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Samuel L. Bray
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Dear Senator Whitehouse:

I am writing in response to your written questions following my testimony earlier this month about universal injunctions before the Senate Judiciary Committee. I will take up the eight questions in sequence.

1. Would you oppose a bill reforming nationwide injunctions but delaying implementation until 2029 to avoid any partisan benefits? I support legislation to address the problem of universal injunctions on grounds of both principle and policy. The effective date of a legislative solution seems to me not to be a matter of legal principle as much as a matter of political feasibility, and it is therefore above my paygrade.

2. Would you support legislation reducing barriers to class action suits to ensure that litigants can seek judicial relief from violations of their legal rights? My support would depend on the details of the proposal. Nevertheless, I think the problem of universal injunctions can be resolved without also changing the requirements for class actions.

3. You've expressed support for the "Judicial Relief Clarification Act." As written, would this bill permit nonparty relief that is necessary to provide complete relief to a party? I do support the Judicial Relief Clarification Act, and I do not think it will endanger a federal court's ability to provide complete relief to the plaintiffs. It sometimes happens that the relief given to a party will have incidental benefits for non-parties. For example, if one neighbor sues another neighbor over a nuisance, and the court enjoins the nuisance, that injunction will incidentally benefit all the neighbors. That is not objectionable, and in fact it is essential for courts to grant effective remedies. These cases of incidental benefit are not targeted by the bill, which instead refers to injunctions that purport to restrain the

enforcement of a federal legal norm against non-parties. A court does not need to restrain the enforcement of a norm against others in order to restrain its enforcement against the plaintiffs.

4. Do you believe any problems might arise if:

a. **Temporary restraining orders were immediately appealable?** Some interlocutory injunctions need to be appealable, because they are practically determinative of the parties' dispute; while other interlocutory injunctions should not be, because they preserve the trial court's ability to grant meaningful relief and an appeal would only cause needless delay. The challenge, of course, is coming up with good rules to sort the interlocutory injunctions that need to be appealable from those that do not. At present, the federal system largely does that with the distinction between preliminary injunctions (appealable immediately) and temporary restraining orders (not usually appealable). That binary is not working especially well right now, especially since some very broad orders are being classified by courts as temporary restraining orders. That makes the preliminary injunction/temporary restraining order distinction not effective as a proxy for appealability. I do think there should be greater availability of appeals for that kind of temporary restraining order.

b. **A court vacated a broadly applicable agency regulation only with respect to the parties to a case?** I do not see a remedy of vacatur in the Administrative Procedure Act, and there is no traditional remedy of "vacatur" either at law or in equity. But if the question is whether there would be a problem with any relief against the enforcement of an agency rule applying only to the parties and those they represent—no, I do not see a substantial problem. To the extent there is a problem, it can be redressed through other means, such as mandamus.

c. **A court declared a law facially unconstitutional but could not issue non-party relief?** The logic of a court's resolution of one case may go far beyond the parties to that case, but the court's judgment does not. I am therefore skeptical that courts should be described as having a power to "declare[] a law

facially unconstitutional." *See* City of Chicago v. Morales, 527 U.S. 41, 77 (1999) (Scalia, J., dissenting).

d. **Class actions were the only means of securing non-party relief in emergency situations, such as in a challenge to an election law in the days prior to that election?** Challenges to an election law in the days prior to an election are disfavored under what is sometimes called the *Purcell* Principle. But I also do not think class actions would be the only mechanism. In particular, emergency litigation related to elections and the counting of votes often occurs in mandamus proceedings. *See* Derek T. Muller, *Election Subversion and the Writ of Mandamus*, 65 WM. & MARY L. REV. 327 (2023).

5. Would you support legislation eliminating the ability of parties to "judge-shop" by filing in divisions in which those parties have a 50-100% chance of their case being assigned to a particular judge? Yes.

6. If Congress eliminated nationwide injunctions or similar relief, could coalitions of states continue to secure sweeping injunctions against the executive branch? If so, are there any steps Congress could take to address these suits? I would encourage Congress to eliminate universal injunctions without any special loopholes for injunctions sought by coalitions of states. The best way to do that would be by passing Chairman Grassley's bill, which is far more effective than the bill recently passed by the House of Representatives, which has an express loophole for universal injunctions sought by states.

7. During the hearing, Senator Schmitt said, "It's statistically impossible for Judge Boasberg to be getting the cases he's getting" and that "the appellate bar . . . know[s]" something is "wrong" with random case assignment among district court judges.

a. **Do you agree with Senator Schmitt's statement that "[i]t's statistically impossible for Judge Boasberg to be getting the cases he's getting"?** I am unaware of it being statistically impossible, given the number of challenges to this administration's actions that have been filed in the U.S. District Court for the District of Columbia.

b. **Do you agree with Senator Schmitt's statement that there's "something wrong" with Judge Boasberg being assigned to major**

cases involving challenges to Trump administration actions? I am not aware of there being anything wrong with the case assignments.

8. Senate Judiciary Republicans have introduced multiple bills to restrict or eliminate district courts' authority to issue nationwide injunctions. The title of one of these bills is the "Restraining Judicial Insurrectionist Acts of 2025."

a. **Do you believe that judges who issue nationwide injunctions or similar relief are "Judicial Insurrectionists"?** No. I disagree with the judges who have issued universal injunctions, whether against the Obama Administration, the first Trump Administration, the Biden Administration, or the second Trump Administration. But I think they do so in good faith. I should also note that most of the judges granting universal injunctions against the current administration are in circuits where the controlling appellate precedent supports universal injunctions. The same observation can be made about most of the judges granting universal injunctions against the previous administration. That appellate precedent is one reason decisive action against universal injunctions can only come from Congress or the Supreme Court.

b. **Please name a "Judicial Insurrectionist."** It is not a term I have used, and I cannot think of any.

I appreciate the thoroughness of these questions. It was an honor to testify before the committee about universal injunctions, and I hope Congress will act to address this pressing problem.

Sincerely,

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Dear Senator Booker:

I am writing in response to your written questions following my testimony earlier this month about universal injunctions before the Senate Judiciary Committee.

Your first topic concerned the answers that were given by high-ranking Department of Justice officials in recent confirmation hearings. I have not read the transcripts of those hearings, so I cannot comment on them specifically, but I can nevertheless offer general answers if that would be helpful. Under this topic you had three questions:

Should orders issued by a federal court always be followed? The short answer to this question is *yes*: as a legal matter, the orders issued by a federal court must be followed. There are, however, a couple of qualifications. First, the person to whom the order is directed must have notice of the order. Second, the court must have jurisdiction (at a minimum, personal jurisdiction).

Are there circumstances under which, if a government official has a moral disagreement with a court order, they can ignore that order or should they recuse themselves? Moral disagreement with an order of a court does not provide a legal basis for disobeying it. A separate question is raised if someone feels called to civil disobedience in the face of what he or she considers an unjust court order, with a full acceptance of the legal consequences that flow from such disobedience. *See, e.g.*, MICHELLE ADAMS, THE CONTAINMENT: DETROIT, THE SUPREME COURT, AND THE BATTLE FOR RACIAL JUSTICE IN THE NORTH 67 (2025) (discussing Gandhi and King). But a moral objection to a court order does not provide a legal basis for

disobedience of that order. *See* Walker v. City of Birmingham, 388 U.S. 307 (1967).

Is there such a thing as "rogue" judges whose orders should not be followed? Not that I know of.

Your second topic concerned threats of violence against federal judges. Under this topic you had two questions:

What are the impacts on our legal system if judges continue to be threatened by parties appearing in cases over which they are presiding? Violence against federal judges, and threats of violence against federal judges, have no place in a society committed to the rule of law. The consequences for our legal system are grave, including the effect on judges, the potential effect on their decisions, and the disincentive for smart lawyers with other options to perform the critical public service of being a judge.

How does rhetoric by elected officials that delegitimizes the judiciary branch risk the likelihood of attacks? Our country has a long tradition of robust debate about judicial decisions, including the critiques of judicial decisions made by then-Senate candidate Abraham Lincoln and President Franklin Delano Roosevelt. The courts are not and should not be above criticism. Yet I find such criticism more productive, and less likely to foster threats and intimidation against judges, when it is directed to judicial decisions and the reasons given for those decisions, not when it is *ad hominem* against the judges themselves. The constitutional protection for vigorous criticism of the courts is very broad; the prudent exercise of that constitutional right does not run all the way to the right's outer bounds.

I am grateful for the thoughtful questions, and I appreciate very much the opportunity to testify before the committee.

Sincerely,

Samuel Bray

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