RULE BY DISTRICT JUDGES II:
EXPLORING LEGISLATIVE SOLUTIONS TO THE BIPARTISAN PROBLEM OF UNIVERSAL INJUNCTIONS

Hearing Before the Senate Committee on the Judiciary

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Chairman Grassley, Ranking Member Durbin, and distinguished members of the Committee:

Thank you for the invitation to testify before the Committee once again. In my testimony, I'd like to make three points about how we got here, and offer four thoughts on the way forward.

First, any discussion about nationwide injunctions has to be put into the broader context of the unprecedented moment in which we find ourselves. Substantively, we have a President running roughshod over existing legal constraints to a degree we've simply never seen before. And procedurally, we have a Justice Department engaged in highly partisan and ethically dubious behavior in lower courts that we've never seen from lawyers working for the federal government.[1]

Rather than respond to ***that*** behavior, we've seen unprecedented calls from Congress to impeach federal judges for nothing other than the substance of their rulings, and for the elimination of entire district courts.[2] And even this Committee seems to be of the view that the central problem is the ***relief*** federal judges are imposing, not the lawlessness they're imposing it ***against***.

At the risk of bringing data to a mud-fight, the reality is ***not*** that a small handful of hand-picked judges appointed by Democratic presidents are using nationwide injunctions to thwart the executive branch. As of last Friday, the 46 cases in which district judges have blocked Trump policies have involved rulings by 39 different judges

1. *See, e.g.*, Response to EPA's Notice of Grant Termination at 1–2, 6–8, Climate United Fund v. Citibank, N.A., No. 25-cv-698 (D.D.C. Mar. 12, 2025) (describing questionable behavior by government lawyers during an agreed-upon procedural extension that attempted to moot the emergency relief the plaintiffs had sought), *available at* https://storage.courtlistener.com/recap/gov.uscourts.dcd.278196/gov.uscourts.dcd.278196.17.0_1.pdf.

2. As of yesterday, resolutions have been introduced in the House of Representatives to impeach *six* different federal district judges—the common theme of which is that they have all ruled against President Trump. During the entire Biden administration, by contrast, there were ***no*** impeachment resolutions introduced against any district judges. Indeed, in all of American history, the House has impeached only 15 federal judges. And the only one whose impeachment was based even partially on the substance of his rulings was acquitted by the Senate. *See* Steve Vladeck, *Impeaching Federal Judges*, ONE FIRST, Mar. 3, 2025, https://www.stevevladeck.com/p/128-impeaching-federal-judges.

appointed by five different presidents and sitting in 11 different district courts across seven circuits. That includes nine cases before district judges appointed by Republican presidents, too.[3] Many of those rulings have included nationwide relief. But not all of them.

Against that backdrop, it seems to me that this Committee should be especially careful to ***not*** have a knee-jerk reaction to underinformed calls from the President and his supporters—and to ***preserve*** the relationship between judicial independence and judicial accountability, rather than taking any rash steps that might undermine it.

Second, it's worth underscoring that federal courts have long and routinely issued relief that benefits non-parties and/or has nationwide effect. As Justices Kavanaugh and Barrett pointed out last year, this is the inevitable effect of vertical stare decisis—where lower courts in other cases are bound to follow appellate rulings in the first case.[4] Even Justice Gorsuch, the most visible critic of nationwide injunctions on the Supreme Court, has voted in favor of them at least 11 times since 2020.[5] More than that, ***any*** time that a court invalidates a law on its face (rather than as applied to the plaintiffs), it is necessarily providing relief to non-parties—since the law can no longer be enforced against ***anyone***. That's not only well settled; there's no serious argument that it's beyond the federal courts' powers.[6]

And even nationwide injunctions ***themselves*** have virtues that other forms of relief do not. Consider the pending cases challenging President Trump's effort to restrict birthright citizenship: Do we really think that parents should have to challenge that policy one child at a time? Would it make any sense at all for the scope of birthright citizenship to differ in Arizona, New Mexico, and Texas simply because

3. *See* Steve Vladeck, *Setting the Record Straight on the Anti-Trump Injunctions*, ONE FIRST, Mar. 31, 2025, https://www.stevevladeck.com/p/136-setting-the-record-straight-on.

4. *See* Labrador v. Poe *ex rel.* Poe, 144 S. Ct. 921, 932 (2024) (Kavanaugh, J., concurring).

5. *See* Steve Vladeck, *Justice Gorsuch and Nationwide Injunctions*, ONE FIRST, Apr. 22, 2024, https://www.stevevladeck.com/p/77-justice-gorsuch-and-nationwide.

6. *See, e.g.*, Johnson v. United States, 576 U.S. 581, 602–05 (2015) (Scalia, J.).

those three states fall into three different federal circuits? Of course, a nationwide class action could solve that problem, but it does not strike me as a coincidence that the rise in universal injunctions came shortly on the heels of the Supreme Court's evisceration of nationwide class certification.[7] Chairman Grassley's bill alludes to class actions as a preferable vehicle, but, tellingly, does nothing to make them more broadly available (even though Congress unquestionably ***could*** do so).[8]

Third, it is deeply myopic to talk about the rise of nationwide injunctions ***without*** talking about the other shifts in litigation behavior that have dramatically increased the ***impact*** of such rulings—including the ability of litigants, especially in some states, to file in a single-judge division in which they can literally hand-pick the specific federal judge to hear their case;[9] the selective dilution, in the Fifth Circuit especially, of the standards for Article III standing (which have made it easier for more litigants to challenge more government policies); the increasing conflation by lower courts of the appropriate standards for preliminary and emergency relief; and so on.[10]

Don't take my word for it, though; in the last three Supreme Court terms, we've seen **five** rulings from the Supreme Court reversing nationwide injunctions issued by hand-picked judges in Texas and Louisiana and affirmed by the Fifth Circuit—because the plaintiffs in all five cases lacked Article III standing.[11] There is no question that

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7. *See, e.g.*, Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338 (2011).

8. *See* Judicial Relief Clarification Act of 2025, § 2 (precluding federal courts from granting relief against the federal government that benefits non-parties "unless the court determines the non-party is represented by a party acting in a representative capacity pursuant to the Federal Rules of Civil Procedure").

9. The only example of such "judge-shopping" since January 20 has been ***by*** the Trump administration. *See* Vladeck, *supra* note 3 (describing a nationwide lawsuit filed by the Department of Justice last week in Waco, Texas—where it had a 100% chance of being assigned to a Trump-appointed district judge).

10. *See, e.g.*, Steve Vladeck, Murthy *v.* Missouri *and the Court's Culture-War Docket*, ONE FIRST, Mar. 18, 2024, https://www.stevevladeck.com/p/71-murthy-v-missouri-as-a-microcosm.

11. *See* Murthy v. Missouri, 603 U.S. 43 (2024); FDA v. All. for Hippocratic Medicine, 602 U.S. 367 (2024); Dep't of Ed. v. Brown, 600 U.S. 551 (2023); United States v. Texas, 599 U.S. 670 (2023); Biden v. Texas, 597 U.S. 785 (2022); *see also* Haaland v. Brackeen, 599 U.S. 255 (2023) (reversing the Fifth Circuit's affirmance of the district court's holding that Texas had standing to challenge various provisions of the Indian Child Welfare Act—albeit in a case that was *not* filed in a single-judge division).

nationwide injunctions have been abused. But the abuses are ***not*** about the scope of the relief courts are issuing; they're only exacerbated by it. And, critically, they would not go away even if nationwide injunctions were narrowed or eliminated. Meanwhile, the ***cost*** of eliminating nationwide injunctions would be less of an ability to restrain executive branch lawlessness—at a moment in American history in which that power has proven singularly ***vital***.

What, then, is to be done?

First, if the Members' real concern is that the President should have the authorities that courts are denying to him, it seems like they should consider legislation to ***provide*** those authorities, rather than legislation that would prevent courts from fully and effectively enforcing existing legal constraints.

Second, insofar as this Committee wants to focus on procedural reforms, it should focus on reducing the ability of individual parties to ***manipulate*** the judicial system (by limiting judge-shopping; requiring random assignments; tightening the standards for relief; etc.), not on limiting the ability of courts to hold the executive branch accountable—especially in an age in which Congress seems less willing and/or able to hold the executive branch accountable itself. In that respect, as I've suggested, prioritizing constraints on nationwide relief would be the wrong solution to the wrong problem.

Third, even if this Committee is nevertheless intent on providing reforms for nationwide relief, specifically, it should focus on the standard of review in such cases—not on categorically eliminating its availability in all cases. If, like me, you believe federal courts ***do*** have the power to issue relief benefitting non-parties in at least some cases, the question should be ***why*** such relief is appropriate in particular cases—and not others. Again, the contrast between the birthright citizenship cases and the cases in which universal relief was predicated on overbroad (and subsequently rejected) interpretations of Article III standing is a useful starting point.

Finally, if the Committee's true goal is to improve the functioning of the judicial system writ large, and not just to maximize short-term partisan political advantage now that a Republican is in the White House, the Committee could follow the model of other recent court-reform legislation—and have any reforms go into effect on or after January 20, 2029.

Otherwise, the message this Committee would be sending is that its goal is to insulate an unprecedented degree of lawless behavior by the executive branch from meaningful judicial review—a message I can't imagine this Committee wants to send, and one that the separation of powers, to say nothing of the rule of law itself, simply can't afford.

Thank you again for the invitation to testify today. I look forward to your questions.