



Politicians in Robes

Since the start of President Trump's second term, nationwide injunctions from activist judges have plagued the Trump agenda. These 'politicians in robes' actively subvert the conservative policies that you support. These rogue judges are attempting to force the Trump Administration to take drastic actions like rehiring tens of thousands of left-wing employees that the administration fired—perpetuating waste and fraud.

Activist judges should not be allowed to make laws from the bench. Their use of nationwide injunctions prevents the Trump Administration from enacting the policy agenda that patriots like you voted for.

That is why The Heritage Foundation

is dedicated to tackling this crucial issue.

This eBook will break down why these judges'

nationwide injunctions are bad law and bad policy,

and how to solve this constitutional crisis.



Activist Judges Abuse the Constitution

Article I of the Constitution gives the legislative power to Congress, and Article II gives the president the executive power which includes the responsibility to "take Care that the Laws be faithfully executed." The Framers spent far less time at the Constitutional Convention on the Article III branch, but they did define and limit the power that the federal courts may exercise. That is the authority to adjudicate cases and controversies under the Constitution and American law.

Nowhere in Article III is there a hint that the judicial power is identical to the legislative power vested in Congress, or that federal courts may make a ruling that is comparable to the law that only the political branches may create. The reason is that the Framers were aware of the difference between the legislative and judicial processes. They assigned different powers to the different branches to avoid any one of them from becoming too powerful, and the Constitution's terms must be read in light of the Framers' knowledge and purpose.¹

¹ See, e.g., 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)).



But today's activist judges and their nationwide injunctions are greatly stretching the limits of judicial power. A judgment simply reflects a court's determination as to the best interpretation of federal law or the best application of that law to the facts of a particular case. Once a court enters its ruling, that judgment binds only the parties, not strangers to the litigation.

What can affect third parties is the doctrine of *stare decisis*—the principle that a legal rule, once settled, should be applied in future cases.² In a federal system like ours, one with numerous vertical and horizontal lines of jurisdiction, the stare decisis doctrine does not apply nationwide unless the Supreme Court has resolved an issue.³ No particular circuit court of appeals can bind another one, and no district court can bind any other court—or even its own.

² See, e.g., Ramos v. Louisiana, 590 U.S. 83, 101-11 (2020) (plurality opinion); id. at 115-24 (Kavanaugh, J.,).

³ See, e.g., Loper Bright Enterprises v. Raimondo, 603 U.S. 369, 406 (2024) (noting that "lower courts [are] bound by even our crumbling precedents").





Activist Judges Create a Policy Nightmare

Even if Congress could empower courts to award nationwide injunctions outside of nationwide class actions, it would be terrible policy for several reasons.

One of those reasons, however, deserves special attention. The ability to persuade a district judge to enter a nationwide injunction without certification of a nationwide class action will encourage "judge shopping" to obtain the perfect judge with the right judicial philosophy and politics that will provide a favorable outcome.



This problem is a serious one. If we don't solve it soon, more and more Americans will start to believe that the entire judicial system is politicized.

As former Dean of Boston University Law School Ron Cass has warned, "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."

We must instead limit the court's ability to issue these politicized nationwide injunctions and ensure they remain within their proper constitutional role.

⁴ Ronald A. Cass, Nationwide Injunctions' Governance Problems: Forum-Shopping, Politicizing Courts, and Eroding Constitutional Structure, 27 GEO. MASON L. REV. 29, 53-54 (2019) (footnote omitted); Developments, supra note 1, at 1712 ("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.") (footnote and punctuation omitted).



SOLUTIONS:

How to Stop Activist Judges

The Heritage Foundation has been on the forefront of the battle against out-of-control, rogue judges interfering with the ability of a president to run the executive branch by issuing nationwide injunctions.

Our legal experts have developed comprehensive policy solutions that will fix these issues.





First, Congress should require all lawsuits contesting the legality or constitutionality of an executive order signed by a president or a regulation promulgated by a federal agency to be filed in the District of Columbia federal district court. This would help ensure an orderly, efficient litigation process.

There is precedent for such a requirement. For example, Section 5 of the Voting Rights Act of 1965 required any lawsuits over the preclearance of changes in voting laws made by any state, county, or city located anywhere in the country to be filed in the U.S. District Court of the District of Columbia. Moreover, due to the importance of voting rights, federal law provides that such cases shall be heard by a three-judge panel, at least one of whom is a circuit judge. It would be hard to argue that cases involving government policies that affect the other rights of citizens are any less important.





Another possible remedy is for either the Supreme Court or Congress to change the standard of review for nationwide injunctions that go beyond correcting the behavior of the government towards the individual, named plaintiffs in a case. The recognized standard of review by an appellate court of a preliminary injunction is normally whether the trial court abused its discretion. Changing this process would provide the appellate courts with more leeway to reverse improperly granted injunctions or injunctions that are too sweeping and too broad in their application.

Congress is already following Heritage's lead on this issue. Following Heritage's publicly available policy blueprints, Congressman Darrell Issa sponsored the "No Rogue Rulings Act" that would, among other things, require that any request for nationwide relief to a president's executive action be heard by a three-judge panel, not a lone federal district judge. An appeal from the three-judge panel would go directly to the U.S. Supreme Court. Senator Mike Lee introduced a similar measure, the "Restraining Judicial Insurrectionists Act of 2025."



The Heritage Foundation will not rest until

these politicians in robes are kept within

their constitutional limits, instead of

illegitimately sabotaging the policies

the American people voted for.

Sources

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Building
an America
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