

Nationwide Injunctions: Recent Legal Developments

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On November 30, 2021, a federal district court in Louisiana entered an [order](#) that effectively suspended a federal vaccine mandate for health care workers. The order prevented the federal government from enforcing an Interim Final Rule of the Centers for Medicare & Medicaid Services (CMS) requiring many employees of Medicare- and Medicaid-certified providers and suppliers to be vaccinated against Coronavirus Disease 2019 (COVID-19). The court’s order, which effectively bars enforcement of the CMS vaccine mandate with respect to all persons and entities, is an example of what some courts and commentators call a *nationwide injunction*. Sometimes [also called](#) national injunctions, universal injunctions, non-party injunctions, or even [cosmic injunctions](#), nationwide injunctions have attracted significant attention from legal commentators and policymakers in recent years. Critics of nationwide injunctions object to court orders—sometimes by a single district court judge—that halt an entire federal policy. Defenders counter that such injunctions provide an appropriate check on the political branches.

A recent [CRS report](#) provides in-depth analysis of the debate regarding nationwide injunctions. This Legal Sidebar provides a shorter introduction to nationwide injunctions, briefly discusses selected recent nationwide injunction cases, then closes with key considerations for Congress related to nationwide injunctions.

What Is a Nationwide Injunction?

Injunctions, including nationwide injunctions, are a form of [equitable relief](#)—a court-ordered remedy providing relief other than money damages—by which a court either requires an entity to take a certain action or forbids an entity from taking a certain action.

The term “nationwide injunction” is not defined in any federal statute, court rule, or majority decision of the Supreme Court, but the term is used fairly consistently in federal court decisions and legal commentary. [Courts](#) and [commentators](#) generally [use](#) the term “nationwide injunction” to refer to an injunction *against the government* that prevents the government from implementing a challenged law, regulation, or other policy with respect to *all persons and entities*, even those not before the court in the litigation.

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A “nationwide injunction” is *not* simply an injunction that applies anywhere in the country. Many court orders granting injunctive relief apply [anywhere in the United States](#) (or even more broadly) but do not meet the criteria outlined above, and some nationwide injunctions apply to conduct that does not occur in all fifty states. For example, some federal environmental regulations apply only in certain areas of the country; an injunction completely [barring enforcement](#) of such a regulation would fit the definition of a nationwide injunction. The defining attribute of a nationwide injunction is not the geographic scope of the injunction, but rather the entities to which it applies.

While discussion of nationwide injunctions often focuses on injunctions against the federal government, some commentators draw comparisons between nationwide injunctions against the federal government and [injunctions against state governments](#) fully barring enforcement of certain state laws or policies.

Recent Nationwide Injunction Litigation

There is significant [scholarly debate](#) around the historical origins of nationwide injunctions, but legal commentators generally agree that no such injunctions issued in the early years of the Republic, and that they have become more common in recent years. To illustrate, as of February 2020, the Department of Justice had [identified](#) 12 nationwide injunctions issued during the presidency of George W. Bush, 19 issued during Barack Obama’s presidency and 55 such injunctions issued against the Trump Administration. The first nationwide injunction against the Biden Administration issued [within a week](#) of President Biden’s inauguration.

Federal courts have issued nationwide injunctions affecting many areas of federal law and policy, including immigration, environmental law, health care regulation, and civil rights. During the Trump Administration, litigation involving nationwide injunctions reached the Supreme Court in challenges to the “[travel ban](#)” barring foreign nationals from certain countries from entering the United States and the “[public charge](#)” rule rendering inadmissible to the United States foreign nationals deemed likely to receive certain public benefits. A majority of the Court declined to address the legality of nationwide injunctions in those cases. Key examples of nationwide injunction cases from the Biden Administration include the following.

COVID-19 Vaccine Mandates. On November 4, 2021, CMS released an [Interim Final Rule](#) (IFR) that requires specified Medicare- and Medicaid-certified providers and suppliers to establish and enforce a vaccination policy for all staff who directly provide care, treatment, or other services for any covered facility or its patients. Subject to legally mandated exceptions, the policy must require all eligible staff to receive the first dose of a two-dose COVID-19 vaccine or a one-dose COVID-19 vaccine by December 6, 2021, and to complete their vaccination series by January 4, 2022. At least [24 states](#) sued to challenge the IFR. On November 29, 2021, a Missouri district court issued an order barring enforcement of the CMS vaccine mandate [in ten states](#) that had filed suit in that case. On November 30, 2021, a district court in Louisiana entered an [order](#) forbidding the federal government from enforcing the CMS vaccine mandate in any other state. The court [specified](#) that the order applied “nationwide, except for the . . . ten states [that] are already under a preliminary injunction order dated November 29, 2021, out of the Eastern District of Missouri.” The Louisiana court [explained](#) that its order reached beyond the fourteen plaintiff states before the court because “a nationwide injunction is necessary due to the need for uniformity” and “there are unvaccinated healthcare workers in other states who also need protection.”

In separate litigation, multiple parties have challenged an [emergency temporary standard](#) of the Occupational Safety and Health Administration (OSHA) requiring employers with 100 or more employees to implement certain COVID-19 vaccination and testing policies. The U.S. Court of Appeals for the Fifth Circuit [stayed](#) the OSHA vaccine mandate and ordered OSHA to “take no steps to implement or enforce the Mandate until further court order,” but did not expressly enter a nationwide injunction. The [Judicial Panel on Multidistrict Litigation](#) has since consolidated all challenges to the OSHA vaccine

mandate in the [Sixth Circuit](#), and the Sixth Circuit court is considering [whether to lift the stay](#). A previous [Legal Sidebar](#) discusses litigation regarding the various COVID-19 vaccine mandates.

Migrant Protection Protocols (MPP). Originally announced in 2018 and also known as the “Remain in Mexico” policy, the [MPP](#) allowed Customs and Border Protection to require many who arrived at the southern border seeking asylum or related protections to wait in Mexico while U.S. immigration courts processed their cases. After President Biden took office, the Secretary of Homeland Security [decided to terminate the MPP](#). That decision was challenged in court, and on August 13, 2021, the [district court](#) vacated the Secretary’s decision and issued a nationwide injunction requiring implementation of the MPP. The Supreme Court [declined to stay](#) that nationwide injunction in a [summary order](#). Since the district court’s order took effect, the Administration is now required to implement the MPP nationwide, though it retains [substantial discretion](#) over how to administer the MPP and other authorities for processing migrants at the border.

Loan Forgiveness. Congress enacted the [American Rescue Plan Act of 2021](#) on March 11, 2021. Section 1005(a)(1) of the Act authorized certain loan modifications and payments for “socially disadvantaged” farmers and ranchers. The Secretary of Agriculture and the Administrator of the Farm Service Agency interpreted the provision to apply to members of certain racial and ethnic minorities, and white farmers and ranchers from multiple states sued, arguing that the program unconstitutionally granted benefits based on race. On June 10, 2021, a federal district court in Wisconsin issued a [nationwide temporary restraining order](#) against the policy. The court held that a nationwide injunction was necessary to provide complete relief to the plaintiffs, and that a narrower injunction would be unworkable. On June 23, 2021, another federal district court in Florida issued a [nationwide injunction](#) barring enforcement of the policy. Several cases involving the loan forgiveness policy [remain pending](#) as of December 2021.

Oil and Gas Leases. On January 27, 2021, President Biden issued an [executive order](#) entitled “Tackling the Climate Crisis at Home and Abroad,” which, among other things, directed the Secretary of the Interior to pause new oil and natural gas leases on public lands or in offshore waters pending review of federal oil and gas permitting and leasing practices in light of potential climate impacts. A number of states challenged the pause. On June 15, 2021, a district court judge in Louisiana issued a [nationwide injunction](#) against the pause, [explaining](#) that the pause affected public lands and offshore waters across the nation and citing the need for a uniform policy. The federal government appealed the injunction on August 16, 2021, and has [proceeded with lease sales](#) while the appeal remains pending.

The Legal Debate over Nationwide Injunctions

Nationwide injunctions have generated a large volume of [legal and historical debate](#) in recent years. The legal debate primarily concerns whether federal courts have the constitutional authority to issue such injunctions. [Article III of the Constitution](#) requires that anyone who brings suit in federal court must have [standing](#)—that is, the plaintiff must have a personal and concrete interest in the litigation rather than a general policy disagreement. Several [commentators](#) have [argued](#) that many nationwide injunctions are inconsistent with Article III standing principles because such injunctions alter the government’s rights and obligations with respect to *everyone*, including persons who are not parties to the litigation and who might not be able to satisfy the requirements for standing. Some defenders of nationwide injunctions dispute that narrow conception of standing and [argue](#) that the federal courts’ authority is [not confined](#) to the bare minimum required to resolve concrete disputes between specific parties.

Constitutional analysis of a nationwide injunction may depend on the specific facts of the case. Courts offer [differing reasons](#) for issuing nationwide injunctions. Sometimes a court expressly extends the relief granted beyond what is required to protect the plaintiffs in order to protect persons not before the court who may have trouble bringing their own claims, or simply because the court finds that a challenged policy is plainly unlawful. Sometimes courts determine that it is not feasible as a practical matter to tailor

relief narrowly to reach only the plaintiff. In other cases, courts find that nothing less than a nationwide injunction will fully protect the rights of the plaintiff. When a plaintiff before the court has standing to sue and a nationwide injunction is the only means to provide complete relief to that plaintiff, most commentators (including some critics of nationwide injunctions) agree that such an injunction **does not raise Article III standing concerns**, even if it incidentally benefits others. Scholars still debate how frequently a nationwide injunction is truly necessary to provide complete relief to the parties.

Legal inquiries beyond constitutional questions remain regarding nationwide injunctions. For instance, there is an open question whether nationwide injunctions conflict with other aspects of **litigation procedure**, including class actions under Federal Rule of Civil Procedure 23. Courts and commentators also disagree on whether nationwide injunctions support or detract from ideals of **fairness, efficiency, and good governance**. Some debate how nationwide injunctions fit within the **role of the judiciary**: some critics contend that nationwide injunctions allow courts to usurp the legislative role, improperly contribute to the **politicization of the judiciary**, or promote forum shopping; defenders respond that nationwide injunctions are an appropriate judicial check on the political branches. Finally, some commentators argue that nationwide injunctions may be more or less appropriate in **certain contexts**, depending on factors such as the substantive claims involved in a case or whether an injunction issues from a trial-level or appellate court.

A majority of the Supreme Court has not expressly ruled on the legality of nationwide injunctions. **Justice Thomas** and **Justice Gorsuch** have each authored separate opinions raising constitutional and other concerns related to nationwide injunctions and urging the Court to limit the practice. By contrast, **Justice Sotomayor** penned a dissent in which she argued that a nationwide injunction was “necessary to provide complete relief to the plaintiffs” in the case at bar. As a practical matter, **courts at all levels of the federal judiciary**, including the Supreme Court, have issued nationwide injunctions. While the Supreme Court might consider the issue in the future, the status quo suggests that current law does not strictly limit injunctive relief to the parties in each case.

Possible Legislative Responses to Nationwide Injunctions

As nationwide injunctions have attracted increased public notice, Congress has also turned its attention to the practice, and two congressional committees have held **hearings** on the **topic**. As Congress considers possible reforms related to nationwide injunctions, the first question that may arise is **whether legal changes in this area are warranted**. In light of the legal and policy issues outlined above, a number of commentators have called for reform of nationwide injunctions. Others support the status quo, arguing for example that nationwide injunctions provide a valuable tool for courts to prevent overreach by the political branches. Still others caution that reforms may have unintended consequences that affect established judicial practices.

If Congress determines that reform of nationwide injunctions is appropriate, it may also consider **which branch of government** is best situated to implement any changes. Either Congress or the judicial branch has the constitutional power to change the law or practice related to nationwide injunctions. For instance, the Supreme Court could **consider** whether some or all nationwide injunctions raise constitutional issues, or the Court could articulate a new legal test for courts to apply when ruling on requests for nationwide injunctions. Some who advocate for reform of nationwide injunctions argue that the **courts should be primarily responsible** for such changes because they have the greatest expertise in managing judicial procedure and crafting equitable remedies. On the other hand, the legislature also enjoys ample constitutional authority to establish and structure the lower federal courts, including by making rules governing court proceedings. Congress could not alter any applicable constitutional limits, but it could enact legislation to **limit the jurisdiction of the federal courts** to issue nationwide injunctions or impose special procedures in cases involving nationwide injunctions. Furthermore, either Congress or the Supreme Court could establish new **court procedural rules** governing requests for nationwide injunctions.

If Congress decides that a legislative response is appropriate, it would face consideration of both [what substantive regulations](#) to impose and [how to define “nationwide injunctions.”](#) Some [recent legislative proposals](#) have sought to implement a comprehensive ban on nationwide injunctions. A ban on nationwide injunctions might reduce the ability of federal courts to provide complete relief to the parties before them. Congress could include an exception to a ban on nationwide injunctions, allowing such injunctions to issue only when required to provide complete relief to the parties. Some courts already consider the principle of complete relief in deciding whether to issue nationwide injunctions, but there is debate about whether that principle imposes a [meaningful limitation](#) on courts’ injunctive authority.

As an alternative to banning nationwide injunctions, Congress (or the Supreme Court) could impose additional substantive requirements in nationwide injunction cases. Congress could impose such requirements by legislation, the Supreme Court could establish them through case law, or either Congress or the Court could amend the [Federal Rules of Civil Procedure](#).

A variety of reforms would be possible by these means. For example, Congress could establish a [presumption](#) against granting nationwide relief or could require specific findings before a court may issue a nationwide injunction. Congress could also channel all suits seeking nationwide injunctions to a [particular forum](#), require district courts to conduct separate hearings on the appropriate scope of injunctive relief in cases seeking nationwide injunctions, mandate that a [three-judge district court](#) hear any request for a nationwide injunction, or allow [direct appeal to the Supreme Court](#) in nationwide injunction cases. Finally, Congress could explore reforms that might reduce incentives for litigants to seek nationwide injunctions, such as [changing the procedures related to class actions](#) to make class actions a more appealing option for plaintiffs who might otherwise file non-class suits seeking broad injunctive relief.

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