In the landmark 2017 *Harvard Law Review* article, "Multiple Chancellors: Reforming the National Injunction," Professor Samuel L. Bray presents a powerful and influential critique of the modern practice of federal district courts issuing "national injunctions"—remedies that prohibit the government from enforcing a law, regulation, or order against anyone, not just the plaintiffs in the case. This summary, mindful of the article's seminal role in the Supreme Court's 2025 *Trump v. CASA* decision, preserves Professor Bray's most potent arguments. He methodically builds a case that the national injunction is a historically baseless, structurally perilous, and doctrinally incoherent innovation that should be abolished in favor of a clear and traditional rule: the "plaintiff-protective injunction."

Introduction: The Core Thesis

Professor Bray opens by identifying a troubling and increasingly common practice: a single federal district judge issuing a sweeping injunction that dictates federal policy for the entire nation. He points to high-profile examples from both the Obama and Trump administrations, such as the injunction in *Texas v. United States* halting a major immigration program and the one in *Washington v. Trump* blocking an executive order on immigration. These remedies, which Bray terms "national injunctions," create a host of problems: they encourage rampant forum shopping, degrade the quality of judicial decision-making, risk conflicting court orders, and clash with established legal doctrines.

Bray’s primary contribution is twofold. First, he provides a novel historical account, demonstrating that the national injunction is a recent invention with no roots in traditional equity or over 150 years of American judicial practice. Its emergence, he argues, was not a conscious revolution but the result of a latent structural vulnerability—the shift from England's "single-chancellor" system to the American "multiple-chancellor" system—that was later exploited by ideological shifts in legal thought during the latter half of the 20th century.

Second, based on this historical and structural analysis, Bray proposes a clear and decisive solution. He argues that federal courts should exclusively issue "plaintiff-protective injunctions," which enjoin the defendant's conduct only with respect to the actual plaintiffs in the case. This rule, he contends, is not only a pragmatic solution to the problems of forum shopping and rushed adjudication but is also compelled by the text of Article III of the Constitution and a proper understanding of the historical scope of equity.

Part I: The Origins of the National Injunction

Bray's argument is deeply rooted in history. He asserts that to be legitimate, the equitable remedies of federal courts must find some warrant in the traditional practice of equity as it existed in England's Court of Chancery around 1789. When judged by this standard, the national injunction is found wanting.

The Absence from Traditional Equity

Bray begins by stating unequivocally that the national injunction is not traceable to traditional equity. In pre-Founding England, injunctions were simply not issued against the Crown. Even beyond this, the tools that equity did possess for handling multiple claims, such as the "bill of peace," were not analogues for the modern national injunction. A bill of peace was a proto-class action used to consolidate suits involving a small, cohesive, and pre-existing social group, like the tenants of a single manor or the parishioners of a single church. The Chancellor might "round up" the remedy to cover all members of this defined group, but this was a far cry from issuing an injunction to control a defendant's conduct against the entire world or to resolve a legal question for the whole realm.

This practice was carried into American equity. In the 19th and early 20th centuries, when state courts expanded the use of taxpayer suits to enjoin the collection of illegal municipal or county taxes, the logic was still rooted in the bill of peace. The remedy was granted on behalf of a cohesive micropolity, not an undifferentiated national public.

The American Practice: No National Injunctions (to the 1960s)

For the first 170 years of the United States, federal courts did not issue national injunctions against federal defendants. Bray marshals extensive evidence to support this claim.

- **19th-Century Cases**: In early cases like *Georgia v. Atkins* (1866), where a federal court enjoined the collection of a tax from the state of Georgia, the injunction was narrowly tailored to the specific amount of money being collected from the specific plaintiff. The idea of enjoining the enforcement of the tax against all states was unthinkable.
- ***Frothingham v. Mellon* (1923)**: Bray offers a crucial re-reading of this case, arguing it was not merely about taxpayer standing but was fundamentally a rejection of the national injunction. The plaintiff, Harriet Frothingham, sought to enjoin federal spending under the Maternity Act, a remedy that, to be effective, would have to be national. The Supreme Court unanimously rejected her suit. Justice Sutherland's opinion, Bray argues, was grounded in equity. It distinguished the case from municipal taxpayer suits by noting the vastly different relationship between a citizen and the national government. The Court

explicitly stated that its power was to decide judicial controversies between parties, not to "assume a position of authority over the governmental acts of another and co-equal department." It could enjoin the specific acts of an official that caused a "direct injury" to a plaintiff, but not the general execution of a statute.

- **The New Deal Era**: This period provides Bray's most powerful evidence. In response to New Deal legislation, federal courts issued an avalanche of injunctions—1,600 against the Agricultural Adjustment Act's processing tax alone. Then-Attorney General Robert Jackson described it as "'hell broke loose' in the lower courts." Yet, in a comprehensive 1937 Department of Justice report tabulating these thousands of injunctions, there is not a single mention of any of them having national scope. This, Bray contends, is a deafening silence. The report repeatedly describes the injunctions as restricting the application of a statute only to the particular parties who brought the suit. The crippling effect on the government came from the sheer quantity of plaintiff-protective injunctions, not from any single order of national scope.
- ***Youngstown Sheet & Tube Co. v. Sawyer* (1952)**: Even in this monumental case, the district court's injunction against President Truman's seizure of the steel mills was not national; it protected only the specific plaintiff companies.

The one minor aberration Bray identifies is *Hammer v. Dagenhart* (1918), where a district judge enjoined the enforcement of the federal child labor law within the Western District of North Carolina. However, Bray argues this was an anomaly, not the start of a trend. The funders of the litigation did not even seek a national injunction, likely because they knew it was impossible. Moreover, any precedential value it might have had was decisively rejected five years later in *Frothingham*.

The Emergence of National Injunctions (from the 1960s)

The ground began to shift in the 1960s. Bray traces a gradual evolution where the national injunction went from unthinkable to possible, and finally to routine for some judges.

- ***Wirtz v. Baldor Electric Co.* (1963)**: Bray identifies this D.C. Circuit case as likely the first true national injunction. The court enjoined the Secretary of Labor from using a wage determination against any business in the industry, not just the three plaintiffs. Strikingly, the court cited no precedent for this extraordinary scope. It relied instead on arguments that Bray finds unpersuasive but prescient: the need for inter-case consistency, the language of the Administrative Procedure Act (APA) instructing courts to "set aside" unlawful agency action, and an analogy to a statute being declared unconstitutional for all.
- ***Flast v. Cohen* (1968)**: In this case, which modified *Frothingham*'s standing rule, the Supreme Court did not reject the possibility of a broad injunction out of hand as it had in the past. It treated the issue purely as one of "standing," ignoring the deep equitable and

remedial questions that animated *Frothingham*.

- ***Harlem Valley Transportation Association v. Stafford* (1973)**: This, for Bray, was the breakthrough moment. A district court issued a national injunction regarding environmental impact statements, backing into it largely because the government defendants conceded the point. Judge Frankel expressed concern about his power to issue such a broad remedy but proceeded based on the concession. The Second Circuit affirmed, influenced by recent opinions from the influential Judge Friendly in cases against state and municipal defendants. Judge Friendly had blurred the line between a court's decree and a government's voluntary compliance, famously stating that in suits seeking injunctive relief against a government practice, class action designation is "largely a formality." This dicta, stripped of its qualifications, was taken as a license for individual plaintiffs to obtain class-wide relief, a principle that was then easily extended to suits against the national government.

From this point forward, the use of national injunctions became a matter of judicial discretion, with courts finding authority on both sides of the issue, leading to an incoherent and unpredictable body of law.

Part II: Why Did the National Injunction Emerge?

Having established *what* happened, Bray explains *why*. The emergence was not caused by a single event but by a structural change followed by ideological shifts.

The Structural Precondition: Multiple Chancellors

The critical, indispensable precondition was the structure of the American judiciary. English equity developed under a "one-chancellor" system. While the Chancellor had assistants, he was a unitary judicial institution. There was no forum shopping and no risk of conflicting injunctions because there was only one source of equitable decrees.

The United States, from its founding in 1789, adopted a "multiple-chancellor" model. Every federal judge was vested with the power to grant equitable relief. This decentralized structure, however, did not immediately cause problems. Its vulnerabilities remained latent for over a century and a half, held in check by judicial restraint and a different conception of the judicial role.

Two Ideological Shifts

It was only in the mid-to-late 20th century that ideological changes exposed and exploited the vulnerabilities of the multiple-chancellor system.

1. **From Antisuit Injunction to Freestanding Challenge**: The first shift was in the conception of an injunction against a government official. Traditionally, such an injunction was seen as a defensive, "antisuit" measure. The plaintiff was trying to stop a threatened enforcement action against *him*. The court's decision on the law's validity was incidental to resolving that specific, personalized threat. Under this view, a national injunction makes no sense; the remedy should match the threatened suit. Over time, this view was replaced by the idea of an injunction as an offensive, freestanding challenge to the validity of the law itself. The injury to the plaintiff became merely the ticket to admission for a court to rule on the legality of the government's policy writ large. Bray suggests the Declaratory Judgment Act of 1934 may have encouraged this change in thinking.
2. **From "Refusing to Apply" to "Striking Down"**: The second shift was in the conception of judicial review. The traditional Marbury v. Madison view is that a court does not "strike down" an unconstitutional law; it simply follows its duty to apply the higher law (the Constitution) and therefore disregards, or refuses to apply, the conflicting lesser law (the statute) in the case before it. This act of non-application does nothing to the statute itself, which remains on the books. The modern view, often expressed in the metaphor of a court "striking down" a law, sees judicial review as an act of erasure. Once a judge "strikes down" a statute, a relentless logic follows: why should anyone be subject to a law that has been judicially obliterated? This shift makes the national injunction seem not just possible, but logical.

Bray also considers other contributing factors, such as the rise of federal agency rulemaking and the renewed judicial confidence in the wake of *Brown v. Board of Education*, but he identifies the two ideological shifts above as the primary drivers that made the national injunction conceivable within the multi-chancellor system.

Part III: The Consequences of the National Injunction

Bray dedicates a full section to detailing the damage caused by this modern invention.

- **The Incentive to Forum Shop**: This is the most visible consequence. Because a single judge can halt a policy nationwide, plaintiffs have an overwhelming incentive to find the most sympathetic judge in the most sympathetic circuit. Bray shows this is not a theoretical concern, citing the pattern of national injunctions against the George W. Bush administration coming from California courts, against the Obama administration from

Texas courts, and against the Trump administration from courts in the Fourth, Seventh, and Ninth Circuits. The problem is amplified by an asymmetry: a decision upholding a law binds no one else, but a single decision invalidating it and issuing a national injunction binds the entire country. The result is a system where litigants can "shop 'til the statute drops."

- **The Effect on Judicial Decisionmaking**: National injunctions degrade the quality of law. The traditional American system relies on the "percolation" of legal issues through different courts of appeals. This allows the Supreme Court to benefit from multiple, competing analyses before it resolves an issue. A national injunction short-circuits this process. It freezes the law after the very first decision, denying the system the "healthful difference" of varied judicial opinions. Furthermore, it often forces the Supreme Court to address major questions in a rushed posture—on a motion for a stay of a preliminary injunction, without a full record and with limited briefing.
- **The Risk of Conflicting Injunctions**: The multiple-chancellor system creates the possibility that different judges could issue directly conflicting orders to the same defendant—the "Erie Railroad" problem. One judge could order the government to implement a program while another judge orders it not to. Bray points to a near-miss in the wake of the *Texas v. United States* injunction, where plaintiffs in New York and Illinois sought orders requiring the federal government to *disregard* the Texas injunction. While courts usually find a way to avoid a direct clash, this relies on judicial self-restraint, which cannot be guaranteed.
- **Doctrinal Inconsistencies**: The national injunction is in direct tension with other settled legal doctrines. For example, in *United States v. Mendoza*, the Supreme Court held that the doctrine of nonmutual offensive issue preclusion does not apply to the federal government, precisely to allow for percolation and relitigation of important issues in different circuits. A national injunction makes this rule a dead letter, achieving through remedy what is forbidden through preclusion. Similarly, it undermines the logic of the Rule 23(b)(2) class action, which provides a specific vehicle for obtaining class-wide injunctive relief if its requirements are met. The national injunction allows plaintiffs to achieve the same result without satisfying those requirements.

Part IV: The Failure of Existing Limits

Bray argues that the current legal doctrines purporting to limit injunctions are wholly inadequate. The primary supposed constraint is the "complete relief" principle, articulated in *Califano v. Yamasaki*, which states that an injunction "should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs."

While intuitively appealing, Bray argues this principle fails as a meaningful limit. It is fatally indeterminate. Courts often reason that since the "violation" (the unlawful statute or

regulation) is national in scope, "complete relief" requires a national injunction to remedy that national violation. Thus, the principle meant to be a shield becomes a sword. It provides no actual guidance and allows judges to justify any outcome they choose. A judge deciding the scope of an injunction has already found the defendant liable, creating a natural bias toward a broader remedy. The complete-relief principle, therefore, has proven to be no constraint at all.

Part V: Where Should We Go from Here?

This section presents Bray's solution: a bright-line rule to be adopted by courts or, if necessary, enacted by Congress.

The Proposal: Plaintiff-Protective Injunctions

The rule is simple and clear: **A federal court should issue an injunction that protects the plaintiff vis-à-vis the defendant, wherever they may be. The injunction should not constrain the defendant's conduct vis-à-vis nonparties.** In practice, an injunction should be no broader than what the plaintiffs themselves could enforce through contempt proceedings.

Bray applies this to his earlier examples. In *Texas v. United States*, the proper injunction would have prohibited the federal government from requiring the 26 plaintiff states to issue driver's licenses based on the challenged program, as that was their alleged injury. It would not have stopped the program's implementation for anyone else. In *Washington v. Trump*, the proper injunction would have prevented the government from enforcing the executive order against students and faculty of the state universities of Washington and Minnesota, not against the entire world.

The basis for this rule is twofold:

1. **Article III**: The Constitution grants the "judicial Power," which is the power to decide a case for a particular claimant and redress their specific injury. It is not the power to resolve abstract questions for everyone or to issue remedies for those not before the court. Once the plaintiffs' case has been resolved, the court's Article III authority is exhausted.
2. **Traditional Equity**: As established in Part I, traditional equity practice was to issue plaintiff-protective injunctions. Bray's rule is a faithful "translation" of this tradition into the modern multiple-chancellor system. Because the institutional check of having only one Chancellor is gone, the doctrine itself must be sharpened into a clear rule to prevent

the abuses that the new structure allows.

Rebutting Objections

Bray systematically dismantles the primary objections to his proposal.

- **Differential Treatment**: To the charge that this creates inequality by treating the plaintiff differently from others, Bray responds that our system already tolerates disuniformity to gain the benefits of percolation. The proper way to resolve legal questions for nonparties is through the steady, careful development of precedent, not the single thunderbolt of a national injunction. If broader relief is needed, the class action device exists for that purpose.
- **Regulatory Disruption and Entrenchment**: To the argument that plaintiff-protective injunctions would disrupt complex regulatory systems or allow agencies to entrench irreversible policies, Bray argues his rule is actually *more* respectful of agency administration. An agency can *choose* to apply a court's ruling nationally if it wishes, or it can choose to continue litigating in other circuits, as contemplated by *Mendoza*. The problem of irreversible regulatory entrenchment is real, but it is a legislative problem best solved by Congress through measures like a mandatory delay for major rules, not by judicially-created national injunctions.
- **Plaintiff Detection**: To the objection that it may be impractical for a defendant to distinguish the plaintiff from others (e.g., stopping only non-plaintiff motorcyclists), Bray replies that the burden is on the defendant to figure out how to comply with the court's order. The court should not make the choice for the government. If the government decides it is easier to extend the injunction’s protections to everyone, that is its choice, not the court's command.
- **A Standard, Not a Rule**: To the final objection that a flexible standard would be better than a rigid rule, Bray argues that any standard is doomed to fail. Given the incentives for forum shopping and the deferential "abuse of discretion" standard of review, an indeterminate standard like "complete relief" provides no discipline. A district court selected by the plaintiffs will apply a vague standard that will then be leniently reviewed by an appellate court also selected by the plaintiffs. In the world as it actually exists, a clear rule is the only effective solution.

Rebuttal of Professor Sohoni's Work

While Professor Bray's article does not explicitly name or rebut the work of Professor Aditya

Sohoni, it directly confronts and dismantles the central argument that Professor Sohoni and others have advanced in favor of universal injunctions. A key pillar of the pro-universal injunction argument rests on the text of the Administrative Procedure Act (APA), specifically the language in 5 U.S.C. § 706(2) which directs a reviewing court to "hold unlawful and **set aside** agency action" found to be unlawful.

Proponents like Sohoni have argued that the phrase "set aside" is synonymous with "vacate" and that when a court vacates a rule, it nullifies it and renders it inoperative for everyone. They contend this statutory language provides a clear textual command for universal remedies against agency rules, distinct from injunctions against the enforcement of statutes.

Professor Bray's analysis serves as a powerful rebuttal to this line of reasoning. Although he does not mention Sohoni, his critique of the Ninth Circuit's opinion in *Earth Island Institute* and the D.C. Circuit's opinion in *Wirtz* meets this argument head-on. Bray makes several key points that undermine the APA-based justification for universal injunctions:

1. **Historical Anachronism**: Bray argues that reading "set aside" as a mandate for universal vacatur is historically anachronistic. At the time the APA was passed in 1946, national injunctions were nonexistent. The judicial practice was uniformly plaintiff-protective. The phrase "set aside" was traditionally used in a judicial context to mean reversing a specific judgment in a specific case, not erasing a law for the entire country. To believe that Congress, with these two words, intended to silently upend centuries of equitable practice and create a new, radical remedy without any debate or discussion is implausible. Statutes, he notes, are presumed to conform to long-standing remedial principles, and a clear statement would be required to displace them.
2. **Adjudication vs. Rulemaking**: Bray points out that when the APA was enacted, it was widely expected that agencies would primarily make policy through case-by-case adjudication, not broad rulemaking. The "set aside" language is perfectly consistent with a court reversing a specific agency adjudication as it applies to the parties in that case. Its application to generally applicable rules was not the central focus.
3. **Proving Too Much**: Bray notes that the APA argument often proves too much. If "set aside" is a mandatory command to vacate a rule universally, it would eliminate all judicial discretion regarding the scope of the remedy. Yet courts, even those issuing national injunctions, almost always speak in terms of their equitable discretion, balancing various factors. This suggests even the courts themselves do not truly believe the APA imposes a rigid, non-discretionary command. In *Wirtz*, the court invoked the APA language but then immediately retreated to discussing its discretion and other "legal and equitable considerations."
4. **Conflating Merits with Remedy**: The "set aside" argument conflates the court's substantive finding on the merits (that the rule is unlawful) with the separate question of the remedy's scope. A court can "hold unlawful" a rule for purposes of deciding the case before it and "set it aside" with respect to the plaintiff without commanding that the rule be rendered a nullity for all nonparties.

In essence, Bray's entire historical and structural framework serves as a counter-argument. If the APA truly mandated universal remedies since 1946, why did the national injunction only emerge decades later? The answer is that it did not. The modern interpretation of "set aside" is a recent gloss, developed in tandem with the ideological shifts Bray identifies, that attempts to provide a post-hoc justification for a practice that has no foundation in the legal landscape into which the APA was born. This is the reasoning that proved so persuasive in *Trump v. CASA*, leading the Supreme Court to reject the APA-based argument for universal relief.

Conclusion

Professor Bray concludes by framing the debate as a fundamental choice about the nature of the American legal system. The national injunction sacrifices deliberate, many-minded decision-making for the sake of accelerated, final resolution by a single judge. This choice is antithetical to the structure of the federal judiciary and the broader American political system, which pervasively divides power. The federal courts are designed for a patient system where law develops through the accumulation of precedent. In such a system, which values the careful consideration of many minds over the rash pronouncement of one, "there is no room for the national injunction."