

RESTORING JUDICIAL RESTRAINT: THE CASE FOR S.1090 AND ITS MULTI-JUDGE REVIEW AS A SOLUTION TO UNIVERSAL INJUNCTIONS

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1. INTRODUCTION

Since the turn of the century, the coequal status of the Executive and Judiciary has come under attack. With the rise of universal injunctions,¹ the executive branch’s authority to act swiftly and strongly has been significantly diminished by an increasingly interventionist judicial branch. Now it is certain that “[a] feeble executive implies a feeble execution of the government,”² and our Founders would be dismayed to know the gavel of the jurist is contributing to a swift decline into weakened government. Today, individual district court judges across the country are vying to be the one to strike the decisive blow against President Trump’s policies. However, these judges have failed to consider the far-reaching implications of their unilateral intrusions into the executive branch.

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¹ Defined as “district courts asserting the power to prohibit enforcement of a law or policy against *anyone*.” *Trump v. CASA, Inc.*, 145 S. Ct. 2540, 2548 (2025).

² THE FEDERALIST NO. 70, at 471 (Alexander Hamilton) (Jacob E. Cooke ed., 1961).

Recently, the Supreme Court took a step in the right direction with *Trump v. CASA, Inc.*³ There, the Court partially stayed three overlapping universal injunctions issued against an executive order from President Trump.⁴ The Court reasoned that in issuing a universal injunction, the lower courts exceeded their equitable authority and that “[w]hen a court concludes that the Executive Branch has acted unlawfully, the answer is not for the court to exceed its power, too.”⁵ Yet, the primary issue with universal relief remains unresolved and “threaten[s] the practical significance of [*Trump v. CASA, Inc.*]”⁶ Challenges to executive branch decisions through class actions, or under the Administrative Procedure Act (APA), remain ripe for abuse.⁷ Especially considering that challenges under the APA constitute the majority of challenges to the executive branch.

The introduction of new legislation is now necessary to return the judiciary to its proper, historical role. To achieve this, the judiciary must be constrained by its own judges working together to ensure that executive decisions are not improperly restricted. The judiciary must continue to assess the legality of the executive branch’s actions. However, when a single judge oversteps by invoking authority to direct executive action that far exceeds the traditional equitable powers of the courts, the judiciary is positioned as the driver of executive policy, which is unacceptable.

This Article begins in Part 2 by addressing the history of universal injunctions in the United States. Next, Part 3 details the problem with not only universal injunctions but also the ability of single district court judges to enjoin executive action nationwide. Part 4 outlines S.1090, my bill to rein in judicial overreach by requiring that (1) lawsuits seeking to block executive branch action be decided by a panel of three judges randomly selected from a pool of all district and circuit judges; (2) the panel includes at least one circuit judge; (3) no more than two of the panel judges sit in the same circuit; and (4) appeals proceed directly to the Supreme Court.

³ 145 S. Ct. 2540 (2025).

⁴ *Id.* at 2563–64.

⁵ *Id.* at 2562.

⁶ *Id.* at 2565 (Alito, J., concurring).

⁷ *Id.* at 2568 (Kavanaugh, J., concurring).

2. HISTORY OF UNIVERSAL INJUNCTIONS

Two distinct, but relevant debates are often collapsed into one. Universal injunctions purport to regulate the conduct of nonparties nationwide, not just the individual parties before that court. By contrast, APA vacatur “sets aside” an administrative rule in a way that courts treat as being universally disabling nationwide.⁸ A similar effect, but the remedy arises from statute, not traditional equity.

Universal injunctions have increasingly caused ubiquitous disruption of national policy: a Biden Administration Executive Order was enjoined nationwide within a week of his inauguration,⁹ “during the first 100 days of the second Trump administration, district courts issued approximately 25 universal injunctions,” and so on.¹⁰ Despite this contemporary prevalence, nationwide injunctions are a very recent phenomenon in American jurisprudence.

Scholars have noted that there were “no national injunctions against federal defendants for the first century and a half of the United States.”¹¹ Even looking at the history of traditional equity, universal injunctive relief is nowhere to be found.¹² The English Court of Chancery had “no jurisdiction to issue injunctions against the Crown, since the court was itself an emanation of the Crown.”¹³ The closest remedy in traditional equity was the “bill of peace”:

⁸ 5 U.S.C. § 706 (“The reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions . . .”); see *United States v. Texas*, 599 U.S. 670, 700–02 (2023) (Gorsuch, J., concurring) (questioning whether Article III authority exists for courts to grant universal relief under Section 706).

⁹ JOANNA R. LAMPE, CONG. RSCH. SERV., R46902, NATIONWIDE INJUNCTIONS LAW, HISTORY, AND PROPOSALS FOR REFORM 1 (2021); see *Texas v. United States*, 515 F. Supp. 3d 627 (S.D. Tex. 2021).

¹⁰ *Trump v. CASA, Inc.*, 145 S. Ct. 2540, 2550 (2025) (citing JOANNA R. LAMPE, CONG. RSCH. SERV., R48476, NATIONWIDE INJUNCTIONS IN THE FIRST HUNDRED DAYS OF THE SECOND TRUMP ADMINISTRATION 1 (2025)).

¹¹ Samuel L. Bray, *Multiple Chancellors: Reforming the National Injunction*, 131 HARV. L. REV. 417, 428 (2017).

¹² *Id.* at 425.

¹³ *Id.* at 482 n.31 (quoting J.D. HEYDON, M.J. LEEMING & P.G. TURNER, MEAGHER, GUMMOW & LEHANE’S EQUITY: DOCTRINES AND REMEDIES § 21-510, at 787 (5th ed. 2015)).

With this device, the Chancellor would consolidate a number of suits that would not be sequential between two parties. These might be suits involving some kind of common claim the plaintiff could have against multiple defendants (for example, a lord suing all of his tenants, or a vicar suing all of his parishioners). Or these might be suits involving some kind of common claim that multiple plaintiffs could have against a single defendant (for example, the tenants suing the lord, or the parishioners suing the vicar).¹⁴

However, the “bill of peace was not used to resolve a question of legal interpretation for the entire realm . . . it was instead a kind of proto-class action.”¹⁵ The Chancellor did not regulate “defendant’s conduct against the world” but only against “this rounded-up group of plaintiffs.”¹⁶ The bill of peace has developed in modernity as a “class action.”¹⁷

In the English system, some courts, such as the Court of Chancery, would exercise multiple functions: “lawmaking, law-enforcing, and law-adjudicating.”¹⁸ The Framers of the American Constitution clearly rejected this approach in favor of one of “separation of powers” and a judiciary system confined to “cases” and “controversies.”¹⁹ The Court of Chancery is also distinguished from the American system by another practical but key difference: when it came to judicial decision-making, the Chancery was a “unitary institution.”²⁰ Or plainly, there was only one Chancellor.²¹ Even “as England grew [and] as the common law courts grew, and as the various other equitable courts grew, there remained only one Chancellor . . . and the power to issue equitable remedies was not distributed throughout the English courts.”²² In contrast, from the beginning of the American federal court

¹⁴ *Id.* at 426.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Trump v. CASA, Inc.*, 145 S. Ct. 2540, 2555 (2025).

¹⁸ 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, 62 (2020).

¹⁹ *Id.*

²⁰ Bray, *supra* note 11, at 446.

²¹ *Id.*

²² *Id.* at 447.

system, “every judge was a Chancellor (that is, every judge could resolve equitable claims on the court’s equity side).”²³ The English system of a single Chancellor could not result in conflicting universal injunctions or forum-shopping.²⁴

Early American practices underscore that, historically, judicial equitable power was not viewed as encompassing universal relief. The Judiciary Act of 1789 vested the newly minted federal courts with equity powers, but this form of relief ran to the parties before the court.²⁵ *Ex parte Young* did authorize suits to restrain state officials from enforcing unconstitutional laws, but the injunctions operated solely against the parties before the court.²⁶

No single case or statute caused the rise of the universal injunction.²⁷ Even the New Deal (which did stir a flurry of litigation) did not generate any universal injunctions.²⁸ For example, “against the enforcement of just one statutory provision, the processing tax in the Agricultural Adjustment Act, there were 1600 injunctions.”²⁹ However, the 1938 merger of law and equity did loosen remedial guardrails, emboldening remedial creativity.³⁰ Then, passage of the APA made nationwide policy challenges a routine matter.³¹ Later, expansion of venue permitted parties to shop for the most favorable forum.³² It was against this backdrop that judges shifted from individual to nationwide relief. Gradual changes beginning in the 1960s evolved into

²³ *Id.* at 447–48; Judiciary Act of 1789, ch. 20, 1 Stat. 73.

²⁴ Bray, *supra* note 11, at 448.

²⁵ Judiciary Act of 1789, ch. 20, 1 Stat. 73.

²⁶ *Ex parte Young*, 209 U.S. 123, 155–56 (1908).

²⁷ Bray, *supra* note 11, at 428.

²⁸ *Id.* at 454.

²⁹ *Id.* at 434.

³⁰ See Kellen R. Funk, *The Union of Law and Equity: The United States, 1800-1938*, in *EQUITY AND LAW: FUSION AND FISSION* 46, 69 (John C.P. Goldberg, Henry E. Smith & P.G. Turner eds., 2019).

³¹ Pub. L. No. 79-404, 60 Stat. 237 (1946) (codified as amended as 5 U.S.C. §§ 551–559).

³² Traditionally, suits against a federal officer seeking injunctive relief had to have been brought in the District of Columbia, but the passage of the Mandamus and Venue Act of 1962 provides grounds to sue government officials in more locations. See Pub. L. No. 87-748, 76 Stat. 744 (1962) (codified as amended as 28 U.S.C. § 1391(e)); *Staford v. Briggs*, 444 U.S. 527, 534 (1980).

universal injunctions reaching near ubiquity by the 2000s and 2010s.³³ Samuel Bray has posited that this trend was mainly driven by two factors.³⁴ The first, a “shift in thinking of an injunction against enforcement of a federal law primarily in antisuit terms to thinking of it primarily as a challenge to the law itself.”³⁵ And second, a retreat from the view that a judge simply refuses to apply an unconstitutional law to a view that the role of the judge is to “strike down” an unconstitutional law.³⁶

3. THE PROBLEM

The problem lies not in judicial review itself—which is essential to our system of governance. The core problem is the extraordinary authority of a single district court judge to halt executive action nationwide for months. As a result, one district court judge—whose opinion “lack[s] precedential force even vis-à-vis other judges in the same judicial district,”³⁷ can effectively dictate national policy.

No other federal judge acting alone wields such power.³⁸ This is wholly out of proportion to the office that exercises it. District courts were created to have limited jurisdictions with limited reach.³⁹ As Justice Barrett states, district courts “do not exercise general oversight of the Executive Branch; they resolve cases and controversies” between the parties before them.⁴⁰ Indeed, ours is a “system of divided judicial authority” in which conflicts in decisions between different jurisdictions are expected.⁴¹ With the Supreme Court’s lack of guidance prior to *Trump v. CASA*, judges waded into

³³ Bray, *supra* note 11, at 428.

³⁴ *Id.* at 449–51.

³⁵ *Id.* at 450.

³⁶ *Id.* at 451.

³⁷ *Trump v. CASA, Inc.*, 145 S. Ct. 2540, 2560 n.17 (2025) (citing *Camreta v. Greene*, 563 U.S. 692, 709 n.7 (2011)).

³⁸ For example, by statute, circuit judges decide cases by panels of at least three judges, and the Supreme Court has nine justices, six of whom are needed to constitute a quorum. 28 U.S.C. §§ 1, 46.

³⁹ Judiciary Act of 1789, ch. 20, 1 Stat. 73; see *Federal Judiciary Act (1789)*, NAT’L ARCHIVES, <https://perma.cc/6C3D-ERMx>.

⁴⁰ *CASA*, 145 S. Ct. at 2562.

⁴¹ *Id.* at 2560 n.17 (noting that Sup. Ct. R. 10(a) identifies “conflict in the decisions of the courts of appeals as grounds for granting certiorari”).

the nationwide arena and ruled with the tools at their disposal. Some lower court judges recognized the issues inherent in universal relief against the executive branch and would stay their injunctions pending appeal.⁴² But many others wielded their power with abandon, halting executive action nationwide as an exercise of general oversight that runs counter to our judicial system.

Prior to the Supreme Court's recent decision in *Trump v. CASA, Inc.*,⁴³ universal injunctions were clear examples of this judicial overreach for two main reasons. First, as stated previously, universal injunctions enable a district court judge to block the Executive from enforcing the law against anyone, anywhere,⁴⁴ going far beyond the limited equitable authority granted to district courts under the Judiciary Act of 1789.⁴⁵

Second, universal injunctions incentivize “rampant” forum shopping.⁴⁶ Parties often seek favorable forums, but the effect of universal injunctions goes far beyond the individual parties to the case.⁴⁷ Since the Bush administration, courts have issued an extraordinary number of universal injunctions, reflecting some judges' willingness to exercise this power without restraint. Between 1963 and 2023, 127 such injunctions were issued—96 during the Bush, Obama, Trump, and Biden administrations. Studies further show that “the excessive use of [universal] injunctions is limited to certain judges and certain courthouses,”⁴⁸ underscoring the heightened risk of forum shopping in nationwide challenges to executive action.⁴⁹

Furthermore, there is a sharp contrast between the number of universal injunctions under President Trump as compared to Presidents Bush, Obama, and Biden. According to the study, 64 of the 96 injunctions were issued under President Trump.⁵⁰ The statistics also reveal judicial partisan

⁴² See, e.g., *Firearms Pol’y Coal., Inc. v. McCraw*, 623 F. Supp. 3d 740, 759 (N.D. Tex. 2022).

⁴³ *Trump v. CASA, Inc.*, 145 S. Ct. 2540 (2025).

⁴⁴ See *supra* Part 1; *CASA*, 145 S. Ct. at 2548 n.1.

⁴⁵ *CASA*, 145 S. Ct. at 2550.

⁴⁶ Bray, *supra* note 11, at 457–61.

⁴⁷ *CASA*, 145 S. Ct. at 2548 n.1.

⁴⁸ *District Court Reform: Nationwide Injunctions*, 137 HARV. L. REV. 1701, 1717 (2024) [hereinafter *District Court Reform*].

⁴⁹ *Id.* at 1705.

⁵⁰ *Id.*

bias, as 59 of these 64 injunctions—over 92%—were issued by judges appointed by Democrats.⁵¹ Recent Congressional research has found that even more universal injunctions (86) were in fact issued during President Trump’s first term.⁵² Notably, 25 universal injunctions were issued during the first 100 days of President Trump’s second term, each by judges in Democrat-controlled or Democrat-leaning states.⁵³ These numbers—and the judges granting these injunctions—strongly suggest the use of lawfare against President Trump and his executive policy.

The practice of single district court judges halting executive action nationwide needs to end. The Supreme Court made a promising start in *Trump v. CASA, Inc.* by prohibiting universal injunctions.⁵⁴ Yet, as discussed below, the problem is still far from resolved.

3.1. Why *Trump v. CASA* Did Not Solve the Problem

Following the Supreme Court’s *CASA* decision, one might assume that the primary problems of universal injunctions have been resolved, but this is not the case. In *CASA*, the Court held that district courts cannot issue universal injunctions unless such broad relief is necessary to provide complete relief to the parties before the court.⁵⁵ Writing for the majority, Justice Barrett emphasized traditional equitable limits on federal judicial power, noting that Article III does not permit roving judicial commissions to oversee the executive branch on behalf of strangers to the case.⁵⁶ Yet while the decision marks a meaningful step toward curtailing judicial overreach, it does not address—let alone resolve—the deeper structural concerns that S.1090 aims to fix.

Trump v. CASA addresses only a particular *remedial* overreach,⁵⁷ not the *procedural* vulnerability that allows individual district court judges to

⁵¹ *Id.*

⁵² JOANNA R. LAMPE, CONG. RSCH. SERV., R48476, NATIONWIDE INJUNCTIONS IN THE FIRST HUNDRED DAYS OF THE SECOND TRUMP ADMINISTRATION 1 (2025).

⁵³ *Id.* at 4–8.

⁵⁴ 145 S. Ct. 2540 (2025).

⁵⁵ *See id.* at 2562–63.

⁵⁶ *Id.* at 2551.

⁵⁷ That is, the Judiciary Act of 1789, which “authorize[d] the federal courts to issue equitable remedies.” *Id.* (quoting S. BRAY & E. SHERWIN, REMEDIES 442 (4th ed. 2024)).

halt executive action nationally. The case involved a challenge to President Trump’s executive order interpreting when a person born in the United States is not “subject to the jurisdiction thereof” for the purpose of becoming a United States citizen.⁵⁸ Three separate district court judges had issued universal injunctions, barring enforcement of the rule anywhere in the United States against anyone.⁵⁹ The Supreme Court reversed, holding that such relief exceeded the district court’s equitable authority under the Judiciary Act of 1789.⁶⁰ However, this decision hinged on the scope of the remedy, not the composition of the forum. It left untouched the reality that any single judge, anywhere in the country, can unilaterally take up a challenge to major federal policy.⁶¹

For example, a district court judge’s ability to enjoin executive action nationwide is not confined only to universal injunctions. Indeed, writing almost as if to assuage advocates of universal injunction-like relief, Justice Kavanaugh emphasized that such relief is still possible—the *CASA* decision simply requires “district courts to follow proper legal procedures when awarding” it.⁶² Justice Kavanaugh noted two “functional equivalent[s] of a universal injunction” that are still available to parties.⁶³

First, a district court judge may grant a preliminary injunction to a nationwide class under Federal Rule of Civil Procedure 23(b)(2).⁶⁴ The injunctive relief extends only to those who are a part of the class, but because of its national reach, the effect is akin to that of a universal injunction. Indeed, the *CASA* majority recognized that universal injunctions effectively created *de facto* class actions at will without needing to satisfy the requirements of Rule 23(a),⁶⁵ thus rendering Rule 23(b)(2) superfluous.⁶⁶

⁵⁸ *Id.* at 2549.

⁵⁹ *CASA, Inc. v. Trump*, 763 F. Supp. 3d 723 (Md. 2025); *Washington v. Trump*, 765 F. Supp. 3d 1142 (W.D. Wash. 2025); *Doe v. Trump*, 766 F. Supp. 3d 266 (Mass. 2025).

⁶⁰ *CASA*, 145 S. Ct. at 2560, 2562–63.

⁶¹ *See id.* at 2567–68 (Kavanaugh, J., concurring).

⁶² *Id.*

⁶³ *Id.* at 2569.

⁶⁴ *Id.*

⁶⁵ *Id.* at 2556 (citing *Smith v. Bayer Corp.*, 564 U.S. 299, 315 (2011)).

⁶⁶ Howard M. Wasserman, “Nationwide” Injunctions Are Really “Universal” Injunctions and They Are Never Appropriate, 22 LEWIS & CLARK L. REV. 335, 367 (2018).

Second, a judge may “set aside” an agency rule under the Administrative Procedure Act.⁶⁷ Specifically, § 706(2) authorizes courts to “hold unlawful and set aside” agency action found to be arbitrary, capricious, or contrary to law.⁶⁸ Courts have interpreted the “set aside” language as a basis for universal vacatur.⁶⁹ That is, courts may vacate the agency rule itself with the same legal effect as if the agency were to rescind the regulation, thereby nullifying the rule nationwide without regard to the scope of the plaintiff’s injury or the court’s jurisdiction.⁷⁰ Justice Kavanaugh’s “functional equivalent” label is thus appropriate. Yet the *CASA* majority noted that “[n]othing we say today resolves the distinct question whether the Administrative Procedure Act authorizes federal courts to vacate federal agency action.”⁷¹ This observation underscores the intentional limits of the majority opinion. While lower courts are now unable to grant universal injunctions in constitutional cases, they remain free to rely on the APA to strike down agency rules in a manner that binds the executive branch far beyond the named plaintiffs.

Justice Alito, joined by Justice Thomas, noted yet another avenue that could “potentially threaten the practical significance” of the *CASA* decision: states suing on behalf of their individual residents via third-party standing.⁷² Alito questioned whether an injunction procured by a State on behalf of its residents binds the defendant with respect to all residents of that State.⁷³ “If so,” he said, “States will have every incentive to bring third-party suits on behalf of their residents to obtain a broader scope of equitable relief than any individual resident could procure in his own suit. Left unchecked, the practice of reflexive state third-party standing will undermine today’s decision as a practical matter.”⁷⁴

⁶⁷ *Id.* at 2567, 2569 (citing 5 U.S.C. § 706(2)).

⁶⁸ 5 U.S.C. § 706(2).

⁶⁹ See John Harrison, *Vacatur of Rules Under the Administrative Procedure Act*, 40 *YALE J. ON REG.* 119, 121 (2023).

⁷⁰ See *id.*; see also *District Court Reform*, *supra* note 48, at 1713 (“Courts have interpreted this language to mean that they have the authority to vacate *the entire rule, not simply the application of the rule as to the individual petitioners.*” (emphasis added)).

⁷¹ *CASA*, 145 S. Ct. at 2554 n.10.

⁷² *Id.* at 2565 (Alito, J., concurring).

⁷³ *Id.* at 2566.

⁷⁴ *Id.*

These Justices are not alone in recognizing that alternatives exist for obtaining relief similar to universal injunctions.⁷⁵ However, these alternatives suffer from the same fundamental problem as universal injunctions: each provides a mechanism for a single district court judge to halt executive action nationwide. Consequently, each alternative creates the same *procedural* vulnerability that has encouraged the rampant forum shopping associated with universal injunctions.⁷⁶

The distinction between remedial and procedural issues is critical. Justice Barrett criticized Justice Jackson’s dissent for “decr[ying] an imperial Executive while embracing an imperial Judiciary.”⁷⁷ However, more needs to be done to truly protect against judicial overreach. While *CASA* limits the injunctive relief that district courts may grant, it fails to address the procedural incentives that drive litigants to forum shop and seek out favorable single-judge districts. As long as the law permits such cases to be filed before any individual Article III judge, the executive branch remains vulnerable to universal obstruction—even when the resulting injunctions are no longer “universal.”

4. THE SOLUTION

The People entrusted the execution of the law to the hands of our duly elected President. Our Founders understood that the judicial process is vital for ensuring the functioning of our civil society. That remains true today, yet allowing a single jurist to override the will of the People vested in the Executive cannot stand. Thus, 28 U.S.C. § 2284 must be amended to require that any civil action seeking to restrain the executive branch be heard by a three-judge panel, not an individual district judge.⁷⁸

This proposal restores balance and integrity to the process by expediting challenges and ensuring that decisions to halt executive policy reflect more than the whim of a single unelected judge. The goal is not to shield the executive from challenges, but to protect the separation of powers by

⁷⁵ E.g., Wasserman, *supra* note 66, at 366–71 (discussing class actions, third-party standing, and associational standing as avenues for obtaining broad injunctive relief).

⁷⁶ See *supra* text accompanying notes 46–53.

⁷⁷ *Trump v. CASA, Inc.*, 145 S. Ct. 2540, 2561 (2025).

⁷⁸ See Restraining Judicial Insurrectionist Act, S. 1090, 119th Cong. (2025).

ensuring that no individual outside the executive branch can unilaterally override executive policy that has been duly promulgated by the President.

4.1. S.1090—The Restraining Judicial Insurrectionist Act

S.1090 addresses this problem directly. It is agnostic regarding the source of legal authority—whether constitutional, statutory, APA, or otherwise. Its focus is procedural: ensuring that major restraints on executive action, however framed, are not issued by a single district judge without further scrutiny. Requiring a three-judge panel restores a measure of deliberation and discourages opportunistic litigation designed to obstruct federal policy through the most favorable local forum.

While the Supreme Court’s decision in *Trump v. CASA* is a positive development, it does not fully resolve the broad issues presented by universal injunctions. While the decision addresses one form of overreach, it leaves intact the underlying structural defect that enables dilatory litigation targeting executive branch policy. S.1090 provides essential protections to preserve the separation of powers and restore the proper balance between the judiciary and the executive branch.

The proposed legislation achieves this objective through a streamlined process designed to address forum shopping while limiting its application to only essential cases. Specifically, the legislation applies to actions “commenced against any department or office of the executive branch that seeks declaratory relief, a temporary restraining order, a preliminary or permanent injunction, vacatur, a stay, or other equitable relief against an action of the executive branch or executive order of the President.”⁷⁹ When such an action is filed, and a panel is requested, the Chief Justice of the United States designates a three-judge panel, selected at random from all active Article III judges.⁸⁰ The selection process includes several key requirements: at least one member of the panel must be an active circuit judge,⁸¹ no more than two of the judges may be serving in the same judicial circuit,⁸² and the judges selected for the panel may only participate if they are selected at random by

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

the Chief Justice and hold active status.⁸³ This random selection process ensures that parties cannot predict or influence the panel's composition, thereby eliminating the strategic advantage of forum shopping in these critical disputes involving the Executive.

4.2. The Benefits of a Three-Judge Panel

The concern here is not judicial relief itself, but rather the authority of a single judge to bind the entire nation by unilaterally overriding executive policies without the moderating influence of collegial deliberation. This concentration of power represents precisely the type of unchecked authority that the Founders sought to prevent through the careful structure of the United States Constitution.⁸⁴ By contrast, when multiple judges deliberate together, the courts benefit from their collective wisdom. Multi-judge panels promote measured consideration and balanced judgment, rather than the potentially precipitous decisions that may result from individual adjudication.

The remedy is straightforward and well-established. Congress, vested with the authority to ordain and establish the inferior courts,⁸⁵ may require that certain actions of exceptional consequence—such as a civil suit to enjoin the Executive's lawful acts—be heard not by a single judge, but by a panel of three. This approach is not novel, but a restoration of established judicial practice. Congress has long recognized the need for three-judge panels in matters of particular constitutional significance, including voting rights and legislative redistricting.⁸⁶ This procedure ensures that decisions halting the

⁸³ *Id.*

⁸⁴ It is undoubtedly true that many of the founders viewed the judiciary as the “least dangerous” branch; however, that depends entirely on a “government in which [the branches] are separated from each other” THE FEDERALIST NO. 78, *supra* note 2, at 522 (Alexander Hamilton). What's more, the judiciary imagined by Hamilton is not the judiciary of today. Especially considering the effects of universal injunctions, it may no longer be true that the judiciary is entirely harmless.

⁸⁵ U.S. CONST. art. III, § 1.

⁸⁶ 28 U.S.C. § 2284(a) (“A district court of three judges shall be convened when otherwise required by Act of Congress, or when an action is filed challenging the constitutionality of the apportionment of congressional districts or the apportionment of any statewide legislative body.”).

machinery of government are rendered with appropriate deliberation and care.

The prudence of multi-judge panels was valued historically and can be traced back to the Roman Republic. For example, the Centumviri was a court composed of 100 or more judges that heard complex civil cases.⁸⁷ The English common law courts recognized the value of multi-judge panels through the King's Bench, the Court of Common Pleas, and the Court of Exchequer.⁸⁸ Immediately after our Founding, the First United States Congress, comprising many of our Founding Fathers, implemented multi-judge panels in our judiciary.⁸⁹ This consistent history of multi-judge panels reflects the understanding that multiple minds are better than one. "The law is reason unaffected by desire,"⁹⁰ and thus, it is best when minds deliberate together. This collaboration by several judges provides greater wisdom, checks passion and prejudice, and ensures that decisions remain grounded in the law, rather than the will of any one person. As the decisions of our Founders illustrate, the fate of life, liberty, and happiness should not be entrusted to an individual judge.

Historically, Congress has seen the value in expanding the trial courts' scope. For instance, as a response to perceived judicial overreach in *Ex parte Young*, Congress created its first three-judge panel to decide suits seeking to invalidate state legislation.⁹¹ This Supreme Court decision had permitted federal suits against state actors to facilitate constitutional challenges to

⁸⁷ See Matthew Roller, *The Rise of the Centumviral Court in the Augustan Age*, in *THE ALTERNATIVE AUGUSTAN AGE* 266, 268 (Kit Morrell, Josiah Osgood, & Kathryn Welch eds., 2019).

⁸⁸ 3 WILLIAM BLACKSTONE, *COMMENTARIES* *37–38, 41, 43–44.

⁸⁹ *The Judiciary Act (1789)*, *supra* note 39.

⁹⁰ ARISTOTLE, *POLITICS* bk. 3, at 75, 77 (Benjamin Jowett trans., Batoche Books 1999) ("Now any member of the assembly, taken separately, is certainly inferior to the wise man. But the state is made up of many individuals. And as a feast to which all the guests contribute is better than a banquet furnished by a single man, so a multitude is a better judge of many things than any individual.").

⁹¹ David P. Currie, *The Three-Judge District Court in Constitutional Litigation*, 32 U. CHI. L. REV. 1, 5–7 (1964); see also Michael E. Solimine, *Congress, Ex parte Young, and the Fate of the Three-Judge District Court*, 70 U. PITT. L. REV. 101, 115 (2008) (quoting 45 Cong. Rec. 7256 (1910)) (As a response to the decision, one senator famously explained that when "one little judge stand[s] against the whole State . . . you find the people of the State rising up in rebellion.").

state laws.⁹² The statute passed in response in 1910 required a three-judge panel to decide these types of challenges.⁹³ At least one being a justice of the Supreme Court of the United States or a circuit judge.⁹⁴ The decision would then be appealable directly to the United States Supreme Court.⁹⁵

This statute underwent two significant modifications. Congress first expanded it in 1937 to encompass constitutional challenges to federal statutes.⁹⁶ The second modification came in 1965 as part of the Voting Rights Act, which mandated that certain southern states obtain federal preclearance from the Department of Justice for changes to their election laws.⁹⁷ This process alternatively allowed the states to petition a three-judge court to approve their changes.⁹⁸ The eventual dissolution of these courts resulted from several systemic problems. The caseload requiring three-judge courts ballooned to several hundred cases annually,⁹⁹ creating an unsustainable burden on the federal judiciary due to the statute's excessive breadth. The Supreme Court's frustration with this arrangement became evident in its practice of summarily disposing of appeals in more than two-thirds of these cases each term.¹⁰⁰ The statute was plainly "long-winded, repetitive, and sloppy in draftsmanship."¹⁰¹

In response to these issues, Congress substantially narrowed the statute's scope, restricting three-judge panels to reapportionment cases exclusively.¹⁰² This targeted approach remains in effect today,¹⁰³ demonstrating that carefully circumscribed use of three-judge panels for exceptional

⁹² Michael E. Solimine & James L. Walker, *The Strange Career of the Three-Judge District Court: Federalism and Civil Rights*, 72 CASE W. RES. L. REV. 909, 915 (2022).

⁹³ See *id.* at 916; Act of June 18, 1910, Pub. L. No. 218, § 17, 36 Stat. 539, 557.

⁹⁴ § 17.

⁹⁵ *Id.*

⁹⁶ See Act of Aug. 24, 1937, Pub. L. No. 352, 50 Stat. 751, 751–52.

⁹⁷ Voting Rights Act of 1965, Pub. L. No. 89-110, § 5, 79 Stat. 437, 439.

⁹⁸ *Id.*

⁹⁹ Solimine, *supra* note 91, at 126.

¹⁰⁰ Solimine & Walker, *supra* note 92, at 919.

¹⁰¹ Currie, *supra* note 91, at 12.

¹⁰² Act of Aug. 12, 1976, Pub. L. No. 94-381, 90 Stat. 1119, 1119 (codified as amended at 28 U.S.C. § 2284).

¹⁰³ 28 U.S.C. § 2284.

circumstances achieves the intended judicial efficiency without imposing excessive administrative burdens on the federal court system.¹⁰⁴

When properly implemented, this measure safeguards litigant rights while upholding the dignity of the law. It enables judicial review while maintaining judicial integrity. It opens courts to legitimate challenge while preventing judicial policymaking. Rather than attacking the judiciary, it protects against its politicization. Justice Alito eloquently explained the dilemma by saying:

[T]here are 680 district court judges, and . . . sometimes they're wrong, and all Article III judges are vulnerable to an occupational disease, which is the disease of thinking that I am right and I can do whatever I want. Now, on a multi-member appellate court, that is restrained by one's colleagues, but trial judge, the trial judge sitting in the trial judge's courtroom is the monarch of that . . . realm¹⁰⁵

Especially since injunctive relief against the Executive often has the practical implication of a final judgment, prudence counsels that such decisions should be taken out of the trial judge's "realm." Critics may argue this procedure would delay justice and allow unchecked executive action. This argument fails. While cases typically require years to reach the Supreme Court, S.1090 empowers three-judge panels to grant preliminary or permanent relief, with decisions directly appealable to the Supreme Court. This framework both enhances deliberative accuracy and accelerates review of executive actions, ensuring lawful governance while preserving constitutional function.

The Constitution guards against tyranny through bold principles and procedural safeguards that prevent judicial policymaking. We must restore the balance of powers and judicial credibility. Courts should fulfill the Framers' vision of deliberative, impartial, and restrained legal judgment. No single

¹⁰⁴ For instance, the United States Court of International Trade utilizes three-judge panels when cases involve "the constitutionality of an act of Congress, a Presidential proclamation, or an Executive order." *About the Court*, U.S. CT. OF INT'L TRADE, <https://perma.cc/M9LQ-9J9L>.

¹⁰⁵ Transcript of Oral Argument at 97–98, *Trump v. CASA, Inc.*, 145 S. Ct. 2540 (2025) (No. 24A884).

judge may govern what only the People, through their elected Executive, may decide.

5. CONCLUSION

The preservation of our great nation depends fundamentally on the distribution and exercise of power. The Constitution’s framers understood the inherent danger of consolidating excessive authority in any single institution, whether executive, legislative, or judicial.¹⁰⁶

In no other sphere of constitutional governance does an individual officer, lacking both national constituency and interbranch accountability,¹⁰⁷ wield such decisive influence over the execution of federal law. This concentration of power proves particularly problematic in the context of injunctive relief, where preliminary remedies frequently carry the practical force of final judgments. Such arrangements threaten the proper functioning of our Republic and violate both constitutional design and Article III’s judicial limitations. S.1090 therefore proves essential for restoring judicial restraint and ensuring effective governance.¹⁰⁸

¹⁰⁶ THE FEDERALIST NO. 47, *supra* note 2, at 324 (James Madison) (“The accumulation of all powers legislative, executive and judiciary in the same hands, whether of one, a few or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.”).

¹⁰⁷ Granted, federal judges are theoretically held accountable through impeachment, but only for “Treason, Bribery, or other high Crimes and Misdemeanors.” U.S. CONST. art. II, § 4. Despite this, history shows that impeachment is largely a blunt sword except in the most extreme of cases. See Douglas Keith, *Impeachment and Removal of Judges: An Explainer*, BRENNAN CTR. FOR JUST. (Mar. 18, 2025), <https://perma.cc/CSM5-QLVH> (“[T]he House of Representatives has impeached only 15 judges . . . and only eight of those impeachments were followed by convictions in the Senate.”).

¹⁰⁸ See Kevin J. Lynch, *The Lock-In Effect of Preliminary Injunctions*, 66 FLA. L. REV. 779, 781 (2015).