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**The Role and Impact of Nationwide Injunctions:
Written Testimony for the House Committee on
the Judiciary, Subcommittee on the Courts,
Intellectual Property, and the Internet**

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**United States House of Representatives, Committee on the Judiciary, Subcommittee on the
Courts, Intellectual Property and the Internet**

The Role and Impact of Nationwide Injunctions by District Courts

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I. Introduction

Thank you for inviting me to testify on the role and impact of nationwide injunctions by federal district courts.

I am a Professor of Law at American University Washington College of Law in Washington, D.C. My areas of expertise include Civil Procedure, Federal Courts, and Immigration.

I will begin my testimony by providing background information on federal district courts' authority to issue nationwide injunctions. I will then describe the costs and benefits of nationwide injunctions, and will conclude by discussing procedures and practices that district courts should adopt before issuing such injunctions.

II. Background on Nationwide Injunctions

A) Definition of the Term “Nationwide Injunction”

Injunctions are an equitable remedy to control the defendant's conduct. If a federal district court concludes that a defendant has violated the law, it must then decide the appropriate scope of the remedy for the violation identified. Remedies can include retrospective relief such as money damages for past harm, as well as prospective relief such as an injunction barring future enforcement of an invalid regulation or policy. If a party violates an injunction, the court can hold civil or criminal contempt proceedings and impose fines or imprisonment.

Federal district courts have broad discretion to determine the appropriate scope of both preliminary injunctions and permanent injunctions entered in cases over which they preside. For example, district courts can choose to craft injunctive relief that restrains enforcement of an invalid law only against the plaintiffs, or against all persons similarly situated to the plaintiffs, or against anyone, anywhere.

This hearing is focused on nationwide injunctions, but that term can be misleading. An injunction that applies only to the plaintiff will apply nationwide, in that the defendant cannot take the enjoined action against that plaintiff anywhere in the United States. *See* Michael T. Morley, *Nationwide Injunctions, Rule 23(B)(2), and the Remedial Powers of the Lower Courts*, 97 B.U. L. Rev. 611, 616 (2017) (hereinafter “Morley, *Nationwide Injunctions*”). My testimony uses the term “nationwide injunction” to refer to an injunction that applies nationwide to individuals and entities who are *not* parties to litigation, as well as to the plaintiff. My testimony will also focus on the use of nationwide injunctions against the federal government, though many of the points made here will also be applicable to nationwide injunctions against private parties.

B) The Distinction Between Preliminary Injunctions and Permanent Injunctions

Federal district courts have the power to issue injunctive relief at different phases of the litigation. In cases challenging the legality of a federal statute, regulation, or executive order, the plaintiff may seek a preliminary injunction to preserve the status quo while the case is under consideration. Courts issue preliminary injunctions at an early stage in the litigation, often before the court has heard the evidence and always before it has issued a final decision on the merits. As the Supreme Court recently explained, the “purpose of such interim equitable relief is not to conclusively determine the rights of the parties . . . but to balance the equities as the litigation moves forward.” *See Trump v. International Refugee Assistance Project (“IRAP”)*, 137 S.Ct. 2080, 2087 (2017) (internal citation omitted).

Courts generally consider the following four factors before issuing a preliminary injunction:

- 1) whether the party seeking the preliminary injunction is likely to succeed on the merits;
- 2) whether the party seeking the preliminary injunction is likely to suffer irreparable harm in the absence of such relief;
- 3) whether the balance of equities favors the party seeking a preliminary injunction; and
- 4) whether the preliminary injunction is in the public interest.

See Winter v. Natural Resources Defense Council, Inc., 555 U.S. 7, 20 (2008).

If a preliminary injunction is issued by a district court, the enjoined party can immediately seek review of that decision to the United States Court of Appeals, and can also file a petition for a writ of certiorari in the U.S. Supreme Court.

District court judges can also enter permanent injunctions in support of their final judgment in a case. As the Supreme Court explained in *eBay, Inc. v. MercExchange LLC*, 547 U.S. 388 (2006), a plaintiff seeking a permanent injunction must satisfy the following four factors before being granted such relief:

- (1) that it has suffered an irreparable injury;
- (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury;
- (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and
- (4) that the public interest would not be disserved by a permanent injunction.

Defendants can appeal permanent injunctions to the United States Courts of Appeals, and can seek review in the United States Supreme Court. The district court's decision to grant or deny equitable relief is reviewed by these appellate courts for abuse of discretion. *Id.*

C) The Source of District Court's Authority to Issue Nationwide Injunctions

Article III of the U.S. Constitution vests all federal judges with the "judicial Power of the United States," which includes the power to order equitable relief. Federal district court judges are geographically constrained regarding the cases they may hear, but there are no geographical limits on the scope of the relief they may provide, and so they may enjoin a defendant's conduct as it affects anyone, anywhere. *See Califano v. Yamasaki*, 442 U.S. 682, 702 (1979) (observing that "the scope of injunctive relief is dictated by the extent of the violation established," and not by geography); *Trump v. IRAP*, 137 S. Ct. 2080 (2017) (*per curiam*) (denying a stay application in part and allowing a lower court's preliminary injunction to remain in effect nationwide).

Although federal district courts have authority to determine the scope of the injunctions they issue, they should use that discretion wisely, and they can be reversed by appellate courts for abusing that discretion. The Supreme Court has explained that an injunction should be "no more burdensome than necessary to provide complete relief to the plaintiffs." *Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 778 (1994).

III. The Benefits of Nationwide Injunctions

In some cases, nationwide injunctions are essential to provide complete relief to plaintiffs and to ensure uniformity in the interpretation and application of federal law.

A) Nationwide Injunctions Are Sometimes Required to Provide Complete Relief to the Plaintiffs

In some cases, a nationwide injunction is essential to ensure that plaintiffs receive complete relief for their injuries. If the plaintiff's injury cannot be addressed through a geographically limited injunction, or through an injunction targeting only defendant's conduct towards the plaintiff, then a nationwide injunction may be the only possible remedy for the legal violation. *See Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 778 (1994); *see also* Michael T. Morley, *De Facto Class Actions? Plaintiff-and-Defendant-Oriented Enjunctions in Voting Rights, Election Law, and Other Constitutional Cases*, 39 Harv. J.L. & Pub. Pol'y 487, 491 (2016) (noting that "[i]n certain cases, it would be impossible to fully enforce a plaintiff's rights without completely invalidating a statute or regulation as it applies to everyone"); Samuel L. Bray, *Multiple Chancellors: Reforming the National Injunction*, __ Harv. L. Rev. __ (forthcoming), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2864175, at 17-20 (noting that the case law supports the principle of crafting injunctions to award complete relief, but rejecting that standard as indeterminate).

In cases challenging federal immigration laws and policies, nationwide injunctions are often required to alleviate plaintiffs' injuries. Challenges to the recent Executive Order banning travel by certain foreign nationals into the United States, and challenges to the 2014 initiative to grant deferred action to undocumented immigrants, are both examples of cases in which the plaintiffs' alleged injuries could only be alleviated by a nationwide injunction.

The State of Hawai'i joined with an individual plaintiff from Hawai'i to challenge Section 2(c) President Trump's Executive Orders banning nationals from certain countries from entering the United States. *Hawai'i v. Trump*, 859 F.3d 741 (9th Cir. 2017), *vacated as moot Trump v. Hawai'i*, No. 16-1540, 2017 WL 4782860 (Oct. 24, 2017). Hawai'i asserted that the Executive Order inflicted statutory and constitutional injuries on "its residents, its employers, its educational institutions, and its sovereignty." *Id.* at 760. In particular, Hawai'i argued that the travel ban prevented the University of Hawai'i from recruiting and retaining students and faculty members from the relevant countries. *Id.* at 765.

The Hawai'i District Court issued a nationwide injunction against enforcement of Section 2(c), and the Ninth Circuit affirmed. *Id.* The scope of the injunction was essential to protect the plaintiffs' interests. As Hawai'i explained, any restriction on the entry of foreign nationals from those countries would impede the University's ability to recruit them to be students and faculty, and would discourage many from applying or accepting job offers. Furthermore, a geographically-restricted injunction is not feasible in the immigration context, because the United States does not restrict travel among the fifty states by a noncitizen lawfully residing in one of them. *See Lemon v. Kurtzman*, 411 U.S. 192, 200 (1973) (plurality opinion) (observing that "equitable remedies are a special blend of what is necessary, what is fair, and what is workable").¹ For similar reasons, federal district courts in Washington and Maryland also ordered nationwide injunctions of Section 2(c) of the Executive Order.

Similar logic supported a Texas District Court's decision to issue a nationwide injunction banning implementation of the 2014 initiative granting deferred action to undocumented immigrant parents of U.S. citizens and lawful permanent residents. Although twenty-six states filed suit, the district court judge found that only Texas had standing to bring the lawsuit based on Texas' claim that it would be forced to provide these new recipients of deferred action with state subsidized driver's licenses. The court nonetheless issued a nationwide injunction after Texas argued it would not be possible to prevent recipients of deferred action in other states from traveling to Texas, taking up residence, and applying for driver's licenses—thereby causing Texas the same injury. *See Texas v. United States*, 86 F. Supp. 3d 591 (S.D. Tex.), *aff'd*, 809 F.3d 134 (5th Cir. 2015), *as revised* (Nov. 25, 2015), *aff'd by an equally divided Court*, 136 S. Ct. 2271 (2016); *see also* Plaintiffs' Opposition to Defendants' Motion to Stay Pending Appeal the Court's February 16, 2015 Order of Preliminary Injunction at 19-20 (arguing that if deferred

¹ Although the Supreme Court narrowed the injunction to apply only to "foreign nationals who have a credible claim of a bona fide relationship with a person or entity in the United States," the injunction continued to apply nationwide and to individuals unrelated to the plaintiffs to the case. *Trump v. IRAP*, 137 S.Ct. 2080, 2087 (2017).

action were granted to undocumented immigrants in other states, those individuals could then travel to Texas and seek driver's licenses).²

For the same reasons, nationwide injunctions are sometimes required in cases involving issues that cross state lines—such as pollution of the air or water, or tainted food, or defective products—because geographically restricted injunctions would not provide the plaintiff with complete relief. For example, in *Northwest Environmental Advocates v. EPA*, 2005 WL 756614 (N.D. Cal. Mar. 30, 2005), a federal district court held that a federal regulation exempting ships from the requirement to obtain a permit before discharging ballast water violated the Clean Water Act. The Court ordered the EPA to repeal the regulation, and subsequently entered a permanent injunction to enforce that ruling. *Northwest Environmental Advocates v. EPA*, No. 03-05760, Order Granting Plaintiffs' Motion for Permanent Injunctive Relief (N.D. Cal. Sept. 18, 2006). Because the environmental harm from discharge of ballast waters could not be easily contained geographically, and because in any case the plaintiffs' claim was to the harm they would suffer if the waters *anywhere* in the United States were polluted, a nationwide injunction barring the EPA from continuing to enforce its regulation was the only remedy that would relieve their injury. Likewise, it would be difficult to craft injunctive relief limited to the plaintiff alone in cases seeking to protect endangered species, or to ensure the safety of food or medical devices. *See, e.g., Am. Lands Alliance v. Norton*, 2004 WL 3246687, at *3 (D.D.C. Jun. 2, 2004) (imposing nationwide injunction prohibiting the Fish and Wildlife Service from violating the Endangered Species Act's notice-and-comment requirement).

Finally, as Professor Michael Morley has noted, injunctions that extend beyond the plaintiff may also be appropriate in cases involving indivisible rights, in which injunctive relief to protect the plaintiff's rights inevitably apply to nonparties to the litigation. For example, in redistricting or school desegregation cases, an injunction crafted to provide relief to the plaintiff by altering voting districts or mandating integration will necessarily require that the defendant change its conduct as to *all* similarly-situated individuals. *See Morley, Nationwide Injunctions*, at 616.

B) Nationwide Injunctions Ensure Uniformity in the Interpretation and Application of Federal Law

Nationwide injunctions are also consistent with rule-of-law values, such as providing uniformity in the interpretation and implementation of federal law and ensuring that similarly-situated individuals are treated alike. The Courts have a “well recognized interest in ensuring that federal courts interpret federal law in a uniform way.” *Williams v. Taylor*, 529 U.S. 362, 389-90 (2000). Similarly situated people are entitled to similar outcomes under the same federal law. Accordingly, an injunction that requires the defendant not to enforce the law against the

² I have argued elsewhere that Texas' claimed injury did not constitute a cognizable injury for the purposes of establishing standing to sue under Article III. *See Amanda Frost & Stephen I. Vladeck, Limit State Access to Federal Court*, Op-Ed, N.Y. Times (Dec. 22, 2015).

plaintiff, but allows the defendant to continue applying the law to everyone else, appears arbitrary and unfair. See Michael T. Morley, *De Facto Class Actions? Plaintiff-and-Defendant-Oriented Injunctions in Voting Rights, Election Law, and Other Constitutional Cases*, 39 Harv. J.L. & Pub. Pol’y 487, 490 (2016) (noting “the unfairness that could result from enforcing certain plaintiffs’ rights while allowing the challenged provision to otherwise remain in effect, violating the rights of others”).

The Supreme Court has recognized that these rule-of-law values support injunctions that apply beyond the plaintiffs to the litigation. As the Court explained in *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979), the “scope of injunctive relief is dictated by the extent of the violation established, not by the geographical extent of the plaintiff class.” Likewise, the D.C. Circuit has stated that “[w]hen a reviewing court determines that agency regulations are unlawful, the ordinary result is that the rules are vacated—not that their application to the individual petitions is proscribed.” *Harmon v. Thornburgh*, 878 F.2d 484, 495 n.21 (D.C. Cir. 1989). The principle of treating like cases alike motivated the Supreme Court’s recent decision in *Trump v. IRAP* to partially keep in place the district court’s nationwide injunction prohibiting enforcement of the travel ban. The Court explained that it wanted to maintain the injunction “with respect to . . . those similarly situated [to the plaintiffs].” 137 S.Ct. at 2087. In other words, the Court wished to avoid a situation in which individuals in a similar situation to the plaintiffs in the lawsuit would receive differential treatment under federal immigration law.

That said, uniformity in the interpretation and application of federal law should not be prioritized at all costs. Our legal system tolerates disuniformity in many contexts, in part because it allows for the percolation of legal issues among the lower courts before the Supreme Court establishes a nationwide rule. So, for example, district court decisions bind no one but the parties, allowing different district court judges to reach different conclusions about the meaning of federal law even when they are located in the same state. Likewise, the regional federal courts of appeals are not bound by each other’s decisions, and thus can issue conflicting interpretations of federal law. Although the Supreme Court can resolve such splits, it does not always choose to do so quickly, or at all, and so the law can vary across regions for decades. In short, our legal system is comfortable with at least some disuniformity, and so district courts considering the proper scope of an injunction need not prioritize uniformity above all other goals when crafting the scope of an injunction. See, e.g., Amanda Frost, *Overvaluing Uniformity*, 94 Va. L. Rev. 1567 (2008) (arguing that uniformity need not be prioritized in all situations); Bray, *supra*, at 55-58.

Uniformity is more important in some contexts than others, however. Congress and the Supreme Court have repeatedly stated that immigration law in particular should be interpreted uniformly, in part because these laws and policies affect the nation’s foreign policy and international relations. See *Texas*, 809 F.3d at 187-88; *Washington v. Trump*, NO. 17-35101, 2017 WL 526497, at *9 (9th Cir. Feb. 9, 2017). Immigration policies should be comprehensible to the noncitizens who must follow them and other actors who must interpret and apply them

(such as airlines). Geographically limited injunctions are sure to create confusion. Accordingly, a broad, nationwide injunction may be appropriate in a case concerning immigration law and policy, where the need for uniformity is particularly great.

The need for uniformity in the immigration context was illustrated by the confusion that followed from a Massachusetts District Court’s geographically restricted injunction of portions of Executive Order 13769 (Protecting the Nation from Foreign Terrorist Entry into the United States). Shortly after President Trump issued that Executive Order, the Massachusetts District Court ordered Customs and Border Protection officials to “notify airlines that have flights arriving at Logan Airport . . . that individuals on these flights will not be detained or returned solely on the basis of the Executive Order.” *Tootkabani et al. v. Trump*, 17-cv-10154 (D. Ma. Jan. 29, 2017). In the confusion that followed, some foreign nationals entered the United States through Logan Airport and then traveled to other states—rendering the geographic limit on the injunction pointless. At the same time, other foreign nationals were barred from boarding flights headed to Logan despite the court order because airline personnel and other officials were confused about what the law required of them in light of the limited injunction. *See, e.g., Maria Sacchetti, Confusion rules after court order temporarily halts Trump immigration ban*, Boston Globe, Jan. 30, 2017.

Uniformity is also a compelling reason for nationwide relief in cases in which fragmented implementation of federal law would lead to confusion or be impossible to implement in practice. For example, in 2015, the Sixth Circuit issued a nationwide stay of a final rule adopted by the U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency broadly defining “waters of the United States.” *In re E.P.A.*, 803 F.3d 804 (6th Cir. 2015). Eighteen States challenged the Rule, arguing it violated the Clean Water Act by expanding the agencies’ jurisdiction, and was promulgated in violation of the Administrative Procedures Act. The Court ordered the agencies to stay implementation of the rule nationwide after finding that a stay would reduce “confusion” and “uncertainty” and “restore uniformity of regulation under the familiar, if imperfect, pre-Rule regime, pending judicial review.” *Id.* at 808. In short, the Court concluded that in a case challenging agencies’ redefinition of the scope of their regulatory authority, piecemeal injunctions would do more harm than good.

IV. The Costs of Nationwide Injunctions

As just discussed, nationwide injunctions can serve the important purposes of providing the plaintiff with complete relief and ensuring uniform interpretation and application of federal law. But they can also come at a cost to other values.

A) Nationwide Injunctions May Encourage Forum Shopping

The district court’s power to issue a nationwide injunction can encourage a plaintiff to forum shop for the district court judge most likely to issue such a remedy. As Professor Samuel Bray has explained, it is no coincidence that nationwide injunctions in major cases over the last

three administrations were issued by courts known to be sympathetic to the plaintiffs' positions in those cases. *See Bray, supra*, at 8-13. Over the last two years, a Federal District Court in the "red state" of Texas issue a nationwide injunction halting the Obama Administration's program granting deferred action to unauthorized immigrants, while Federal District Courts in the "blue states" of Washington, Hawai'i, and Maryland issued nationwide injunctions enjoining President Trump's executive order banning travel by nationals of specified countries. Such cases arguably undermine the public's perception of judges as neutral, non-partisan decisionmakers, and thus the legitimacy of the legal system.

Although the concern about forum shopping is a valid one, it is worth noting that forum shopping is pervasive and is not limited to cases involving nationwide injunctions. Forum shopping is permitted, and even encouraged, under both the U.S. Constitution and federal venue statutes. Indeed, the framers of the Constitution created the federal courts precisely so that litigants could choose a federal forum when they thought a state court might be hostile to their claim of federal right, or when they feared a state court might be biased against them because they are not a citizen of the state. Congress allows such forum shopping by permitting litigants to file in either state or federal court in most cases raising a federal question or involving parties from diverse states, and by allowing a choice of forum under federal venue statutes. *See Tafflin v. Levitt*, 493 U.S. 455 (1990); *The Federalist* No. 82 (Hamilton) (noting that state courts have concurrent jurisdiction over federal claims unless Congress says otherwise). As a result, litigants quite reasonably take advantage of the fact that they have a choice of forum to search out the judge they think will be friendly to their legal claims in *all* cases, not only those involving the potential for nationwide injunctions.

B) Nationwide Injunctions Create a Risk of Conflicting Injunctions

Nationwide injunctions also create the potential for conflicting injunctions, leading to the risk that the defendant could be held in contempt of court no matter which injunction the defendant tried to obey. Conflicting injunctions are rare, and when they have occurred in the past the usual result is that one judge backs down, staying an injunction or narrowing it. *See e.g., Feller v. Brock*, 802 F.2d 722 (4th Cir. 1986); *see also Bray, supra*, at 14. Typically, the Supreme Court could resolve the conflict, but there is always a chance the Court could evenly divide on the issue—either because one Justice recuses him or herself, or because of a vacancy—and thus the conflict would persist. *Id.*

To the degree that conflicting injunctions are a problem, however, they are the natural result of a legal system that allows lower courts to issue divergent decisions. *See Bray, supra*, at 55-58 (noting that our legal system permits lower courts to reach different results on the same legal question). Conflicts are not limited to cases involving nationwide injunctions. Defendants can be put in a similar bind whenever two courts issuing conflicting decisions about the meaning of federal law, whether or not those decisions come with a nationwide injunction, or indeed any

injunction at all. The problem is particularly acute when the conflicting rulings come from courts within the same state.

For example, in 2015, a federal district court in Alabama declared that same sex marriage was protected under the U.S. Constitution's Equal Protection Clause even as Alabama Chief Justice Roy Moore, acting in his role as chief administrative officer of the state courts, prohibited probate judges from granting marriage licenses to same sex couples. *See* Howard M. Wasserman, *Crazy in Alabama: Judicial Process and the Last Stand Against Marriage Equality in the Land of George Wallace*, 110 Nw. L. Rev. Online 1 (2015). Probate judges in Alabama were put in a difficult position of choosing between the conflicting commands of two different judicial systems—a problem that persisted until the Supreme Court resolved the issue. These sorts of conflicting rulings are the cost we pay for allowing lower courts to reach divergent conclusions about the meaning of federal law—a cost that most think is worthwhile because it also allows for the percolation of these issues among different jurists before final resolution by the Supreme Court. *See* Bray, *supra*, 55-58; Frost, *supra*, at 159.

C) Nationwide Injunctions Prevent Percolation of Legal Issues in the Lower Federal Courts

Nationwide injunctions can also stymie the development of the law and the percolation of legal issues in the lower courts. The Supreme Court prefers to resolve questions about the meaning and constitutionality of federal law after multiple lower courts have had a chance to weigh in on the questions in different factual contexts. *See Califano v. Yamasaki*, 442 U.S. 682, 702 (1979); *United States v. Mendoza*, 464 U.S. 154, 160 (1984). If the first district court to address the constitutionality of a federal law issues a nationwide preliminary injunction barring that law from going into effect, it can force the Supreme Court to address the question without the benefit of additional viewpoints from other lower federal courts.

In *Califano*, the Supreme Court has addressed this same problem in the context of certification of nationwide class actions under Federal Rule of Civil Procedure 23(b). Although the Court recognized that nationwide class actions can undermine the development of federal law, it “decline[d] to adopt the extreme position that such a class may never be certified.” *Califano*, 442 U.S. at 702-03. Instead, the Supreme Court encouraged district courts to “take care to ensure that nationwide relief is indeed appropriate in the case before it” before certifying such class actions. *Id.* at 702.

V. Best Practices for Issuing Nationwide Injunctions

As just explained, nationwide injunctions come with both costs and benefits. In some cases, the benefits of nationwide injunctions—providing complete relief to the plaintiff and ensuring uniformity in the application of federal law—will outweigh the costs. In other cases, they will not. Unfortunately, however, some federal district courts appear to consider nationwide

injunctions the default remedy in any case holding a federal law invalid, without considering the costs and benefits of doing so.

The best practice is for a federal district court to establish procedures to ensure that it has all the relevant information about the costs and benefits of the proposed scope of an injunction. The court should hold a hearing at which the parties to the litigation, as well as interested third parties, can present evidence and make arguments about the proper scope of the remedy. The court should then issue a written ruling addressing the costs and benefits of an injunction in the case at hand that will provide a guide to the appellate courts, which may be asked not only to review the merits of the district court's decision but also the scope of the injunctive relief.

District courts should be particularly cautious about issuing broad *preliminary* injunctions, which typically come at an early stage of the litigation before the judge has had an opportunity to review the evidence. Many of the nationwide injunctions in major recent cases—such as the nationwide injunction against the 2014 deferred action initiative and the multiple nationwide injunctions against the travel ban—were preliminary injunctions issued within days or weeks of the filing of a complaint. As a result, the Federal Courts of Appeals and the U.S. Supreme Court have also been asked to review these injunctions without the benefit of evidence or well developed arguments on the merits. The costs of these preliminary injunctions may be higher because they may prevent other lower courts from addressing the issue and force the Supreme Court to decide a case without the benefit of multiple viewpoints from the lower courts and a record below. In such cases, federal district courts should be particularly careful to consider the costs as well as the benefits of issuing a nationwide injunction that immediately freeze the development of the law.

VI. Conclusion

As described above, nationwide injunctions come with both costs and benefits. Accordingly, federal district courts should not assume that national injunctions are the default remedy in a case challenging the legality of a federal law. Nor, however, should they refuse to grant them in cases in which the benefits outweigh the costs. Rather, they should ask both the parties to the litigation and interested third parties to provide evidence and argument about the proper scope of injunctive relief, and should then weigh the costs and benefits of the nationwide injunction before issuing a final decision.