



US Supreme Court

Are universal injunctions an important check on the executive, or harmful judicial activism?

What's the story?

On 21st February 2020, the Supreme Court lifted an injunction that had prevented a new immigration rule from taking effect in Illinois. All four Democrat-appointed justices dissented from the order. In her written dissent, Justice Sonia Sotomayor noted how often the Supreme Court's majority of Republican-appointed justices had granted the Trump administration's requests to overturn injunctions issued by lower courts. President Trump argued that Sotomayor had inappropriately accused the Supreme Court's Republican-appointed justices of "being biased in favour of Trump" in an attempt to "shame some into voting her way". He argued that she should recuse herself from any future cases he is involved in.

What led to this appeal to the Supreme Court?

On 12th August 2019, the Trump administration announced a new rule that allows immigrants who are likely to rely on public benefits, such as Medicaid, housing assistance or food stamps, to be classified as a "public charge" and denied permanent residency. The rule was soon challenged in federal district courts across the country. Several district courts issued injunctions (court orders that prevent a specific action until after the case has been decided) that were later overturned by the 4th and 9th Circuit Courts of Appeals. However, other injunctions were left in place. The 7th Circuit denied a request to suspend a state-wide injunction that prevented the public charge rule from being enforced anywhere in Illinois, while the 2nd Circuit upheld a New York District Court's 'universal' nationwide injunction that prevented the rule from taking effect across the entire country. On 27th January, the Supreme Court voted 5-4 to lift the nationwide hold on the rule. Justice Neil Gorsuch wrote a short opinion in which he firmly criticised the increasing use of universal injunctions. He lamented the fact that, while legal challenges to the Trump administration's new rule found mixed responses across the country, a single district judge found it fitting to prevent the federal government from applying its new rule anywhere in the country. The decision left the Illinois injunction in place, but on 21st February the Supreme Court voted 5-4 to overturn this state-wide hold as well, allowing the public charge rule to take effect across the entire country while both sides present their legal arguments, and judges finally determine the legality of the rule.

What did Justice Sotomayor argue in her dissent?

Justice Sotomayor argued that the decision "follows a now-familiar pattern", in which the Government seeks emergency relief from the Supreme Court, arguing "that it will suffer irreparable harm" if a lower court's injunction is not immediately stayed (halted), and the Court swiftly agrees. She said that this decision is particularly concerning, because, while the Government argued weeks earlier that the New York District Court's injunction should be overturned largely because it was applied nationwide, a factor which Justice Gorsuch similarly focussed on in his written opinion, the Government was unable to "state with precision any of the supposed harm" that would come from the Illinois injunction. The injunction blocked the rule in just a single state and possibly for only a short period, as the 7th Circuit Court of Appeals was due to begin examining it only a week later. She criticised the Government for "claiming one emergency after another", treating what was once an exceptional mechanism as the "new normal", and the Court for being too quick to grant the Government's requests. She said she was most troubled by the fact that "the Court's recent behaviour on stay applications has benefited one litigant over all others". While requests to delay executions have recently been denied because a majority have felt that the petitioners failed to make "meritorious claims in a timely manner", the same Court's "concerns over quick decisions wither when prodded by the Government in far less compelling circumstances."

Debate! While defending the use of universal injunctions, the Solicitor General for DC recently argued that "courts would be remiss to permit legally unsupportable conduct to continue to harm individuals and entities across the country". Do the benefits of nationwide injunctions outweigh the costs?



How does this fit into your exams?

US Supreme Court – Are Supreme Court justices simply ‘politicians in robes’?

The fight over universal injunctions is a useful issue to explore when discussing whether the judiciary has become too powerful or politicised. Sotomayor’s dissenting opinion in the Illinois injunction case has proven extremely divisive. Supporters pointed out that she did not directly accuse her Republican-appointed peers of being biased towards the Trump administration, she simply highlighted the fact that its five conservative justices have proven particularly willing to grant the Government’s requests to allow emergency relief from lower court injunctions. But critics argued that Sotomayor’s insinuation has dangerously undermined the Court’s appearance of neutrality. Republican Senator Ted Cruz said her opinion was like “an arsonist complaining about the noise from the fire trucks”. He argued that the real issue was not the Trump administration’s requests for relief, but activist judges acting like they are part of a liberal resistance movement. Regardless of which conclusion you agree with, both support the idea that federal courts are increasingly acting like a political, rather than legal, branch of government.

Under Article III of the US Constitution, federal courts are vested with “judicial Power”. Traditionally, this has been interpreted as limiting appointed judges to resolving disputes only between the parties who appear before them in court - unlike elected representatives, who have the ‘political power’ to debate and act on any issue. Under the US Constitution, a plaintiff must demonstrate that they have standing in order to sue the government – they must demonstrate that they were directly harmed by a law or action, and that the courts are able to provide relief. It is not possible to sue on someone else’s behalf, and so judges are usually unable to provide relief for non-plaintiffs - unlike elected officials, who can use legislation to alter the rights of *all* citizens. This limit applies to the Supreme Court as well, but, because lower courts are bound to follow the Court’s precedent, its decisions are effectively universal, impacting the entire country. The growing use of universal injunctions has therefore proven highly controversial because they allow a single district judge to grant relief not only to the plaintiff, but to the entire country. Critics argue that they effectively make every court supreme, and every judge a king.

The way that activist groups have made use of universal injunctions has undermined the judiciary’s appearance of neutrality. It is no coincidence that conservative activists make their claims in Texas, or that many of the injunctions blocking the Trump administration have come out of California. Activists know that they if they lose in one sympathetic district court, they can simply try again somewhere else – they only need to convince a single judge to issue a nationwide injunction. In contrast, the Government has to win every single time if it is to be able to proceed with its reforms, and it is having to defend itself more frequently than ever. The Trump administration has already been issued with 55 nationwide injunctions, up from the Obama administration’s 19, and the George W. Bush administration’s 12.

The power to temporarily delay the implementation of a rule may not initially appear significant, but, not only do injunctions tie governments up in legal action, they also make it easier for newly elected presidents to abolish rules passed by their predecessor. If a regulation is still being blocked by an injunction at the time of a presidential election, the new administration does not need to go through the lengthy, formal process of repealing the rule, they can simply decline to fight the injunction, and leave it blocked. In 2016, the Obama administration issued a rule that banned insurance companies and health-care providers from discriminating against pregnant and transgender patients. A carefully selected conservative judge in Texas soon issued a universal injunction, and, several months later, the newly elected Trump administration simply declined to appeal the decision. The Trump administration has done the same thing with injunctions blocking Obama-era rules governing overtime pay.

Supporters argue that universal injunctions can provide an essential check on the executive, and point to numerous examples where their use has protected the rights of vulnerable minorities. They see the Supreme Court’s willingness to repeatedly grant the executive emergency relief as, at best, a failure to uphold constitutional checks and balances, and, at worst, a sign of political bias. But critics argue that the Supreme Court is simply demonstrating a commitment to judicial restraint, making a long overdue effort to signal to both conservative and liberal judges that they must stop politicising the courts.