party.

(2) ***Consolidating the Hearing with the Trial on the Merits.*** Before or after beginning the hearing on a motion for a preliminary injunction, the court may advance the trial on the merits and consolidate it with the hearing. Even when consolidation is not ordered, evidence that is received on the motion and that would be admissible at trial becomes part of the trial record and need not be repeated at trial. But the court must preserve any party's right to a jury trial.

(b) Temporary Restraining Order.

(1) ***Issuing Without Notice.*** The court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if:

(A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and

(B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

(2) ***Contents; Expiration.*** Every temporary restraining order issued without notice must state the date and hour it was issued; describe the injury and state why it is irreparable; state why the order was issued without notice; and be promptly filed in the clerk's office and entered in the record. The order expires at the time after entry—not to exceed 14 days—that the court sets, unless before that time the court, for good cause, extends it for a like period or the adverse party consents to a longer extension. The reasons for an extension must be entered in the record.

(3) ***Expediting the Preliminary-Injunction Hearing.*** If the order is issued without notice, the motion for a preliminary injunction must be set for hearing at the earliest possible time, taking precedence over all other matters except hearings on older matters of the same character. At the hearing, the party who obtained the order must proceed with the motion; if the party does not, the court must dissolve the order.

(4) ***Motion to Dissolve.*** On 2 days' notice to the party who obtained the order without notice—or on shorter notice set by the court—the adverse

party may appear and move to dissolve or modify the order. The court must then hear and decide the motion as promptly as justice requires.

(c) Security. The court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained. The United States, its officers, and its agencies are not required to give security.

(d) Contents and Scope of Every Injunction and Restraining Order.

(1) ***Contents.*** Every order granting an injunction and every restraining order must:

(A) state the reasons why it issued;

(B) state its terms specifically; and

(C) describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required.

(2) ***Persons Bound.*** The order binds only the following who receive actual notice of it by personal service or otherwise:

(A) the parties;

(B) the parties' officers, agents, servants, employees, and attorneys; and

(C) other persons who are in active concert or participation with anyone described in Rule 65(d)(2)(A) or (B).

(e) Other Laws Not Modified. These rules do not modify the following:

(1) any federal statute relating to temporary restraining orders or preliminary injunctions in actions affecting employer and employee;

(2) 28 U.S.C. § 2361, which relates to preliminary injunctions in actions of interpleader or in the nature of interpleader; or

(3) 28 U.S.C. § 2284, which relates to actions that must be heard and decided by a three-judge district court.

(f) Copyright Impoundment. This rule applies to copyright-impoundment proceedings.

Endnotes

1. For a discussion of the Unitary Executive Theory, see Steven G. Calabresi & Christopher S. Yoo, The Unitary Executive: Presidential Power from Washington to Bush (2008).
2. U.S. Const. art. II, § 1, cl. 1 ("The executive Power shall be vested in a President of the United States of America.").
3. Seila Law LLC v. Consumer Financial Protection Bureau, 591 U.S. 197, 203 (2020) ("Under our Constitution, the 'executive Power'—all of it—is 'vested in a President,' who must 'take Care that the Laws be faithfully executed.' Art. II, § 1, cl. 1; *id.*, § 3.").
4. Hereafter, our reference to either sex should be read as a reference to both unless the context indicates otherwise.
5. *See* Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 585 (1952) ("The President's power, if any, to issue the order must stem either from an act of Congress or from the Constitution itself.").
6. *See*, *e.g.*, Eric Schmitt et al., *Trump Fires Joint Chiefs Chairman Amid Flurry of Dismissals at Pentagon*, N.Y. Times, Feb. 21, 2025, https://www.nytimes.com/2025/02/21/us/politics/trump-fires-cq-brown-pentagon.html?searchResultPosition=1.
7. U.S. Const. art. II, § 2, cl. 2; *id.* § 2, cl. 3. The term "Officers of the United States" refers to every federal employee to whom the President delegates authority to exercise the "executive Power." *See* Buckley v. Valeo, 424 U.S. 1, 126 (1976) ("[A]ny appointee exercising significant authority pursuant to the laws of the United States is an 'Officer of the United States' and must, therefore, be appointed in the manner prescribed by [the Appointments Clause]."); *see also* Edmond v. United States, 520 U.S. 651, 662 (1997); Weiss v. United States, 510 U.S. 163, 168–70 (1994).
8. Who is elected to the same four-year term of office as the President and cannot be removed except by impeachment and conviction. U.S. Const. art. II, § 1, cl. 1 ("[The President] shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows....").
9. The statement in the text follows from the Supreme Court's 1926 decision by Chief Justice William Howard Taft in *Myers v. United States*, 272 U.S. 52, that the President may remove executive branch officials without proving a cause for the action. That is the baseline rule. Since then, the Court has adopted two narrow exceptions. *Seila Law*, 591 U.S. at 204 ("Our precedents have recognized only two exceptions to the President's unrestricted removal power. In *Humphrey's Executor v. United States*, 295 U.S. 602 (1935), we held that Congress could create expert agencies led by a *group* of principal officers removable by the President only for good cause. And in *United States v. Perkins*, 116 U.S. 483 (1886), and *Morrison v. Olson*, 487 U.S. 654 (1988), we held that Congress could provide tenure protections to certain *inferior* officers with narrowly defined duties.'). Recently, the U.S. Department of Justice has concluded that the Supreme Court's post-*Morrison* decisions in cases like *Seila Law* have so undermined the Court's decisions in *Humphrey's Executor*, *Perkins*, and *Morrison* that the Justice Department will no longer defend the constitutionality of laws that restrict the President's Article II removal authority. *See* Letter from Sarah M. Harris, Acting Solicitor General, to the Hon. Charles Grassley, President Pro tempore, U.S. Senate, Re: Multilayer Restrictions on the Removal of Administrative Law Judges (Feb. 20, 2025), https://static01.nyt.com/newsgraphics/documenttools/dffde13e0617be58/18df4de7-full.pdf. Whether (and, if so, when) the Supreme Court will revisit those three decisions remains to be seen.
10. A successful plaintiff is not entitled to an injunction as a matter of course; he must also establish that it is necessary to prevent an injury for which damages are insufficient. *See*, *e.g.*, Weinberger v. Romero-Barcelo, 456 U.S. 305, 312 (1982) ("The Court has repeatedly held that the basis for injunctive relief in the federal courts has always been irreparable injury *and the inadequacy of legal remedies*.") (emphasis added).
11. *See* James Barr Ames, *The Origin of Uses*, *in* Lectures on Legal History and Miscellaneous Legal Essays 233, 233 (1913) ("[T]he principle 'Equity acts upon the person' is, and always has been, the key to the mastery of equity."); James Barr Ames, *The Origin of Uses and Trusts*, 21 Harv. L. Rev. 261, 261–62 (1908).
12. *See*, *e.g.*, Abram Chayes, *The Role of the Judge in Public Law Litigation*, 89 Harv. L. Rev. 1281 (1976); Note, *The Modification of Consent Decrees in Institutional Reform Litigation*, 99 Harv. L. Rev. 1020 (1986).
13. *See*, *e.g.*, Trump v. Hawaii, U.S. 682 (1979) (a ban on travel into the United States from certain nations); Ruiz v. Estelle, 679 F.2d 1115 (5th Cir.), *modified*, 688 F.2d 266 (1982) (litigation challenging the conditions of confinement in the Texas prison system).
14. The Supreme Court approved that practice in *Califano v. Yamasaki*, 442 U.S. 682, 699–701 (1979) (approving a nationwide class action against the federal government under Rule 23).
15. *See*, *e.g.*, Dep't of Homeland Sec. v. New York, 140 S. Ct. 599, 600 (2020) (Gorsuch, J., concurring) (speaking of "cosmic" injunctions); Trump v. Hawaii, 585 U.S. at 713 n.1 (Thomas, J., concurring) (noting a preference for the term "universal" injunction). The nomenclature is misleading. A prevailing party can rely on a final judgment anywhere. *See*, *e.g.*, Steele v. Bulova Watch Co., 344 U.S. 280, 289 (1952); Leman v. Krentler-Arnold Hinge Last Co., 284 U.S. 448, 452 (1932); Zayn Siddique, *Nationwide Injunctions*, 117 Colum. L. Rev. 2095, 2100 (2017) (quoting the "central and oft-cited rule of equitable relief: '[E]quity acts *in personam*.'") (footnote omitted). A third party cannot. *See* Paul J. Larkin & GianCarlo Canaparo, *One Ring to Rule Them All: Individual Judgments, Nationwide Injunctions, and Universal Handcuffs*, 96 Notre Dame L. Rev. Reflection 55, 66–72 (2020).
16. "[T]he rise of the national injunction seems to have been gradual and unplanned. The best understanding of the evidence is that the national injunction went from being unthinkable to being thinkable without any sharp turns or decisive moments. What made it thinkable was not a single unifying cause, but rather shifts in how judges thought about legal challenges and invalid laws, accompanied by changes in agency practice and new

reasons for judicial confidence." Samuel L. Bray, *Multiple Chancellors: Reforming the National Injunction*, 131 Harv. L. Rev. 417, 456–57 (2017) (footnote omitted; emphasis in original) [hereafter Bray, *Multiple Chancellors*]. As one commentator explained the state of the law in 2017, "courts determine the geographic scope of an injunction in an ad hoc manner, relying on an undisciplined mix of procedural and substantive considerations. In response to this perceived disuniformity, scholars have suggested various ways to limit the reach of injunctive relief, such as applying multifactor balancing tests, adopting a presumption against certifying classes when the government is a defendant, adopting a presumption against certifying nationwide classes in constitutional and statutory challenges, applying equal protection and severability analysis when deciding the breadth of relief, and adopting a bright-line rule that limits injunctions only to the plaintiffs." Siddique, *supra* note 15, at 2100 (footnotes omitted).

17. *See* Amanda Frost, *In Defense of Nationwide Injunctions*, 93 N.Y.U. L. Rev. 1065, 1071 (2018) (defining "the term 'nationwide injunction'" as "an injunction at any stage of the litigation that bars the defendant from taking action against individuals who are not parties to the lawsuit in a case that is not brought as a class action."). That term is misleading, though, because district courts may enjoin a defendant's proven unlawful conduct anywhere. The question is whether nonparties to a case can benefit from an injunction against the defendant, not where that injunction applies or can be enforced. *Id*.

18. The propensity to overuse nationwide injunctions appears to be a particular problem in public-law cases. In private-law cases, the courts use them to ensure that a successful plaintiff can obtain complete relief. *See* Siddique, *supra* note 15, at 2120 ("An examination of the private law cases [up to 2017] suggests that judges are, either overtly or implicitly, defining the geographic scope of injunctions in accordance with what is required to afford complete relief to a meritorious plaintiff."). By contrast, in public-law cases, the courts appear to use them as the judicial equivalent of a "law" that only Congress may pass. *See id.*

19. Bray, *Multiple Chancellors*, *supra* note 16, at 425.

20. *Id.* at 419 (emphasis in original).

21. *See*, *e.g.*, Int'l Refugee Assistance Project v. Trump, 857 F.3d 554, 572 (4th Cir.), *as amended* (May 31, 2017), *as amended* (June 15, 2017), *vacated as moot and remanded sub nom*. Trump v. Int'l Refugee Assistance, 583 U.S. 912 (2017); Washington v. Trump, 847 F.3d 1151, 1169 (9th Cir. 2017); Texas v. United States, 86 F. Supp. 3d 591, 677 (S.D. Tex.), *aff'd*, 809 F.3d 134 (5th Cir. 2015), *aff'd by an equally divided Court*, 579 U.S. 547 (2016); Guilford Coll. v. Wolf, No. 18-CV-891, 2020 WL 586672, at *12 (M.D.N.C. Feb. 6, 2020); HIAS, Inc. v. Trump, 415 F. Supp. 3d 669, 686–87 (D. Md. 2020); El Paso County v. Trump, 407 F. Supp. 3d 655 (W.D. Tex. 2019), *injunction vacated*, No. 19-51144 (5th Cir. Jan. 8, 2020); City of Chicago v. Sessions, 264 F. Supp. 3d 933, 951 (N.D. Ill. 2017), *aff'd*, 888 F.3d 272 (7th Cir. 2018), *reh'g en banc granted in part, opinion vacated in part*, No. 17-2991, 2018 WL 4268817 (7th Cir. June 4, 2018), *vacated*, Nos. 17-2991 & 18-2649, 2018 WL 4268814 (7th Cir. Aug. 10, 2018) (vacating only the court's previous decision to rehear the case *en banc*); Darweesh v. Trump, No. 17 Civ. 480 (AMD), 2017 WL 388504, at *1 (E.D.N.Y. Jan. 28, 2017); Jeffrey A. Rosen, Deputy Att'y Gen., U.S. Dep't of Just., Opening Remarks at Forum on Nationwide Injunctions and Federal Regulatory Programs (Feb. 12, 2020) (noting that nationwide injunctions have become "almost a routine step in a regulation or policy's lifecycle."). *See generally* Larkin & Canaparo, *supra* note 15, at 56 n.1 (collecting cases).

22. *See*, *e.g.*, FDA v. All. for Hippocratic Med., 602 U.S. 367 (2024) (a nationwide injunction against FDA approval of an abortifacient drug).

23. U.S. Department of Justice figures reveal that there were six nationwide injunctions during the George W. Bush Administration, 12 during the Obama Administration, 64 during the first Trump Administration, and 14 during the Biden Administration. *Developments in the Law: Court Reform*, Ch. 4—Nationwide Injunctions, 134 Harv. L. Rev. 1701, 1705 Tbl. 1 (2024) (hereafter *Developments*).

24. *See* Federal Register 2025 Donald J. Trump Executive Orders, https://www.federalregister.gov/presidential-documents/executive-orders/donald-trump/2025 (listing Executive Orders Nos. 14147 to 14214 issued from January 20 through February 14).

25. *See*, *e.g.*, Campbell Robertson & Mattathias Schwartz, *Judge Blocks Trump's Birthright Citizenship Order Nationwide*, N.Y. Times, Feb. 5, 2025, https://www.nytimes.com/2025/02/05/us/trump-birthright-citizenship.html.

26. *See*, *e.g.*, Pacito v. Trump, No. 2:25-CV-255-JNW, 2025 WL 655075 (W.D. Wash. Feb. 28, 2025) (granting a nationwide injunction against enforcing an executive order suspending a program that resettled certain migrants into the United States); Nat'l Ass'n of Diversity Officers in Higher Educ. v. Trump, No. 1:25-CV-00333-ABA, 2025 WL 573764 (D. Md. Feb. 21, 2025) (granting a nationwide injunction against enforcing parts of Trump's orders pertaining to diversity, equity, and inclusion in federal contracting); PFLAG, Inc. v. Trump, No. CV 25-337-BAH, 2025 WL 510050, at *2 (D. Md. Feb. 14, 2025) (granting a nationwide injunction with respect to Trump's order instructing agencies not to give grants to organizations promoting gender ideology); Doe v. Trump, No. CV 25-10135-LTS, 2025 WL 485070, at *15 (D. Mass. Feb. 13, 2025) (granting a nationwide injunction with respect to Trump's order articulating the policy of his Administration with respect to birthright citizenship); State v. Trump, No. C25-0127-JCC, 2025 WL 415165 (W.D. Wash. Feb. 6, 2025) (same); CASA, Inc. v. Trump, No. CV DLB-25-201, 2025 WL 408636 (D. Md. Feb. 5, 2025) (same).

27. *Nat'l Ass'n of Diversity Officers in Higher Educ.*, 2025 WL 573764.

28. *Id*. at *29–32.

29. State v. Trump, 2025 WL 415165 (imposing a "nationwide injunction" without specifying whom, besides the plaintiffs and defendants, the injunction covers); Doe v. Trump, No. CV 25-10135-LTS, 2025 WL 485070, at *15 (D. Mass. Feb. 13, 2025) (granting a nationwide injunction with respect to nonparty states, but not with respect to nonparty individuals, and extending it to anyone "acting in concert" with the defendants); CASA, 2025 WL 408636 (granting a nationwide injunction against the defendants and "their officers, agents, servants, employees, and attorneys, and any other persons who are in active concert or participation with them").

30. *Pacito*, 2025 WL 655075 (same language as in *CASA*).

31. *PFLAG*, 2025 WL 510050 (granting a nationwide injunction without specifying to whom it applies).
32. *Developments*, *supra* note 23, at 1705 Tbl. 1.
33. *Id*. at 1707.
34. *See* Siddique, *supra* note 15, at 2139–40 ("At bottom, the status quo presents two essential problems. First, there is no satisfactory account of when courts actually issue nationwide injunctions. Both casual and sophisticated observers may be inclined to dismiss nationwide injunctions they disagree with as unprecedented judicial power grabs, while hailing the ones they agree with as routine exercises of judicial discretion. But absent a shared framework for contextualizing nationwide injunctions, it is difficult to meaningfully debate whether a particular injunction is within or outside the bounds of accepted judicial authority. Second, there is little clarity about what principle should guide the decision of whether or not to issue a nationwide injunction. Is the variation in how courts define the geographic scope of injunctions a desirable consequence of largely unlimited judicial discretion, or should there be some uniform rule with which to determine injunctive scope?") (footnote omitted).
35. *See*, *e.g.*, Charlton C. Copeland, *Seeing Beyond Courts: The Political Context of the Nationwide Injunction*, 91 U. Colo. L. Rev. 789, 808–32 (2020).
36. *See*, *e.g.*, Frances E. Lee, Insecure Majorities: Congress and the Perpetual Campaign (2016).
37. *See*, *e.g.*, Copeland, *supra* note 35 at 808–32.
38. Such as then-President Barack Obama's famous "I've got a pen, and I've got a phone" strategy. *See*, *e.g.*, Clyde Wayne Crews, *Presidential Documents: A Baseline to Curb the Pen and Phone*, Forbes, Sept. 25, 2024, https://www.forbes.com/sites/waynecrews/2024/09/25/presidential-documents-a-baseline-to-curb-the-pen-and-phone/.
39. Bray, *Multiple Chancellors*, *supra* note 16, at 445 ("The explanation is historical, and it blends doctrine, the institutional structure of courts, and ideology (in the sense of changes in intellectual fashion regarding law and the judicial role). The necessary condition for the problems associated with the national injunction was a structural change: the shift from a one-chancellor system to a multiple-chancellor system. For the federal courts, that shift occurred in 1789. The shift to multiple Chancellors was necessary but not sufficient to create the forum-shopping and conflicting-injunction problems. [¶] What made the vulnerabilities of the multiple-chancellor system manifest were two ideological shifts. The first was a shift in the conception of injunctions against federal officers, from thinking of them as essentially antisuit to thinking of them as freestanding challenges to a statute, regulation, or order. The second was a shift in the conception of legal invalidity, from an invalid law being one a judge merely failed to apply because a higher law controlled, to the conception of a judge 'striking down' and thus removing from operation an invalid law. In addition to these two ideological shifts, there were other changes that might have made national injunctions seem more natural: familiarity with statutes that concentrated judicial review in a single court, greater use of federal agency rulemaking and pre-enforcement challenges, and renewed judicial confidence after *Brown v. Board of Education*.").
40. For the debate over this practice, see, in addition to the literature cited elsewhere in this Legal Memorandum, Spencer E. Amdur & David Hausman, Response, *Nationwide Injunctions and Nationwide Harm*, 131 Harv. L. Rev. F. 49 (2017); Samuel Bray, *Response to The Lost History of the "Universal" Injunction*, Yale J. on Reg. (Oct. 18, 2019), https://www.yalejreg.com/nc/a-response-to-the-lost-history-of-the-universal-injunction-by-samuel-bray/ (last visited Feb. 21, 2025); Ronald A. Cass, *Nationwide Injunctions' Governance Problems: Forum-Shopping, Politicizing Courts, and Eroding Constitutional Structure*, 27 Geo. Mason L. Rev. 29 (2019); Zachary D. Clopton, *National Injunctions and Preclusion*, 118 Mich. L. Rev. 1 (2019); Kate Huddleston, *Nationwide Injunctions: Venue Considerations*, 127 Yale L.J.F. 242 (2017); Suzette M. Malveaux, Response, *Class Actions, Civil Rights, and the National Injunction*, 131 Harv. L. Rev. F. 56 (2017); Michael T. Morley, *Nationwide Injunctions, Rule 23(b)(2), and the Remedial Powers of the Lower Courts*, 97 B.U. L. Rev. 615 (2017); Doug Rendleman, *Preserving the Nationwide National Government Injunction to Stop Illegal Executive Branch Activity*, 91 U. Colo. L. Rev. 887 (2020); Mila Sohoni, *The Lost History of the "Universal" Injunction*, 133 Harv. L. Rev. 920 (2020); Alan M. Trammell, *Demystifying Nationwide Injunctions*, 98 Tex. L. Rev. 67 (2019); Howard M. Wasserman, *"Nationwide" Injunctions Are Really "Universal" Injunctions and They Are Never Appropriate*, 22 Lewis & Clark L. Rev. 335 (2018); Russell Weaver, *Nationwide Injunctions and the Administrative State*, 89 Brook. L. Rev. 853 (2024). *See generally Developments*, *supra* note 23, at 1702 nn.14–15 (collecting scholarship arguing pro and con).
41. United States Courts, Overview of the Judiciary 2 (undated), https://www.forbes.com/sites/waynecrews/2024/09/25/presidential-documents-a-baseline-to-curb-the-pen-and-phone/ ("There are 94 district courts in the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories of Guam, the U.S. Virgin Islands, and the Northern Mariana Islands.... There are 677 authorized Article III district court judgeships nationwide.") (last visited Feb. 20, 2025).
42. 448 U.S. 358 (1980); *see* Larkin & Canaparo, *supra* note 15, at 66–72.
43. 464 U.S. 154 (1984).
44. *See*, *e.g.*, Summers v. Earth Island Inst., 555 U.S. 488, 500–01 (2009) (noting but not deciding the issue).
45. As some others have argued. *See*, *e.g.*, Bray, *Multiple Chancellors*, *supra* note 16, at 420 ("[T]his Article proposes a single clear rule for the scope of injunctions against federal defendants. A federal court should give a plaintiff-protective injunction, enjoining the defendant's conduct only with respect to the plaintiff. No matter how important the question and no matter how important the value of uniformity, a federal court should not award a national injunction.") (footnote omitted).
46. *See* Jack Rakove, Original Meanings: Politics and Ideas in the Making of the Constitution (1996).
47. *Id.* art. III, § 1; *id.* § 2 cl. 1; Grupo Mexicano de Desarrollo, S.A. v. All. Bond Fund, Inc., 527 U.S. 308, 318 (1999) (stating that the Judiciary Act of 1789 gave federal courts the "authority to administer in equity suits the principles of the system of judicial remedies which had been devised and was being administered by the English Court of Chancery at the time of the separation of the two countries.") (quoting Atlas Life Ins. Co. v. W.I.S., Inc., 306 U.S. 563, 568 (1939)).

48. *See*, *e.g.*, District of Columbia v. Heller, 554 U.S. 570, 593–94 (2008) (noting that Blackstone's "works" were "the preeminent authority on English law for the founding generation") (citation omitted).
49. For example, the colonies adopted criminal trial processes patterned after the ones used in England. *See*, *e.g.*, Douglas Greenberg, Crime and Law Enforcement in the Colony of New York, 1691–1776, at 127–32 (1974); Hugh Rankin, Criminal Trial Proceedings in the General Court of Colonial Virginia 109–13 (1965).
50. Larkin & Canaparo, *supra* note 15, at 59 ("Those terms draw their meaning not only from the assignment of responsibilities in Articles I and II, but also from the practices of the English common-law and equity courts. That is, the new federal courts were responsible for answering questions of 'Law and Equity' that arose while they presided over 'Trial[s]' in 'criminal prosecutions' or 'Suits at common law.'") (footnotes omitted). In the words of Justice Felix Frankfurter: "Both by what they said and by what they implied, the framers of the Judiciary Article gave merely the outlines of what were to them the familiar operations of the English judicial system and its manifestations on this side of the ocean before the Union. Judicial power could come into play only in matters that were the traditional concern of the courts at Westminster and only if they arose in ways that to the expert feel of lawyers constituted 'Cases' or 'Controversies.'... [E]ven as to the kinds of questions which were the staple of judicial business, it was not for courts to pass upon them as abstract, intellectual problems but only if a concrete, living contest between adversaries called for the arbitrament of law." Coleman v. Miller, 307 U.S. 433, 460 (1939) (Frankfurter, J., concurring).
51. U.S. Const. art. III, § 2, cl. 1; *id.* cl. 3; *id.* amend. VI; *id.* amend. VII.
52. 2 Records of the Federal Convention of 1787, at 430 (Max Farrand ed., 1966) (referencing the United States Supreme Court).
53. *Grupo Mexicano de Desarrollo*, 527 U.S. at 318 (citations and punctuation omitted); *see also* City of Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S. 687, 708–09 (1999).
54. *See* Bray, *Multiple Chancellors*, *supra* note 16, at 421 ("The federal courts are obligated to trace their equitable doctrines and remedies to the historic tradition of equity. In equity, however, injunctions did not control the defendant's behavior against nonparties.") (footnote omitted); *id*. at 425 ("In English equity before the Founding of the United States, there were no injunctions against the Crown. No doubt part of the explanation was the identification of the Chancellor with the King, an identification that was important in the early development and self-understanding of the Court of Chancery. Without injunctions against the Crown, it would be easy to see why there were no broad injunctions against the enforcement of statutes. There were sometimes suits to restrain the actions of particular officers against particular plaintiffs. And the Attorney General could be a defendant in Chancery in certain kinds of cases in which the interests of the Crown were not immediately concerned. Still, there was nothing remotely like a national injunction.") (footnotes omitted); *id*. at 427 ("These principles were carried over into American equity. A suit had to fall under one of the recognized heads of equity jurisprudence. Courts would 'take care to make no decree [that would] affect' the rights of nonparties.") (footnotes omitted); *id*. at 425–45 (finding no English or American historical pedigree in equity for nationwide injunctions); *id*. at 428 ("There were apparently no national injunctions against federal defendants for the first century and a half of the United States. They seem to have been rejected as unthinkable as late as *Frothingham v. Mellon*, [262 U.S. 447 (1923)] and to have been conspicuously absent as late as *Youngstown Sheet & Tube Co. v. Sawyer*[, 343 U.S. 579 (1952)]."); Owen W. Gallogly, *Equity's Constitutional Source*, 132 Yale L.J. 1213 (2023) (discussing the history of equity jurisdiction).
55. *See* Akhil Reed Amar, *Intratextualism*, 112 Harv. L. Rev. 747 (1999) (arguing that the Constitution should be read holistically).
56. U.S. Const. art. I, § 2, cls. 1–4; *id*. § 3, cls. 1–3; *id*. amend. XVII.
57. U.S. Const. art. I, § 7, cls. 2–3; INS v. Chadha, 462 U.S. 919 (1983).
58. As William Blackstone put it, "[f]inal judgements are such as at once put an end to the action, by declaring that the plaintiff has either entitled himself, or has not, to recover the remedy he sues for." 3 William Blackstone, Commentaries *398.
59. Miranda v. Arizona, 384 U.S. 436 (1966) (requiring a party in custody to be advised that he has a right to remain silent, to have an attorney present during any questioning, to free cable television, and to sing the blues before any questioning).
60. "What that means is this: in a criminal prosecution, a federal court can enter a judgment before trial that dismisses charges improperly brought. After trial, the court can order the accused to be punished or freed, depending on the jury's verdict, and impose a punishment identified by Congress in the act creating a criminal offense. In a civil action, a court can award the same type of monetary or injunctive relief available in England at law or equity when this nation came into being. That is all. The Article III adjudicative power vested in federal courts is not a charter to substitute appointed judges for elected officials. Nationwide injunctions differ markedly from the remedies contemplated by Article III because the former exceed the party-specific reach of the judgment and partake more of legislation." Larkin & Canaparo, *supra* note 15, at 61–62 (footnotes omitted).
61. "Equitable remedies, like remedies in general, are meant to redress the injuries sustained by a particular plaintiff in a particular lawsuit. When a district court orders the government not to enforce a rule against the plaintiffs in the case before it, the court redresses the injury that gives rise to its jurisdiction in the first place. But when a court goes further than that, ordering the government to take (or not take) some action with respect to those who are strangers to the suit, it is hard to see how the court could still be acting in the judicial role of resolving cases and controversies. Injunctions like these thus raise serious questions about the scope of courts' equitable powers under Article III." Dep't of Homeland Security v. New York, 140 S. Ct. 599, 600 (2020) (Gorsuch & Thomas, JJ., concurring).
62. Bray, *Multiple Chancellors*, *supra* note 16, at 421 (footnote omitted).
63. Reported *sub nom*. Massachusetts v. Melon, 262 U.S. 447 (2923).
64. *See* Bray, *Multiple Chancellors*, *supra* note 16, at 430–33.

65. *Id*. at 479, 482 ("What, then, is the nature of the right of the state here asserted and how is it affected by this statute? Reduced to its simplest terms, it is alleged that the statute constitutes an attempt to legislate outside the powers granted to Congress by the Constitution and within the field of local powers exclusively reserved to the states.").
66. *Id*. at 480–86.
67. *Id*. at 487 ("[T]he relation of a taxpayer of the United States to the federal government is very different. His interest in the moneys of the treasury—partly realized from taxation and partly from other sources—is shared with millions of others, is comparatively minute and indeterminable, and the effect upon future taxation, of any payment out of the funds, so remote, fluctuating and uncertain, that no basis is afforded for an appeal to the preventive powers of a court of equity.").
68. *Id*. at 487–88 ("The administration of any statute, likely to produce additional taxation to be imposed upon a vast number of taxpayers, the extent of whose several liability is indefinite and constantly changing, is essentially a matter of public and not of individual concern. If one taxpayer may champion and litigate such a cause, then every other taxpayer may do the same, not only in respect of the statute here under review, but also in respect of every other appropriation act and statute whose administration requires the outlay of public money, and whose validity may be questioned. The bare suggestion of such a result, with its attendant inconveniences, goes far to sustain the conclusion which we have reached, that a suit of this character cannot be maintained. It is of much significance that no precedent sustaining the right to maintain suits like this has been called to our attention, although, since the formation of the government, as an examination of the acts of Congress will disclose, a large number of statutes appropriating or involving the expenditure of moneys for nonfederal purposes have been enacted and carried into effect.").
69. *Id*. at 488–89 ("The functions of government under our system are apportioned. To the legislative department has been committed the duty of making laws, to the executive the duty of executing them, and to the judiciary the duty of interpreting and applying them in cases properly brought before the courts. The general rule is that neither department may invade the province of the other and neither may control, direct, or restrain the action of the other. We are not now speaking of the merely ministerial duties of officials. Gaines v. Thompson, 7 Wall. 347. We have no power per se to review and annul acts of Congress on the ground that they are unconstitutional. That question may be considered only when the justification for some direct injury suffered or threatened, presenting a justiciable issue, is made to rest upon such an act. Then the power exercised is that of ascertaining and declaring the law applicable to the controversy. It amounts to little more than the negative power to disregard an unconstitutional enactment, which otherwise would stand in the way of the enforcement of a legal right. The party who invokes the power must be able to show, not only that the statute is invalid, but that he has sustained or is immediately in danger of sustaining some direct injury as the result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally. If a case for preventive relief be presented, the court enjoins, in effect, not the execution of the statute, but the acts of the official, the statute notwithstanding. Here the parties plaintiff have no such case. Looking through forms of words to the substance of their complaint, it is merely that officials of the executive department of the government are executing and will execute an act of Congress asserted to be unconstitutional; and this we are asked to prevent. To do so would be, not to decide a judicial controversy, but to assume a position of authority over the governmental acts of another and coequal department, an authority which plainly we do not possess.").
70. *See*, *e.g.*, James T. Barry III, Comment, *The Council of Revision and the Limits of Judicial Power*, 56 U. Chi. L. Rev. 235, 237–43 (1989); Larkin & Canaparo, *supra* note 15, at 61.
71. *See*, *e.g.*, Barry, *supra* note 70, at 237; Paul J. Larkin, Jr., *The Lost Due Process Doctrines*, 66 Cath. Univ. L. Rev. 293, 327-32 (2016) (describing the evolution of early English law out of English customs).
72. Barry, *supra* note 70, at 237.
73. *Id.* at 238.
74. *Id*.
75. *Id.* at 239.
76. *Id*. at 238–41.
77. *Id*. at 243–45.
78. *Id.* at 248–57.
79. *See*, *e.g.*, James Barr Ames, *The Origin of Uses and Trusts*, 21 Harv. L. Rev. 261, 261–62 (1908); Siddique, *supra* note 15, at 2107.
80. United States v. Lee, 106 U.S. 196, 220 (1882) ("No man in this country is so high that he is above the law.").
81. Southern Pac. Co. v. Jensen, 244 U.S. 205, 221 (1917) (Holmes, J., dissenting).
82. *See* Cass, *supra* note 40, at 31–32 (footnotes omitted) ("The original understanding of American governance was that basic policy decisions are made by Congress—through a process designed to assure both deliberation and broad acceptance of those choices—and implemented by the Executive (that is, the President and officials working under his direction). Courts, which make retrospective decisions applying law to particular facts, were deliberately insulated from political influence.... The explicit precept behind this arrangement was that judges would interpret and apply legal rules in neutral fashion but would not intrude into the realm of policymaking reserved to the political branches (and reserved as well to decision by constitutionally prescribed means).") (footnotes omitted); *see also* The Federalist Nos. 10, 42, 45–51 (James Madison), Nos. 52–63, 65–77 (Alexander Hamilton), No. 64 (John Jay) (Clinton Rossiter ed., 1961).
83. *See, e.g.*, Ames, *supra* note 79, at 261, 261–62 (1908); Siddique, *supra* note 15, at 2107.

84. Madsen v. Women's Health Ctr., Inc., 512 U.S. 753, 765 (1994) (internal quotation marks omitted) (quoting *Yamasaki*, 442 U.S. at 702).
85. "The critical distinction emphasized by Tocqueville, Hamilton, Madison, and John Marshall was that between, on the one hand, deciding what law to apply to *specific* parties in a *specific* case (including whether a given act violated constitutional restraints) and, on the other hand, determining what law applies nationwide to anyone anywhere who may share the concerns asserted about a choice made by the politically chosen branches. In contrast to the limited view of courts' role, widespread use of nationwide injunctions to shape applicable law on the basis of *general*, national considerations—especially in cases infected with partisan, political overtones—effectively replaces the tri-partite constitutional structure with one that puts courts in the position of overall political overseers." Cass, *supra* note 40, at 59 (footnote omitted; emphasis in original).
86. It might be helpful to think of the two doctrines in terms of a Venn Diagram. For an expert discussion on Venn Diagrams, see Fox News, *"Bizarre": Kamala Harris Mocked for Venn Diagram Stories*, YouTube, Feb. 24, 2023, https://www.youtube.com/watch?v=XOjRsJiBTF0.
87. Frost, *supra* note 17, at 1071.
88. *See* Lawrence B. Solum, *Stare Decisis, Law of the Case, and Judicial Estoppel, in* 18 James Wm. Moore, Moore's Federal Practice ¶ 134.02[2] (Daniel R. Coquillette et al. eds., 3d ed. 2015).
89. Camreta v. Greene, 563 U.S. 692, 709 n.7 (2011) ("A decision of a federal district court judge is not binding precedent in either a different judicial district, the same judicial district, or even upon the same judge in a different case.") (citation omitted).
90. Larkin & Canaparo, *supra* note 15, at 61 ("The Article III adjudicative power vested in federal courts is not a charter to substitute appointed judges for elected officials.") (footnote omitted); *see also*, *e.g.*, Gill v. Whitford, 585 U.S. 48, 65 (2018) ("Our power as judges to 'say what the law is,'...rests not on the default of politically accountable officers, but is instead grounded in and limited by the necessity of resolving, according to legal principles, a plaintiff's particular claim of legal right." (quoting Marbury v. Madison, 5 U.S. (1 Cranch) 137, 177 (1803)); Ariz. Christian Sch. Tuition Org. v. Winn, 563 U.S. 125, 132–33 (2011) ("Under Article III, the Federal Judiciary is vested with the 'Power' to resolve not questions and issues but 'Cases' or 'Controversies.' This language restricts the federal judicial power 'to the traditional role of the Anglo–American courts.'... In the English legal tradition, the need to redress an injury resulting from a specific dispute taught the efficacy of judicial resolution and gave legitimacy to judicial decrees.... If the judicial power were 'extended to every *question* under the constitution,' Chief Justice Marshall once explained, federal courts might take possession of 'almost every subject proper for legislative discussion and decision.'" (first quoting Summers v. Earth Island Inst., 555 U.S. 488, 492 (2009), and then quoting 4 Papers of John Marshall 95 (Charles T. Cullen ed., 1984)) (emphasis in original); Flast v. Cohen, 392. U.S. 83, 95 (1968) ("In part those words ["Cases" and "Controversies"] limit the business of federal courts to questions presented in an adversary context and in a form historically viewed as capable of resolution through the judicial process. And in part those words define the role assigned to the judiciary in a tripartite allocation of power to assure that the federal courts will not intrude into areas committed to the other branches of government.").
91. *See* 28 U.S.C. §§ 1330–1369 (West 2025).
92. For the text of Rule 65, see the Appendix, *infra*.
93. 10B Charles Allen Wright et al., Federal Practice and Procedure § 2752 (4th ed. 2016).
94. 28 U.S.C. §§ 2201–02 (emphasis added).
95. 28 U.S.C. § 2201. Two other statutes also point in that direction. One law, 28 U.S.C. § 1359, divests a district court of jurisdiction when a party has been joined "improperly or collusively" joined; the other statute, which creates supplemental jurisdiction, limits it to claims that are "so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. § 1367. As explained below, the Supreme court's *Zbaraz* decision forbids a court from granting relief on a claim not mentioned in the complaint, a ruling that logically applies to relief that would be granted to an outsider to the case. *See also* Fed. R. Civ. P. 19 (requires a district court to join a nonparty in the case when that person has an interest in the case that cannot be adequately protected or disposed of without the person's participation and requires the court to dismiss an action when "in equity and good conscience" the action cannot proceed among the existing parties.). *See also supra* note 46.
96. *See* Cary v. Curtis, 44 U.S. (3 How.) 236, 245 (1845).
97. *See* Larkin & Canaparo, *supra* note 15, at 64; *id*. at 63 n.51 (collecting statutes).
98. *See, e.g.*, Hibbs v. Winn, 542 U.S. 88, 112 (2004) (upholding a statute prohibiting lower courts from restraining state tax collection); Lauf v. E.G. Shinner & Co., 303 U.S. 323, 329–30, 333 (1938) (upholding a statute restricting the ability of courts to grant injunctive relief in labor disputes).
99. *See*, *e.g.*, Cass, *supra* note 40, at 65–66.
100. *See* 28 U.S.C. §§ 81–131 (defining the geographic scope of the districts within each state); *id.* § 132 (establishing a district court within each district).
101. *See id.* § 41 (specifying the composition of the various circuit courts). There also are some additional, specialized courts, such as the Court of Federal Claims, Tax Court, Court of International Trade, and Federal Circuit Court of Appeals. *See id.* §§ 1292(c)–(d), 1295.
102. For example, the U.S. Court of Appeals for the Eleventh Circuit has jurisdiction over Alabama, Florida, and Georgia and only those states. A judgment by that court fixes the law for all district courts in that circuit, but not elsewhere. District courts in a different circuit, such as New York City or Salt Lake City, are not bound by the *stare decisis* effect of an Eleventh Circuit ruling. By contrast, a district court in Hawaii that enters a nationwide injunction purports to bind every other court across the country, from Eastport, Maine, to Adak, Alaska, and the Eleventh Circuit would not be able to review that decision even though it would purport to govern actions that affect those states.

103. *See*, *e.g.*, United States v. Mendoza, 464 U.S. 154 (1984) (discussed *infra* at text accompanying notes 121–137); Bray, *Multiple Chancellors*, *supra* note 16, at 421 ("When federal agencies lose in one circuit, they often continue litigating the question in other circuits.") (footnote omitted); Samuel Estreicher & Richard L. Revesz, *Nonacquiescence by Federal Administrative Agencies*, 98 Yale L.J. 679 (1989).
104. "The availability of nationwide injunctions makes obtaining class-wide relief under Rule 23(b)(2) seemingly unnecessary. When plaintiffs can get the same relief in an individual suit that they can in a class action, it raises the question: Why jump through the procedural hoops to obtain class certification when you can bypass them and still receive the same relief?" *Developments*, *supra* note 23, at 1709 (footnotes and punctuation omitted).
105. 425 U.S. 308, 311 n.1 (1976).
106. Larkin & Canaparo, *supra* note 15, at 65.
107. 5 U.S.C. § 706 (West 2025); *see* Siddique, *supra* note 15, at 2120–21 ("The basic rationale of these cases is that when a regulatory action is found unlawful, the appropriate response should be vacatur and a nationwide injunction rather than merely proscribing its application against individual plaintiffs."). The D.C. Circuit has held that the APA authorizes courts to issue nationwide injunctions because "the ordinary result" in such a case is to vacate the rule without limiting that judgment "to the individual petitioners." Nat'l Mining Ass'n v. U.S. Army Corps of Eng'rs, 145 F.3d 1399, 1409 (D.C. Cir. 1998) (quoting Harmon v. Thornburgh, 878 F.2d 484, 495 n.21 (D.C. Cir. 1989)). In so ruling, the court relied on Justice Blackmun's dissent in *Lujan v. National Wildlife Federation*, 497 U.S. 871 (1990), and a concern that "refusal to sustain a broad injunction is likely merely to generate a flood of duplicative litigation." *Nat'l Mining Ass'n*, 145 F.3d at 1409. That ruling was mistaken—and not just because a judicial dissent is hardly the place to learn what the law is. The D.C. Circuit's rationale in *Nat'l Mining Ass'n* is inconsistent with the Supreme Court's decision in *United States v. Mendoza*, 464 U.S. 154 (1984), discussed below, which the D.C. Circuit misread. 145 F.3d at 1409; *see* Larkin & Canaparo, *supra* note 15, at 65 n.66; Siddique, *supra* note 15, at 2121–26.
108. It could be argued that APA vacaturs and injunctions are different because the former sets aside a rule while the latter directs the conduct of a government official. They have the same practical effect, however, and therefore should be treated the same. *Developments*, *supra* note 23, at 1713–15.
109. Bray, *Multiple Chancellors*, *supra* note 16, at 438 n.121.
110. *Id.*; *see also* Morgan v. Daniels, 153 U.S. 120, 124 (1894) (explaining that a challenge to a patent-office adjudication is "a proceeding to set aside the conclusions reached by the administrative department" and is analogous to "a suit to set aside a judgment.").
111. *See*, *e.g.*, Litchfield v. Crane, 123 U.S. 549, 552 (1887) (no judgment binds "a stranger to the proceedings"); Restatement of Judgments § 93 (Am. L. Inst. 1942); Cass, *supra* note 40, at 72–77.
112. 448 U.S. 358 (1980); *see* Larkin & Canaparo, *supra* note 15, at 66–72.
113. 464 U.S. 154 (1984).
114. *Zbaraz*, 448 U.S. at 361.
115. 410 U.S. 113 (1973), *overruled by* Dobbs v. Jackson Women's Health Org., 597 U.S. 215 (2022).
116. The Hyde Amendment is a well-known federal law that has become an annual component of federal appropriations since 1976. It prohibits the use of federal funds to perform elective abortions. *Id.* at 362 n.4.
117. *Id.* at 367.
118. The *Zbaraz* decision was decided by a 5–4 vote, but none of the four dissenters—Justices Brennan, Marshall, Blackmun, and Stevens—disagreed with the majority opinion as to whether there was a "Case" or "Controversy" between the plaintiff and the federal government in that case. Each of them disagreed with the merits of the Court's companion decision in *Harris v. McRae*, 448 U.S. 297 (1980), which upheld the constitutionality of the Hyde Amendment in a case where it was at issue between the parties.
119. Although he does not discuss the *Zbaraz* decision, Professor Bray makes precisely that argument why nationwide injunctions are unlawful: "Article III of the Constitution of the United States confers the 'judicial Power.' This is a power to decide a case for a particular claimant. Indeed, 'all challenges to statutes arise when a particular litigant claims that a statute cannot be enforced against her.' This claimant-focused understanding of the judicial power has implications not only for who can sue in federal court, but also for what remedies the federal courts have authority to give. On this understanding, Article III defines the judicial role as 'redress[ing] an injury resulting from a specific dispute.' Once a federal court has given an appropriate remedy to the plaintiffs, there is no longer any case or controversy left for the court to resolve. The parties have had *their* case or controversy resolved. There is no other. The court has no constitutional basis to decide disputes and issue remedies for those who are not parties. In short, Article III gives the judiciary authority to resolve the disputes of the litigants, not the disputes of others. Article III gives the judiciary authority to remedy the wrongs done to those litigants, not the wrongs done to others." Bray, *Multiple Chancellors*, *supra* note 16, at 471–72 (footnotes in original; emphasis omitted).
120. *See*, *e.g.*, *Litchfield*, 123 U.S. at 551–52.
121. *See*, *e.g.*, Brainerd Currie, *Mutuality of Collateral Estoppel: Limits of the* Bernhard *Doctrin*e, 9 Stan. L. Rev. 281, 282 (1957); *see also* Restatement (Second) of Judgments § 27 (Am. L. Inst. 1982); 18 Wright et al., *supra* note 94, § 4403.
122. 402 U.S. 313 (1971).
123. 439 U.S. 322 (1979).

124. *Mendoza*, 464 U.S. at 156.
125. *Id.*
126. *Id*.
127. *Id*.
128. *Id*.
129. *Id*. at 157.
130. *Id*. at 159.
131. *See*, *e.g.*, *Developments*, *supra* note 23, at 1707 ("Scholars theorize that nationwide injunctions interrupt the ordinary development of law in three main ways: by interfering with percolation, creating conflicts in the law, and allowing an end-run around class actions. Two of these concerns have [been] borne out in practice.").
132. *See* Bray, *Multiple Chancellors*, *supra* note 16, at 421–22 ("If this seems like madness, it has a method. If the circuits all agree, their precedents resolve the question; if they disagree, the Supreme Court gains from the clash of opposing views. We sacrifice immediate resolution for what we hope will be better decisionmaking. The national injunction requires the opposite sacrifice, giving up deliberate decisionmaking for accelerated resolution. Cases still go to the Supreme Court, but without the benefit of decisions from multiple courts of appeals. If the national injunction issued by the district court is a preliminary one, the Supreme Court might even decide a major constitutional question on a motion for a stay. In that procedural posture, the Court would be reviewing lower court decisions reached in haste, and without the benefit of a record.... By returning to the older practice with respect to the scope of injunctions—the practice that obtained for more than a century and a half in the federal courts, and that is still followed in many cases—we choose patience and get better decisions.") (footnote omitted).
133. Bray, *Multiple Chancellors*, *supra* note 16, at 422.
134. *Mendoza,* 464 U.S. at 161; *see also* Califano v. Yamasaki, 442 U.S. 682, 702 (1979) (noting that an overbroad injunction can deny courts "the benefit of adjudication by different courts in different factual contexts").
135. Some scholars have argued against a per se rule and in favor of a balancing test. *See* Frost, *supra* note 17, at 1090 ("Such injunctions are an appropriate remedy in three categories of cases: when they are the only method of providing the plaintiff with complete relief; when they are the only means of preventing irreparable injury to individuals similarly situated to plaintiffs; and when they are the only practical remedy because a more limited injunction would be chaotic to administer and would impose significant costs on the courts or others."). The first category is unnecessary because a successful plaintiff is protected by an injunction across the country. The second two categories are policy matters for Congress to consider assuming that they satisfy Article III—which, even in the abstract, is dubious given *Zbaraz*.
136. *Mendoza,* 464 U.S. at 155, 162. Most commentators give the *Mendoza* decision short shrift or say that it was wrongly decided and should be overruled. *See*, *e.g.*, Clopton, *supra* note 40, at 22.
137. 311 U.S. 32 (1940).
138. *See id.* at 40–41; *see also* Martin v. Wilks, 490 U.S. 755, 762 (1989) ("A judgment or decree among parties to a lawsuit resolves issues as among them, but it does not conclude the rights of strangers to those proceedings.").
139. Larkin & Canaparo, *supra* note 15, at 70–71 (footnotes and punctuation omitted): "To be sure, freezing the first final decision rendered on a particular legal issue could be said to be a more efficient way of developing contemporary legal doctrines, particularly in important cases of national application, because it would force the government to make its best case the first time an issue arises. But that approach forces the government to win every lawsuit to avoid ever being bound by an adverse judgment. It also puts tremendous pressure on the Supreme Court to loosen restraints imposed on judicial decisionmaking by the doctrine of stare decisis. That doctrine represents a judgment that a rule of law adopted by the courts ought to stand unless there is a special justification for jettisoning it. Stare decisis seeks to generate certainty in the law and confidence in the courts by requiring rules of law to remain in place, except for extraordinary reasons, as individual judges come and go. Put differently, the doctrine exists to prevent the law from being batted back and forth like a tennis ball. If the Court were denied the opportunity to wait until numerous lower courts had debated an issue, there is a considerable risk that the Court would later conclude that its initial answer was incorrect. Remorse over giving the wrong answer to a hastily considered issue might increase the Court's willingness to reconsider its initial decisions, thereby weakening the benefits that stare decisis provides for the legal system. Eliminating the flexibility that the Court enjoys at the front end of the process—enjoys, that is, by allowing numerous lower courts to address an issue—would force the Court to increase the flexibility it has at the back end—by upping its willingness to overrule decisions that it now believes are mistaken. That tradeoff does not improve the Court's decision-making process, but it does increase the risk that the law will be seen as up for grabs and that the Justices will be seen as political actors, as members of Congress in black robes rather than suits. That certainly would not be an improvement in the fact or appearance of impartiality and legitimacy in the legal process. [¶] Indeed, these considerations apply with even greater force to nationwide injunctions than to the offensive use against the government of a prior adverse judgment, as *Parklane* allows. A nationwide injunction has a greater impact than the *Parklane* doctrine because it grants relief to third parties who never file their own lawsuit. The possibility that the same judge who ruled against the government in the first case will reconsider his or her ruling is far less than the likelihood that a new judge might uncritically apply the first judgment. People disagree over controversial issues, and judges are people, so one or more judges are likely to disagree with whoever first decides a case. That, in turn, increases the potential that additional judges will join them in the debate, raising the possibility of a consensus emerging as to the correct or best resolution that differs from the first decision."

140. Larkin & Canaparo, *supra* note 15, at 66; *see* J.R.R. Tolkien, The Lord of the Rings 65 (1954) ("He [Sauron the Great, the Dark Lord] only needs the One; for he made that Ring himself, it is his, and he let a great part of his own former power pass into it, so that he could rule all the others.").
141. *Developments*, *supra* note 23, at 1712 (footnote omitted).
142. Cass, *supra* note 32, at 53–54 (footnote omitted).
143. *Id.* (quoting Gregg Costa, *An Old Solution to the Nationwide Injunction Problem*, Harv. L. Rev. Blog (Jan. 25, 2018), https://harvardlawreview.org/blog/2018/01/an-old-solution-to-the-nationwide-injunction-problem).
144. *See* Scott Gottlieb, Uncontrolled Spread: Why COVID-19 Crushed Us and How We Can Defeat the Next Pandemic 76 (2021).