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In *CASA* You Missed It

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Abstract. This Essay's purpose is to show how *Trump v. CASA* should be read—and how it emphatically should not be read. While *CASA* rejected one pathway to universal injunctive relief on statutory grounds, the decision simultaneously left intact a number of alternative routes to broad relief, including complete-relief injunctions, universal remedies under the Administrative Procedure Act and other statutes, class actions, and relief based on associational and state standing.

The Trump Administration, however, has consistently advanced inflated readings of *CASA*—characterizing it as a far more sweeping limitation on remedial scope than the decision actually was—and has accused lower courts of flouting the decision. But a close examination of *CASA*'s holding, reasoning, and limitations reveals why it is a grave error to portray lower courts that issue broad remedies in the wake of *CASA* as acting in defiance of the decision. Lower courts that are correctly perceiving *CASA*'s metes and bounds and conscientiously grappling with them across a variety of contexts are not defying *CASA*'s mandate, but rather are doing the work that *CASA* left them no choice but to do. Those who depict this judicial work as insubordination whenever it results in a broad remedy against the executive branch have fundamentally misunderstood the task that *CASA* left to the lower courts.

By framing legitimate judicial deliberation as defiance, the Trump Administration's rhetoric threatens to poison intrabranch dialogue within the Article III judiciary and to corrode the legitimacy of judicial review. Ultimately, *CASA*'s most immediate danger may lie not in its holding, but in the Trump Administration's instrumental use of the decision as part of its broader effort to undermine judicial review across the board. A correct understanding of *CASA*'s actual scope—including its limitations and unresolved questions—is essential both for fending off strategic misrepresentations of the decision and also for preserving the foundational principle, articulated in *United States v. Lee*, that in

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America, all government officers, "from the highest to the lowest, are creatures of the law and are bound to obey it."

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Introduction

Over many decades, Congress and the federal courts have collaborated in a long project of rationalizing the law to facilitate meaningful judicial review of the legality of federal governmental action. Sovereign immunity has been waived for many claims;[1] venue rules have been relaxed for officer suits[2] and their abatement prevented;[3] jurisdictional statutes have been expanded[4] and the declaratory judgment adopted[5]—the list goes on and on. Many, too many, lacunae persist; that is not only undeniable but seems more painfully apparent with each passing week.[6] Yet it nonetheless remains true that this accumulation of reforms has done significant work toward realizing the promise that in America, "[a]ll the officers of the government, from the highest to the lowest, are creatures of the law and are bound to obey it."[7]

Trump v. CASA, Inc.[8] cut against the grain of that project—but not to the quick. On statutory grounds, *CASA* held that federal courts generally lack the authority to issue universal injunctions.[9] But *CASA* left open other avenues to the same endpoint, including "complete relief" injunctions, universal remedies under the Administrative Procedure Act (APA) and other statutes, class actions, and relief based on associational and state standing.[10] That makes *CASA*'s footprint hard to estimate. Before *CASA*, many lower courts were already halting universal injunctions or tailoring them so that they were plaintiff-specific;[11] after *CASA*, many lower courts are still allowing broad and even

1. *See, e.g.*, 5 U.S.C. § 702.
2. 28 U.S.C. § 1391(e).
3. FED. R. CIV. P. 25(d); FED. R. APP. P. 43(c).
4. 28 U.S.C. § 1331.
5. *Id.* §§ 2201-2202.
6. *See, e.g.*, Matthew B. Lawrence, Eloise Pasachoff & Zachary S. Price, *Appropriations Presidentialism*, 114 GEO. L.J. ONLINE 1, 18-22 (2025) (explaining roadblocks to challenging executive branch violations of appropriations laws); Jennifer M. Chacón, *Whose Common Sense? Some Reflections on* Noem v. Vazquez Perdomo, VERFASSUNGSBLOG (Sept. 10, 2025), https://perma.cc/EQZ5-XSBA (explaining obstacles to challenging immigration enforcement policies that rely on racial profiling).
7. United States v. Lee, 106 U.S. 196, 220 (1882).
8. 145 S. Ct. 2540 (2025).
9. *Id.* at 2550-51.
10. *See infra* Part I.
11. Joshua B. Fischman, *Universal Injunctions on Appeal*, 36 YALE J.L. & HUMANS. 212, 222 (2025) (noting that in sixteen percent of the cases in which such injunctions were granted and appealed during the first Trump and Biden Administrations, appellate courts narrowed the injunction so that it applied only to the plaintiffs); *Developments in the Law—Chapter Four: District Court Reform: Nationwide Injunctions*, 137 HARV. L. REV. 1701, 1719-20 (2024) (noting appellate and district court constraints on universal remedies).

universal remedies.[12] And if the deeper aspiration of *CASA* was to lower the temperature of confrontations between the branches concerning politically sensitive issues, its effects are even harder to gauge. Plaintiff-specific remedies are, it turns out, quite as capable of causing conniptions in the Trump Administration as universal remedies, at least when those narrow remedies require payments of research funds,[13] block blacklists of law firms,[14] or entail affording rudimentary due process to immigrants.[15]

The upshot is that *CASA* has not reset the relationship between federal courts and the executive branch. What the decision *has* done is introduce new sources of tension into that relationship. By leaving crucial factors governing remedial scope either undefined or unaddressed, *CASA* created a set of interpretive vacuums that the Trump Administration is now rushing to fill. Resisting any accurate reading of the decision, the White House immediately proclaimed *CASA* to be a much more sweeping rejection of remedial breadth than it in fact was.[16] And in *CASA*'s aftermath, the Trump Administration has continued to advance distorted readings of *CASA* and has asserted that lower courts are defying the decision—all as part of a broader campaign to undermine judicial review across the board.

The purpose of this Essay is to show how *CASA* should be read—and how it emphatically should not be read. A close examination reveals that *CASA* has several significant limitations and ambiguities and that it poses serious

12. *See, e.g.*, Washington v. Trump, 145 F.4th 1013, 1019 (9th Cir. 2025) (granting preliminary injunctive relief to the plaintiff states); New York v. U.S. Dep't of Just., 804 F. Supp. 3d 294, 334 (D.R.I. 2025) (same), *appeal filed*, No. 25-2099 (1st Cir. Nov. 10, 2025); *see also* Barbara v. Trump, 790 F. Supp. 3d 80, 87 (D.N.H.) (granting a class-wide preliminary injunction), *cert. granted*, 146 S. Ct. 879 (2025) (mem.); L.G.M.L. v. Noem, 800 F. Supp. 3d 100, 134 (D.D.C. 2025) (same).

13. *See* President & Fellows of Harvard Coll. v. U.S. Dep't of Health & Hum. Servs., 798 F. Supp. 3d 77, 136 (D. Mass. 2025), *appeal filed*, No. 25-2231 (1st Cir. Dec. 31, 2025); Dhruv T. Patel, Avani B. Rai & Saketh Sundar, *Judge Hands Victory to Harvard in Funding Lawsuit, Ruling Trump Administration's Freeze Unconstitutional*, HARV. CRIMSON (updated Sept. 3, 2025, 11:45 PM), https://perma.cc/KFB4-BHWM (noting that the White House called the district court decision granting summary judgment in favor of Harvard "egregious").

14. *See* Jenner & Block LLP v. U.S. Dep't of Just., No. 25-cv-00916, 2025 WL 946993, at *1 (D.D.C. Mar. 28, 2025); Defendants' Status Report Exhibit 1 at 2, *Jenner & Block LLP*, 2025 WL 946993 (No. 25-cv-00916), ECF No. 21-1 (reprinting a government memorandum referring to "an unelected district court" engaged in "blatant overstepping").

15. *See* Oral Order, Abrego Garcia v. Noem, 811 F. Supp. 3d 741 (D. Md. 2025) (No. 25-cv-02780), ECF No. 13; Press Release, Dep't of Homeland Sec., Secretary Noem Condemns the Release of Kilmar Abrego Garcia, a MS-13 Gang Member, Human Trafficker, Wife Beater, and Child Predator, https://perma.cc/S2H3-8QQJ (last updated Aug. 25, 2025) (referring to a federal judge who paused a single deportation as "unhinged" and "publicity hungry").

16. *See infra* notes 131-33 and accompanying text.

questions that will take time to resolve. Lower courts that are correctly perceiving and grappling with *CASA*'s metes and bounds are not defying *CASA*'s mandate; rather, they are doing the work that *CASA* left them no choice but to do. Of course, I am not saying—literally *nobody* is saying—that lower courts should ignore *CASA* or fail to give it its full due. What I *am* saying is that lower courts applying *CASA* are percolating a complex decision's implications across widely varied factual and legal contexts—a function that is both essential and commonplace. Those who would portray those courts' work as insubordination whenever it results in a broad-gauged remedy against the executive branch have fundamentally misunderstood the task that *CASA* assigned to the lower courts.

Conversely, the Trump Administration's rhetoric of defiance[17] has absolutely no place in this conversation. Not only is it premised on drastic overstatements concerning *CASA*, but it is dangerous in its own right, for it threatens to poison intrabranch dialogue within the Article III judiciary and to corrode judicial review more generally by casting legitimate judicial intervention as illegitimate political resistance. However courts eventually resolve the analytical questions raised by its holding, *CASA* creates an underappreciated jeopardy: the potential that the Trump Administration will leverage the decision and its aftermath to undermine both relationships within the Article III courts and the "sociological legitimacy"[18] of judicial review more generally.

I. Reading *CASA*

CASA arose from three lawsuits challenging the Trump Administration's Executive Order purporting to redefine birthright citizenship.[19] After lower courts universally enjoined the Order from going into effect, the Trump Administration brought emergency applications asking the Court to stay the injunctions insofar as they protected nonparties.[20]

Following a round of briefing and oral argument, the Court held that federal courts generally lack the authority under the Judiciary Act of 1789 to

17. *See infra* notes 142-46 and accompanying text.

18. Richard H. Fallon, Jr., *Legitimacy and the Constitution*, 118 HARV. L. REV. 1787, 1795 (2005) (describing the sociological legitimacy of governmental acts, including judicial decisions, as measured by whether "the relevant public regards [them] as justified, appropriate, or otherwise deserving of support for reasons beyond fear of sanctions or mere hope for personal reward").

19. Trump v. CASA, Inc., 145 S. Ct. 2540, 2549 (2025); *see* Protecting the Meaning and Value of American Citizenship, Exec. Order No. 14160, 90 Fed. Reg. 8449 (Jan. 29, 2025).

20. *CASA*, 145 S. Ct. at 2549.

issue universal injunctions.[21] The Court rested its holding purely on statute;[22] it eschewed reliance on the Constitution;[23] and it totally set aside the policy objections to universal relief raised by the government as "beside the point" to the question before it.[24] The Court construed the Judiciary Act to mean that a lower court may issue an injunction that offers "complete relief" to the plaintiffs.[25] Although such an injunction may benefit nonparties, it may "do so only incidentally," when the "only . . . feasible option" is an order that "necessarily benefit[s]" nonparties.[26] On two centrally important questions—what makes relief "complete" and what makes narrower relief not "feasible"?—the Court said next to nothing.[27] Exegesis of *CASA*'s sweet-mystery-of-complete-relief passages is now the task of the lower courts.

This Part walks through these and other limits of *CASA* as well as questions posed by the decision. It examines *CASA*'s implications for the scope of "complete relief," the question of universal vacatur under the APA, and the availability of preliminary injunctions to protect putative classes, as well as the decision's silence concerning associational and state standing and its grounding in statutory rather than constitutional law. Separately and collectively, these aspects of *CASA* mean that courts retain considerable room to issue broad and even universal remedies against the executive branch. This Part then situates *CASA* alongside other recent actions by the Court that shed light on how *CASA* should be read. Only with this thorough descriptive and analytical account of *CASA* in hand can one see why—as Part II will explore—it is a grave error to communicate the message that lower courts granting broad remedies in the wake of *CASA* must be acting in defiance of it.

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21. *Id.* at 2550-51. The Court treated 1789 as the operative date for determining the scope of equitable remedies authorized by the statute, not 1875, when the forerunner to the modern-day federal question jurisdiction statute, 28 U.S.C. § 1331, was enacted. *See* Jack Goldsmith, Essay, *Interim Orders, the Presidency, and Judicial Supremacy*, 139 HARV. L. REV. 86, 115-16 (2025).

22. *CASA*, 145 S. Ct. at 2550-51.

23. *Id.* at 2550 n.4.

24. *Id.* at 2560.

25. *Id.* at 2556-57.

26. *Id.* at 2557.

27. The Court noted that "[t]he equitable tradition has long embraced the rule that courts generally 'may administer complete relief *between the parties*.'" *Id.* (quoting Kinney-Coastal Oil Co. v. Kieffer, 277 U.S. 488, 507 (1928)). But the cited case did not involve relief to nonparties, let alone reject relief to nonparties. *See Kieffer*, 277 U.S. 488. So the clause emphasized by the Court—"*between the parties*"—had nothing to do with the holding of the case. Nor does the case shed any light on what it means to administer complete relief "between the parties" as opposed to relief to nonparties. For a careful exploration of the history of the "complete relief" principle, see generally Note, CASA*'s Complete Relief Paradox*, 139 HARV. L. REV. 646 (2025).

A. Complete Relief

CASA's first important limit is that it leaves unclear what "complete relief" means. Choosing the simplest possible illustration, *CASA* specifically addressed only complete relief that was indivisible—an "archetypal case" of a binary nuisance.[28]

That category, though simple, is nonetheless important, for it includes many important cases that produced sweeping remedies before *CASA*. The border wall injunction[29] and the census questionnaire injunction,[30] for instance, both involved an indivisible remedial choice: either the wall would be funded or not; either the questionnaire would ask about citizenship or not. There was no third way. *CASA* preserves these indivisible complete-relief injunctions.

But a second category of complete relief has also proved important: when the only workable or feasible option for complete relief to the plaintiff is relief that extends universally.[31] Courts have found less-than-universal relief to be infeasible because of constraints created by the Constitution,[32] by statute,[33] or

28. *CASA*, 145 S. Ct. at 2557 (stating that when a plaintiff sues a neighbor blaring loud music, the only "feasible" relief—an order that the music be turned off—will "necessarily benefit" any "surrounding neighbors too"); *id.* at 2557 n.12 (noting that "[t]here may be other injuries for which it is all but impossible for courts to craft relief that is complete and benefits only the named plaintiffs").

29. Sierra Club v. Trump, 963 F.3d 874, 879-80 (9th Cir. 2020), *vacated sub nom.*, Biden v. Sierra Club, 142 S. Ct. 46 (2021) (mem.).

30. New York v. U.S. Dep't of Com., 351 F. Supp. 3d 502, 676-77 (S.D.N.Y.), *aff'd in part, rev'd in part*, 139 S. Ct. 2551 (2019).

31. *See* Fischman, *supra* note 11, at 228-29 (noting that courts justified universal relief as necessary because of "spillover" effects between jurisdictions, or "on the grounds that limited injunctions would have violated other legal provisions," or "on the grounds that limited relief would be unworkable").

32. *See, e.g.*, V.O.S. Selections, Inc. v. Trump, 149 F.4th 1312, 1340 n.20 (Fed. Cir.) (reciting the lower court's holding that "any relief short of a universal injunction would be unconstitutional as violative of the Uniformity Clause"), *aff'd on other grounds sub nom.*, Learning Res., Inc. v. Trump, Nos. 24-1287 & 25-250, 2026 WL 477534 (U.S. Feb. 20, 2026); Amanda Frost, *In Defense of Nationwide Injunctions*, 93 N.Y.U. L. REV. 1065, 1102 n.165 (2018) (noting cases where courts thought the Naturalization Clause might require nationwide uniformity of immigration injunctions).

33. *See, e.g.*, Nat'l TPS All. v. Noem, 150 F.4th 1000, 1028 (9th Cir. 2025) ("[L]imiting the relief to individual plaintiffs and [National Temporary Protected Status Alliance] members is not a workable solution under the [Temporary Protected Status (TPS)] statute. . . . Limiting Secretary Noem's decision to affect only certain individuals would effectively mean rewriting it in a way that does not comply with the TPS statute."); *id.* at 1029 ("Finally, anything short of a nationwide postponement is incongruent with the TPS statute, and it would not provide Plaintiffs with the complete relief they seek.").

by procedural requirements.[34] Or less-than-universal relief may be infeasible because of its sheer impracticality.[35] This second category, too, contains many important cases that produced sweeping remedies before *CASA*, among them the Muslim ban litigation and the DACA case.[36]

CASA, as noted, said almost nothing about how to decide when narrower relief would be infeasible. But the Court's reference to universal relief that is the "only . . . feasible option"[37] recognizes that the complete relief calculus must incorporate considerations of feasibility. To determine if something short of a universal remedy is "all but impossible,"[38] one must first decide whether narrower relief *is* realistically possible. Indeed, the Court's remand was premised on that proposition. The states expressly relied on the unworkability of narrower relief,[39] and the Court left it to the lower courts to decide if that argument was correct.[40] Complete relief on grounds of unworkability thus remained on the table for the states in *CASA* itself[41]—and for other litigants after *CASA*. And though the Court stressed that "[c]omplete relief is not a

34. Some courts have suggested that a violation of the APA's procedural requirements may entail universal relief. *See, e.g.*, District of Columbia v. U.S. Dep't of Agric., 444 F. Supp. 3d 1, 49-50 (D.D.C. 2020); Make the Rd. N.Y. v. McAleenan, 405 F. Supp. 3d 1, 72 (D.D.C. 2019), *rev'd and remanded on other grounds sub nom.*, Make the Rd. N.Y. v. Wolf, 962 F.3d 612 (D.C. Cir. 2020); *see also* Bowen v. Massachusetts, 487 U.S. 879, 911 (1988) (noting that the APA gives district courts "the authority to grant *the complete relief authorized by § 706*" (emphasis added)); Ronald M. Levin, *The National Injunction and the Administrative Procedure Act*, REGUL. REV. (Sept. 18, 2018), https://perma.cc/3MXN-MNB5 ("Virtually everyone understands 'set aside' to connote total nullification of the unlawful agency action. . . . Indeed, if this were not so, it is hard to understand how a court could effectively remand a rule to an agency for further consideration. The rule must be either remanded or not remanded—or remanded as to some provisions only . . . .").

35. *See* Frost, *supra* note 32, at 1098-1101; Ronald M. Levin, *Vacatur, Nationwide Injunctions, and the Evolving APA*, 98 NOTRE DAME L. REV. 1997, 2005-06 (2023).

36. *See, e.g.*, Washington v. Trump, 847 F.3d 1151, 1166-67 (9th Cir. 2017) (per curiam) (declining to limit the nationwide geographic scope of a temporary restraining order in part because the government had failed to "propose[] a workable alternative form of the [temporary restraining order] that accounts for the nation's multiple ports of entry and interconnected transit system and that would protect the proprietary interests of the States at issue here while nevertheless applying only within the States' borders"); Texas v. United States, 787 F.3d 733, 769 (5th Cir. 2015) ("[T]here is a substantial likelihood that a partial injunction would be ineffective because DAPA beneficiaries would be free to move between states.").

37. Trump v. CASA, Inc., 145 S. Ct. 2540, 2557 (2025).

38. *Id.* at 2557 n.12.

39. *Id.* at 2558 ("Given the cross-border flow, the States say, a 'patchwork injunction' would prove unworkable . . . .").

40. *Id.*

41. *See Washington*, 145 F.4th at 1038-39 (affirming, on remand from *CASA*, a complete-relief universal injunction because interstate movement of individuals would otherwise result in unavoidable harms to the plaintiff states).

guarantee—it is the maximum a court can provide,"[42] it is anybody's guess how lower courts will make that discretionary judgment, given that the Court (again) gave only cryptic guidance on how courts should decide when to award something short of complete relief.[43] It should therefore come as no surprise when lower courts decline to issue infeasible narrow injunctions and instead issue universal relief.

B. The APA and Cognate Statutes

A second important limit in *CASA* concerns the scope of relief available in challenges to rules and other rule-like regulatory action under the APA and cognate statutes such as the Hobbs Act. Courts and scholars have long read the APA to authorize "universal vacatur" of federal agency action and to empower courts to stay federal agency action universally.[44] This category also includes many important cases that produced sweeping remedies before *CASA*, among them the challenges to the CDC's eviction moratorium,[45] the Biden vaccine mandates[46] and borrower defense rule,[47] and the Federal Trade Commission's "noncompete" rule.[48] But these recent decisions are but the tip of an iceberg:

42. *CASA*, 145 S. Ct. at 2558.

43. *See id.* (endorsing "the power of the Chancellor to do equity and to mould each decree to the necessities of the particular case" as well as the proposition that plaintiffs need a "stronger . . . story" to justify a "broader and deeper . . . remedy" (first quoting Hecht Co. v. Bowles, 321 U.S. 321, 329 (1944); and then quoting Samuel L. Bray & Paul B. Miller, *Getting into Equity*, 97 NOTRE DAME L. REV. 1763, 1797 (2022))).

44. *See* Corner Post, Inc. v. Bd. of Governors of the Fed. Rsrv. Sys., 144 S. Ct. 2440, 2460 (2024) (Kavanaugh, J., concurring); *see, e.g.*, Mila Sohoni, *The Power to Vacate a Rule*, 88 GEO. WASH. L. REV. 1121, 1126 (2020) [hereinafter Sohoni, *The Power to Vacate a Rule*] (arguing that the APA allows universal vacatur); Mila Sohoni, *The Past and Future of Universal Vacatur*, 133 YALE L.J. 2305, 2311 (2024) [hereinafter Sohoni, *The Past and Future of Universal Vacatur*] (same). *But see, e.g.*, John Harrison, *Vacatur of Rules Under the Administrative Procedure Act*, 40 YALE J. ON REGUL. 119, 120 (2023) (arguing that vacatur "was unknown when the APA was adopted and for at least two decades afterwards," but that vacatur "might be a justifiable innovation, either under an innovative reading of that provision or as an addition to the remedies found in unwritten federal equity"); Aditya Bamzai, *The Path of Administrative Law Remedies*, 98 NOTRE DAME L. REV. 2037, 2040 (2023).

45. Ala. Ass'n of Realtors v. Dep't of Health & Hum. Servs., 141 S. Ct. 2485, 2489-90 (2021).

46. Nat'l Fed'n of Indep. Bus. v. Occupational Safety & Health Admin., 142 S. Ct. 661, 666 (2022) (per curiam); Biden v. Missouri, 142 S. Ct. 647, 654 (2022) (per curiam).

47. Career Colls. & Schs. of Tex. v. U.S. Dep't of Educ., 98 F.4th 220, 255 (5th Cir. 2024), *cert. granted*, 145 S. Ct. 1039 (2025) (mem.), *and cert. dismissed*, No. 24-413, 2025 WL 3120404 (U.S. Aug. 12, 2025) (mem.).

48. Ryan, LLC v. FTC, 746 F. Supp. 3d 369, 390 (N.D. Tex. 2024).

"The federal courts have likely vacated tens of thousands of administrative actions since the enactment of the APA."[49]

CASA bracketed the propriety of universal vacatur both expressly and implicitly. First, and obviously, the Court stated that whether the APA authorizes vacatur of agency action was a "distinct question" that *CASA* left unresolved.[50] Second, and although these cases had been brought to its attention in the filings,[51] the Court did not mention or address the potential relevance of cases that had allowed universal remedies in challenges to agency action. Third, the Court's separation of the APA question from the Judiciary Act question itself has some significance, in that it means that a decision about the latter does not automatically resolve questions about the former. Separating them implies the possibility that remedial authority in APA suits derives not solely from the Judiciary Act, but from the APA too.

What are the implications for the APA? At a minimum, all must agree that because *CASA* did not speak directly to the APA or announce any Article III limits on remedial authority, it thereby leaves intact lower-court precedent, from both the D.C. Circuit and elsewhere, that has long treated universal vacatur as an available remedy for unlawful rules.[52] A closer look, however, reveals something counterintuitive—*CASA* in fact lends *support* to the case that the APA authorizes universal remedies.

To see why requires some unpacking of *CASA*'s approach. To discern the meaning of the 1789 Act, *CASA* did not limit itself to the landscape of equity at the time of that law's enactment.[53] In fact, it barely looked at the state of

49. BENJAMIN M. BARCZEWSKI, CONG. RSCH. SERV., LSB11357, "SET ASIDE" AND VACATUR UNDER THE ADMINISTRATIVE PROCEDURE ACT 3 (2025).

50. Trump v. CASA, Inc., 145 S. Ct. 2540, 2554 n.10 (2025).

51. *See* Brief for Professor Mila Sohoni as Amica Curiae in Support of Respondents at *13-16, *CASA*, 145 S. Ct. 2540 (Nos. 24A884, 24A885 & 24A886), 2025 WL 1173016.

52. *See infra* notes 70-75 and accompanying text.

53. This is the entirety of the Court's treatment of founding-era American law: "Nor did founding-era courts of equity in the United States chart a different course. If anything, the approach traditionally taken by federal courts cuts against the existence of such a sweeping remedy." *CASA*, 145 S. Ct. at 2551-52 (citation omitted) (citing 1 JOHN NORTON POMEROY, A TREATISE ON EQUITY JURISPRUDENCE § 41, at 33-34 (1881)). In support, the Court cited a case *from 1897*. *Id.* at 2552. The case, *Scott v. Donald*, narrowed an injunction not because it was overbroad but because it was too conjectural: The *Scott* Court doubted whether there really were numerous other persons "in like case with the plaintiff." 165 U.S. 107, 115 (1897); *see also id.* ("It is, indeed, possible that there may be others in like case with the plaintiff, and that such persons may be numerous, but such a state of facts is too conjectural to furnish a safe basis upon which a court of equity ought to grant an injunction."). Obviously, "a holding that a class is 'too conjectural' is not the same thing as a holding that the class is 'overbroad,' and it is not at all the same thing as a holding that a federal court cannot properly offer injunctive relief that extends beyond the plaintiff." Mila Sohoni, *The Lost History of the "Universal" Injunction*, 133 HARV. L. REV. 920, 974 (2020). As for the Pomeroy treatise, the cited

footnote continued on next page

American equity as of 1789 at all.[54] Rather, *CASA* consulted "cases and practices many decades beyond 1789" in reaching its holding.[55] It may be said—it inevitably will be said—that the Court looked forward from the Founding purely to assert the *absence* of the universal injunction through that period, and not because subsequent cases could be good evidence of the meaning of equity in 1789. But it does not seem sensible to read *CASA* as suggesting that the Court would have deemed it irrelevant if courts had been issuing universal injunctions in that span of time. If the Court in (say) *Osborn v. Bank of the United States*[56]—a milestone decision penned by John Marshall in 1824—had somehow issued a universal injunction, surely that would have changed *CASA*'s reasoning and outcome.

However that might be, though, *CASA*'s treatment of *Ex parte Young*[57] confirms that cases subsequent to 1789 *must* matter in understanding the meaning of equity under the 1789 Act. Jurisdiction in *Young* rested on the federal question statute[58]—the same statute construed in *CASA*. In pointing out that the majority's "rigid historical test" would cut too far, Justice Sotomayor's *CASA* dissent correctly noted that *Young* represented a significant evolution in equity.[59] *Young* allowed injunctive relief against government officials to stop them from suing to enforce an unconstitutional law—and that kind of relief was unknown in English chancery courts.[60] The *CASA* majority's response was

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section explains that federal courts and some state courts as of 1881 had unified systems of law and equity and that various states differed in how they organized their courts. *See* 1 POMEROY, *supra*, § 41, at 33-34. It does not say anything remotely relevant to whether injunctions could benefit nonparties.

54. *See CASA*, 145 S. Ct. at 2587 (Sotomayor, J., dissenting).

55. Goldsmith, *supra* note 21, at 116 n.183; *see, e.g.*, *CASA*, 145 S. Ct. at 2557 (quoting *Kinney-Coastal Oil Co. v. Kieffer*, 277 U.S. 488, 507 (1928), for its reference to "complete relief *between the parties*"). *But cf. supra* note 27 (questioning *Kinney-Coastal*'s relevance).

56. 22 U.S. (9 Wheat.) 738 (1824).

57. 209 U.S. 123 (1908).

58. Michael G. Collins, *"Economic Rights," Implied Constitutional Actions, and the Scope of Section 1983*, 77 GEO. L.J. 1493, 1512-13 (1989) (noting "the [*Young*] Court's conclusion that for the purposes of the general federal question statute, *Young* arose under federal law").

59. *CASA*, 145 S. Ct. at 2589 (Sotomayor, J., dissenting). I should note that this was an argument that I had pressed in an amicus brief. *See* Brief for Professor Mila Sohoni as Amica Curiae in Support of Respondents, *supra* note 51, at *2-3.

60. *See* James E. Pfander & Jacob P. Wentzel, *The Common Law Origins of* Ex Parte Young, 72 STAN. L. REV. 1269, 1342 (2020) ("The groundbreaking feature of *Ex parte Young*—its willingness to approve an injunction against a state enforcement proceeding—consists of its sharp departure from the practice of the High Court of Chancery."); James E. Pfander & Jessica Dwinell, *A Declaratory Theory of State Accountability*, 102 VA. L. REV. 153, 213 (2016) ("Prior to *Ex parte Young*, equity had no established power to enjoin criminal proceedings on the ground that they would threaten constitutional values

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to characterize *Young* as the outgrowth of equitable practice in nineteenth-century America—not, mind you, as consistent with English chancery circa 1789. Specifically, the Court stated that *Young* "justifie[d] its holding" by relying on "a long line of cases" from that period that "in certain circumstances" had allowed "suits" against state officials.[61] Now, if those cases—the Court cited cases from the 1820s and 1873[62]—are the historical tether that validates the *Young* injunction,[63] then the material question is not just the state of equity at the time of the relevant statute's enactment (here, 1789), but also decades after that statute's enactment. In short, *CASA*'s treatment of *Young* suggests that the Judiciary Act's reference to suits in equity should be understood in light of how equity was understood in the decades—as many as three to eight decades—following the statute's enactment (albeit with the caveat that over a century afterwards is evidently, if inexplicably, too far).[64]

One might seek to dismiss the Court's expedition into nineteenth-century caselaw pertaining to *Young* by saying that the Court was seeking to protect *Young* in particular, not to endorse the general proposition that post-enactment practice matters. A holding that called into question this "landmark decision"[65] may have been a nonstarter.[66] But that is exactly the point. To insulate *Young*, the Court had to validate a significant development in equity that occurred well after 1789. If the Court wanted to preserve *Young*'s plaintiff-protective injunction against enforcement of a law—which it clearly did—it had no real choice *but* to adopt that approach. Whatever label one might attach to the approach the Court used here—equitable traditionalism? liquidation? "unfrozen" equity?—the end result is the same: To defend *Young*, the Court relied on decisions decades down the line to affirm a remedial power that was not part of equity circa 1789.

The Court's approach in *CASA* offers fresh fodder for the ongoing debate over whether the APA allows universal remedies. If post-enactment judicial practice illuminates the meaning of the Judiciary Act, then post-enactment

(such as substantive due process) . . . ."); David L. Shapiro, Ex parte Young *and the Uses of History*, 67 N.Y.U. ANN. SURV. AM. L. 69, 84-87 (2011); Sohoni, *supra* note 53, at 1003-04.

61. *CASA*, 145 S. Ct. at 2554 n.9 (majority opinion).

62. *Id.*

63. This claim itself is questionable, in that *Young* was still a significant innovation even as measured against these cases. Elsewhere, I explore this and other important problems posed by *CASA*'s treatment of *Young*. *See* Mila Sohoni, CASA, Young, *and Affirmative Relief*, 140 HARV. L. REV. (forthcoming 2026) (manuscript at 1-2, 28-37) (on file with author).

64. *See CASA*, 145 S. Ct. at 2553 ("[The universal injunction's] absence from 18th- and 19th-century equity practice settles the question of judicial authority.").

65. Edelman v. Jordan, 415 U.S. 651, 663 (1974).

66. I am grateful to Brian Fletcher for his thoughts on this point.

practice under the APA ought to likewise be relevant to the question whether the APA authorizes universal vacatur. Now, my own conclusions on the landscape of equitable remedies in federal court *before* 1946 and its implications for the APA's meaning have been well-aired elsewhere.[67] Absent any affirmative evidence that pre-APA decrees were read more narrowly, which I do not believe has been supplied,[68] I continue to think they should be read as they most naturally are read, as they were in fact read at the time, and as we continue to read similarly worded orders today—as universal vacaturs of rules.[69]

But whatever view one takes of the state of things *before* the APA, *everyone* accepts that federal courts were granting universal remedies in APA suits within a few decades *after* the APA's enactment. In 1954, the Court in *FCC v. American Broadcasting Co.*[70] unanimously affirmed a lower court order that had "vacated and set aside" new FCC rules regarding radio and TV "giveaway" programs.[71] *Wirtz v. Baldor Electric Co.*, a case that all agree granted a universal remedy against an agency action, was decided in 1963.[72] *Abbott Laboratories v. Gardner*,[73] in 1967, was an APA suit in which a lower court had given a universal remedy against an agency action.[74] By 1989—forty-three years

67. Sohoni, *The Power to Vacate a Rule*, *supra* note 44, at 1142-44; Sohoni, *The Past and Future of Universal Vacatur*, *supra* note 44, at 2327-28.

68. *See* Bamzai, *supra* note 44, at 2050-51; Jameson M. Payne & GianCarlo Canaparo, *Is Vacatur Unconstitutional?* 4-8, 10-13 (Ctr. for the Study of the Admin. State, Working Paper No. 26-02, 2025), https://perma.cc/5TXF-QFF6.

69. *See* Corner Post, Inc. v. Bd. of Governors of the Fed. Rsrv. Sys., 144 S. Ct. 2440, 2468 (2024) (Kavanaugh, J., concurring) (noting that "vacatur was not a new remedy" at the time of the APA's enactment).

70. 347 U.S. 284 (1954).

71. Transcript of Record at 138, *Am. Broad. Co.*, 347 U.S. 284 (Nos. 117, 118 & 119); *see* Sohoni, *The Past and Future of Universal Vacatur*, *supra* note 44, at 2358-59 (describing the lower court decision and the Supreme Court's affirmance).

72. 337 F.2d 518, 536 (D.C. Cir. 1963) (ordering a nationwide injunction). The district court's order on remand from *Wirtz* held the challenged agency determination "null and void and of no legal effect" and enjoined the government "from enforcing or attempting to enforce said determination in any manner and with respect to any member of the motors and generators industry" Motors and Generators Industry; Revocation, 29 Fed. Reg. 13322 (Sept. 25, 1964) (quoting the district court's language).

73. 387 U.S. 136 (1967).

74. The lower court decree both universally vacated and universally enjoined an agency action by decreeing that the challenged regulations "are null and void and of no effect, and the statutory provisions on which they are based do not impose, or authorize the defendants to impose, the requirements which they embody," and by enjoining "perpetually" the enforcement of the enumerated regulations by the defendant agency officials. Transcript of Record at 62-63, *Abbott Lab'ys*, 387 U.S. 136 (No. 39); *see* Sohoni, *The Past and Future of Universal Vacatur*, *supra* note 44, at 2366-67 & nn.369-70 (describing the lower court litigation and decision).

following the APA's enactment—the D.C. Circuit had confidently declared that vacatur was "the ordinary result" when "a reviewing court determines that agency regulations are unlawful."[75] Indeed, and almost comically, because the APA was enacted "only" eighty years ago, even very recent cases allowing universal remedies against rules (a number of them by the Court itself[76]) fall within the interpretive window adopted by *CASA*'s treatment of *Young*.[77]

One response to this would be to say that the APA should be understood only by reference to the backdrop of equitable remedies as of 1946. Certainly, until *CASA*, much debate over universal remedies under the APA had been conducted on these terms.[78] The thing is, though, that the 1789 Act was *also* enacted against a backdrop of equitable remedies—equity as it had developed in the English courts of chancery.[79] Yet *CASA*—to its ultimate credit, if at considerable cost to its "originalist" bona fides—teaches that English chancery practice at the time of enactment is *not* the only relevant ingredient to understanding the 1789 Act.[80] For *CASA* to accept as valid post-Founding

75. Harmon v. Thornburgh, 878 F.2d 484, 495 n.21 (D.C. Cir. 1989).

76. *See, e.g.*, Ala. Ass'n of Realtors v. Dep't of Health & Hum. Servs., 141 S. Ct. 2485, 2488 (2021) (per curiam); Nat'l Fed'n of Indep. Bus. v. Occupational Safety & Health Admin., 142 S. Ct. 661, 666-67 (2022) (per curiam); West Virginia v. EPA, 577 U.S. 1126, 1126 (2016); *see also* Eli Nachmany, *Vacatur as Complete Relief*, CATO SUP. CT. REV., 2024-2025, at 77, 77-78, 85 (explaining that in *Diamond Alternative Energy, LLC v. EPA*, 145 S. Ct. 2121 (2025), "redressability depended on the availability of invalidation—that is, vacatur—as an APA remedy," and that the Court "explicitly assumed that such a remedy was available").

77. *See* Trump v. CASA, Inc., 145 S. Ct. 2540, 2554 n.9 (2025) (citing *Davis v. Gray*, 83 U.S. (16 Wall.) 203 (1873), which was decided eighty-four years after 1789, as one of the "long line of cases" that *Young* relied on to "justif[y] its holding").

78. Scholars have also examined post-1946 law in federal courts and canvassed developments in state law that presaged the APA. *See, e.g.*, Levin, *supra* note 35, at 2004 (explaining how "the regime of across-the-board relief" became "entrenched in the post-*Abbott Labs* era"); Sohoni, *The Past and Future of Universal Vacatur*, *supra* note 44, at 2355-60 (discussing post-1946 cases); Fred Halbhuber, Note, *The State-Law Origins of the Appellate Review Model*, 135 YALE L.J. (forthcoming 2026) (manuscript at 4), https://perma.cc/U587-4LWF (noting the state common-law roots of the appellate review model); Fred Halbhuber, *A Remedy Inherited: State Law, Universal Vacatur, and the Meaning of "Set Aside"*, 78 STAN. L. REV. ONLINE 121, 122-23 (2025); Kathryn Kimball Mizelle, *To Vacate or Not to Vacate: Some (Still) Unanswered Questions in the APA Vacatur Debate,* HARV. J.L. & PUB. POL'Y PER CURIAM, Fall 2023, 1, 14-15 (exploring the idea of liquidation of the APA). For a detailed examination of the law of "appeal and error" in the pre-APA period and of the contention that vacatur should be conceptualized as an "appellate determination" rather than as a "remedy," see Emily S. Bremer, *Vacatur Within the Appellate Model of Judicial Review*, 136 YALE L.J. (forthcoming 2026) (manuscript at 5-8), https://perma.cc/ZR9V-J3EC.

79. *See CASA*, 145 S. Ct. at 2551.

80. *See supra* notes 53-64 and accompanying text.

developments was, I hasten to add, the right result.[81] This approach is far more in keeping with the principles of equity than to treat equity as "fr[ozen] in amber" at the Founding.[82] But given that the Court treated post-enactment practice as relevant when construing the chief statute that speaks to the federal courts' powers in equity, then, logically speaking, the same approach ought to apply to the APA. And that in turn would fortify the view that the APA authorizes universal remedies.

C. The Class Action

A third important limit to *CASA* flows from its treatment of the modern-day class action. *CASA* pronounced that the bill of peace "lives in modern form" as the Rule 23 class action, rejecting as insufficient the analogy between the bill of peace and the universal injunction.[83]

One live question after *CASA* is whether courts may issue preliminary injunctions that shield putative (i.e., not-yet-certified) classes before the decision whether to certify a class—which can be a time-consuming task.[84] Four Justices contemplated that courts could and would issue such injunctions, including in the very cases under review,[85] and the majority did not dispute the point. Thus, notwithstanding the "functional equivalen[ce]" correctly noted by Justice Kavanaugh between injunctions shielding putative classes and the universal injunction,[86] *CASA* does not deprive district courts of the power to issue preliminary injunctions that protect putative classes.

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81. *See* Sohoni, *supra* note 53, at 928 (noting that *Grupo Mexicano de Desarrollo v. Alliance Bond Fund*, 527 U.S. 308 (1999), "rested not only on the meaning of equity in England in 1789, but also on how American federal courts treated that concept in decisions extending through the twentieth century"); Samuel L. Bray, *The Supreme Court and the New Equity*, 68 VAND. L. REV. 997, 1011-12 (2015) (noting the difficulties with "[l]ooking to the equity of 1789 to determine the equitable remedies available today").

82. *CASA*, 145 S. Ct. at 2554 (quoting *id.* at 2588 (Sotomayor, J., dissenting)). The Court asserted that it did not regard equity as "fr[ozen]." *Id.* (alteration in original) (quoting *id.* at 2588 (Sotomayor, J., dissenting)).

83. *Id.* at 2555.

84. For an examination of the federal courts' authority to give relief to provisionally certified classes, see David Marcus, *The Class Action After* Trump v. CASA, 73 UCLA L. REV. DISCOURSE 2, 18-23 (2025).

85. *CASA*, 145 S. Ct. at 2569 (Kavanaugh, J., concurring) (noting that post-*CASA*, district courts may grant "a preliminary injunction to a putative nationwide class under Rule 23(b)(2)"); *id.* at 2596 (Sotomayor, J., dissenting) (noting, in an opinion joined by Justices Kagan and Jackson, that "the parents of children covered by the Citizenship Order would be well advised to file promptly class-action suits and to request temporary injunctive relief for the putative class pending class certification").

86. *Id.* at 2569 (Kavanaugh, J., concurring); *see also* Mila Sohoni, *Guest Post: Mila Sohoni on* Trump v. CASA, DIVIDED ARGUMENT (May 17, 2025), https://perma.cc/XGQ8-LWX4.

Putative class members are not parties to the lawsuit[87] and would not be bound by an adverse judgment.[88] Some have therefore read *CASA* to reject such injunctions, because *CASA* generally bars injunctive relief that protects nonparties. That reading is incorrect. It misunderstands what *CASA* rejected and what it preserved. *CASA* did not reject the class-action tradition. What *CASA* rejected is the proposition that the universal injunction was justifiable as an *outgrowth* of the class-action tradition, or that the universal injunction should be seen as legitimate *in light of* that tradition.[89] But preliminary injunctive relief that shields absent members of a noncertified class is obviously a part of the class-action tradition. That is because (1) class certification did not exist until 1966[90] and (2) many federal courts issued injunctions that protected both named plaintiffs and absent class members alike *before* 1966.[91] Even stern critics of universal injunctions have not denied that injunctions in pre-1966 representative suits protected not just the plaintiffs but also those *represented* by the plaintiff.[92] Rather, they sought to deflect the proposition that the existence of such injunctions in the past logically entailed that universal injunctions are proper today. Nicholas Bagley and Samuel Bray, for example, asserted that Rule 23 now occupies the "waterfront," and that "equity's historical practice of group litigation cannot be used to justify other, novel forms of non-party relief—such as the [universal] injunction."[93] They contended, in other words, that because our law *today* includes a rule that speaks to class-action litigation, the universal injunction should not be used as an end-run around that rule. Whatever the merits of that

87. *See* Smith v. Bayer Corp., 564 U.S. 299, 313 (2011) (rejecting the contention that a member of a "proposed but uncertified class . . . qualifies as a party").

88. *Id.* at 315 ("Neither a proposed class action nor a rejected class action may bind nonparties."); *id.* at 316 n.11 ("The great weight of scholarly authority—from the Restatement of Judgments to the American Law Institute to Wright and Miller—agrees that an uncertified class action cannot bind proposed class members.").

89. *See CASA*, 145 S. Ct. at 2554-56; *id.* at 2555 ("The bill of peace lives in modern form, but not as the universal injunction. It evolved into the modern class action . . . .").

90. *See* FED. R. CIV. P. 23 advisory committee's note to 1966 amendment; 7A WRIGHT & MILLER'S FEDERAL PRACTICE & PROCEDURE § 1753 (4th ed. 2021).

91. *See* Sohoni, *supra* note 53, at 964-73 (describing selected cases between 1913 and 1938); *see also, e.g.*, Gramling v. Maxwell, 52 F.2d 256, 263 (W.D.N.C. 1931); Davidowitz v. Hines, 30 F. Supp. 470, 472-73, 477 (M.D. Pa. 1939), *aff'd*, 312 U.S. 52 (1941); Lopez v. Seccombe, 71 F. Supp. 769, 772 (S.D. Cal. 1944); Mendez v. Westminster Sch. Dist. of Orange Cnty., 64 F. Supp. 544, 551 (S.D. Cal. 1946), *aff'd*, 161 F.2d 774 (9th Cir. 1947); Gonzales v. Sheely, 96 F. Supp. 1004, 1009 (D. Ariz. 1951).

92. Brief for Nicholas Bagley & Samuel L. Bray as Amici Curiae Supporting Petitioners at 10-11, Trump v. Pennsylvania, 140 S. Ct. 2367 (2020) (No. 19-454), 2020 WL 1433996 ("[E]quity representative suit[s] offered remedies for the plaintiffs and those represented by the plaintiffs . . . .").

93. *Id.* at 11.

argument, *CASA* endorsed it insofar as the decision held that the universal injunction was an impermissible "workaround" to Rule 23.[94] But a preliminary injunction that shields a putative class is not a "workaround" to Rule 23; it is a sometimes-necessary part of the process of deciding a Rule 23 case.

In short, *CASA* deemed the modern Rule 23 class action to be a legitimate descendant of the bill of peace.[95] Under *CASA*, it is thus *today's* class-action law, not the law of the bill of peace at the Founding, that decides whether putative-class preliminary injunctions are valid[96]—and under today's law, at least in certain circumstances, they *are* valid.[97] After *CASA*, the pre-1966 decrees in class suits are relevant only collaterally, insofar as they show that the issuance of preliminary injunctive relief to protect absentees is not a new invention, but rather has been a part of "equity's historical practice of group litigation"[98] in American courts.

D. Associational and State Standing

A fourth important limit in *CASA* is its silence concerning associational standing and state standing—both of which enable certain categories of plaintiffs to seek relief on behalf of broader constituencies.[99] This is another important category, or pair of categories; in recent years, many famous universal injunctions have come out of suits in which state or associational plaintiffs asserted that such relief was necessary to shield them, their residents,

94. *CASA*, 145 S. Ct. at 2556 ("[U]niversal injunctions are a class-action workaround.").

95. *Id.* at 2555 ("The bill of peace lives in modern form . . . . It evolved into the modern class action, which is governed in federal court by Rule 23 . . . . [Rule 23] would still be recognizable to an English Chancellor."). Notably, *CASA*'s catalog of the family resemblances between the bill of peace and the modern class action did *not* mention preclusive effects on absentees as a reason that the modern class action is a legitimate descendant of the bill of peace. *See id.* (listing numerosity, commonality, typicality, and adequate representation as requirements of Rule 23 injunctive classes and noting that the "requirements for a bill of peace were virtually identical"). Although critics of universal injunctions had treated preclusion as critical to the analogy between the bill of peace and the class action, *CASA* did not treat it as such. *See* Sohoni, *supra* note 86 (noting critics' emphasis on the "importance of class-wide preclusion").

96. *Cf.* Stephen E. Sachs, *Originalism as a Theory of Legal Change*, 38 HARV. J.L. & PUB. POL'Y 817, 846-47 (2015) (arguing that the law today is the law of the Founding as validly changed).

97. *See* 2 WILLIAM B. RUBENSTEIN, NEWBERG & RUBENSTEIN ON CLASS ACTIONS § 4:30 (6th ed. 2025); Marcus, *supra* note 84, at 20; Samuel Bray, *The Universal Injunction Cases, Part 4: The Court's Options,* DIVIDED ARGUMENT (May 13, 2025), https://perma.cc/Z684-YBRF (contending that courts have the "[j]urisdiction-preservation" power to "hold[] things in place" *before* they decide whether to certify a class).

98. Brief for Nicholas Bagley & Samuel L. Bray as Amici Curiae Supporting Petitioners, *supra* note 92, at 11.

99. E. Garrett West, *Taming the Shadow Docket*, 112 VA. L. REV. 347, 375-78 (2026).

or their members from harms threatened by illegal federal governmental action.[100]

CASA declined to address the government's arguments that the states lacked standing and that associations may not seek relief on behalf of unidentified members.[101] And with respect to the states, *CASA* did nothing more than remand so that lower courts could determine whether a universal injunction was appropriate given the states' asserted injuries.[102] Thus, *CASA* did not disturb existing law on either state standing or associational standing—despite the fact that the "only . . . feasible option"[103] for such litigants may be relief that universally halts a challenged law or regulation.

E. The Statute, Not the Constitution

Last but not least, a fifth important limit of *CASA* is that it is grounded in statute, rather than in Article III's reference to "cases . . . in equity" or in principles of standing that are (nowadays) said to derive from Article III. This theory of the case was very different from what the government had urged; the government's papers leaned heavily on Article III.[104] But the Court instead rested *CASA*'s holding squarely on the Judiciary Act.[105] Thus, *CASA* left open questions about the equitable relief that may be appropriate under other statutes, including the All Writs Act,[106] the APA and cognate review statutes (as earlier discussed),[107] the antitrust laws,[108] and perhaps others as well.[109]

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100. *See, e.g.*, Chamber of Com. v. EPA, 577 U.S. 1127 (2016) (staying the Obama clean power plan); Biden v. Nebraska, 143 S. Ct. 2355, 2365 (2023) (invalidating the Biden student loan forgiveness program); Missouri v. Trump, 128 F.4th 979, 997 (8th Cir. 2025) (addressing challenges to another Biden student loan forgiveness program).

101. Trump v. CASA, Inc., 145 S. Ct. 2540, 2549 n.2 (2025).

102. *Id.* at 2558.

103. *Id.* at 2557.

104. Application for a Stay at 16, *CASA*, 145 S. Ct. 2540 (No. 24A884), 2025 WL 819551. But when pressed at oral argument, Solicitor General John Sauer agreed with Justice Gorsuch that "[t]he Court does not have to rest on Article III" and could decide the case on the basis of "the 1789 Judiciary Act." Transcript of Oral Argument at 27, *CASA*, 145 S. Ct. 2540 (No. 24A884).

105. *CASA*, 145 S. Ct. at 2551; *id.* at 2550 n.4.

106. *See* A.A.R.P. v. Trump, 145 S. Ct. 1364, 1369 (2025) (per curiam) (relying on the All Writs Act to enjoin the executive branch from deporting a putative class of detainees).

107. *See supra* Part I.B (discussing the APA).

108. *In re* Google Play Store Antitrust Litig., 147 F.4th 917, 958 (9th Cir. 2025), *cert. dismissed sub nom.*, Google LLC v. Epic Games, Inc., No. 25-521, 2026 WL 682610 (U.S. Mar. 10, 2026) (mem.); Epic Games, Inc. v. Apple Inc., 161 F.4th 1162, 1193 (9th Cir. 2025).

109. *See* Richard H. Fallon, Jr., *Constitutional Remedies: In One Era and Out the Other*, 136 HARV. L. REV. 1300, 1353-54 (2023) (noting that fixing equitable remedies to "practice in 1789" would place in "constitutional jeopardy" a "variety of modern statutes" that

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Loose language about Article III standing in *CASA*—which the Court, to its credit, eschewed—could have collaterally undermined other elements of the law of standing, including the "one good plaintiff" rule,[110] third-party standing,[111] and (as earlier discussed) associational standing.[112] And ultimately, of course, grounding *CASA*'s holding in the Constitution would have prospectively curtailed Congress's powers to pass legislation concerning the scope of remedies that federal courts can give, including in challenges to agency action. This would have been a momentous holding. Not only would it have broken new constitutional ground,[113] but it would have foreclosed future legislative reforms that could preserve the good of universal remedies while mitigating their chief ill, which is and always has been a mundane problem of stubbornly nonconstitutional dimensions: forum shopping.[114] In short, had *CASA* been an Article III holding, its impact crater would have been far broader. But it wasn't, and so it isn't.

Everything discussed so far comes from *CASA* itself. But *CASA* should be read—and indeed it must be read—in conjunction with recent "shadow docket" orders, each of which addresses how "equitable discretion" should properly be exercised by lower courts.[115]

Consider again the putative class action. In *A.A.R.P. v. Trump*, the Court, over two noted dissents, blocked the Trump Administration from deporting over 100 detainees to a terrorist prison in El Salvador.[116] No class had been certified below. Rejecting the government's contention that Article III forbade giving injunctive relief to nonparties,[117] the Court stated that "courts may

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contain "broadly worded congressional authorizations of injunctions"); *id.* at 1353 n.358.

110. *See* Biden v. Nebraska, 143 S. Ct. 2355, 2365 (2023) ("If at least one plaintiff has standing, the suit may proceed.").

111. *See* Edmonson v. Leesville Concrete Co., 500 U.S. 614, 629 (1991) (describing contexts in which "a litigant may raise a claim on behalf of a third party").

112. *See supra* notes 99-102 and accompanying text (discussing associational standing).

113. *See* Mila Sohoni, *Equity and the Sovereign*, 97 NOTRE DAME L. REV. 2019, 2051 (2022) ("[T]he Court has never yet held that Article III's reference to 'Equity' is a hard constitutional limit on the equitable remedies that Congress may create.").

114. *See Developments in the Law*, *supra* note 11, at 1702, 1722-24 (noting that legislating reforms to address forum shopping would be better than outright bans on universal remedies); Adam White, *Congress Should Fix the Nationwide Injunction Problem with a Lottery*, YALE J. ON REGUL. (Feb. 11, 2020), https://perma.cc/GF3F-E27F.

115. Trump v. Boyle, 145 S. Ct. 2653, 2654 (2025) ("Although our interim orders are not conclusive as to the merits, they inform how a court should exercise its equitable discretion in like cases.").

116. 145 S. Ct. 1364, 1367 (2025); *see also id.* at 1371 (Alito, J., dissenting) (joined by Justice Thomas).

117. The government had argued that although the detainees sought to "secur[e] injunctive relief on behalf of a putative class of detainees in the Northern District of Texas," the

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issue temporary relief to a putative class."[118] *CASA* did not cite *A.A.R.P.*, and it cannot fairly be read to overturn it *sub silentio*.

Consider, too, the APA and associational standing. *CASA*'s choice to sidestep the APA[119] must be read in light of *NIH v. American Public Health Ass'n*,[120] a case in which an assortment of plaintiffs challenged the Trump Administration's termination of National Institutes of Health grants.[121] The lower court's judgments had, inter alia, vacated the relevant agency guidance documents under the APA,[122] and the government applied to the Court for stays pending appeal.[123] With a splintered vote, the Court stayed the district court's orders insofar as they "vacat[ed]" the "termination of various research-related grants,"[124] holding that such challenges belonged in the Court of Federal Claims.[125] However, the Court *declined* to stay the parts of the district court's orders that had declared unlawful and vacated the agency guidance documents.[126] At least five Justices appeared to take it as given that a lower court *could* vacate agency guidance under the APA when that guidance is final and arbitrary and capricious.[127] Moreover, no Justice questioned the

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Court "lack[ed] the authority to grant them relief" because "[u]nder Article III . . . a plaintiff's remedy must be limited to providing relief to injured parties. Because no class has been certified, the putative class members are non-parties to the dispute." Respondents' Opposition to Emergency Application at 12, *A.A.R.P.*, 145 S. Ct. 1364 (No. 24A1007), 2025 WL 1171736 (citations omitted).

118. *A.A.R.P.*, 145 S. Ct. at 1369.

119. Trump v. CASA, Inc., 145 S. Ct. 2540, 2554 n.10 (2025).

120. 145 S. Ct. 2658 (2025).

121. *Id.* at 2668 (Jackson, J., concurring in part and dissenting in part).

122. Am. Pub. Health Ass'n v. NIH, No. 1:25-CV-10787, 2025 WL 1747128, at *2 (D. Mass. June 23, 2025), *stay granted in part sub nom. Am. Pub. Health Ass'n*, 145 S. Ct. 2658; Massachusetts v. Kennedy, No. 25-CV-10814, 2025 WL 1747213, at *1-2 (D. Mass. June 23, 2025), *stay granted in part sub nom., Am. Pub. Health Ass'n*, 145 S. Ct. 2658.

123. Application to Stay the Judgments of the United States District Court for the District of Massachusetts and Request for an Immediate Administrative Stay at 1-2, *Am. Pub. Health Ass'n*, 145 S. Ct. 2658 (No. 25A103), 2025 WL 2146619.

124. *American Pub. Health Ass'n*, 145 S. Ct. at 2660.

125. Four Justices would have granted the government's application in full to stay the district court's vacatur of the agency's grant terminations and guidance. *Id.* at 2659. Writing separately, Justice Barrett supplied the fifth vote for vacating only the agency's grant terminations. *Id.* at 2661 (Barrett, J., concurring in the partial grant of the application for stay) (citing Dep't of Educ. v. California, 145 S. Ct. 966 (2025) (per curiam)).

126. *See id.* at 2660 (majority opinion) (carving out paragraphs to stay).

127. *Id.* at 2662 n.1 (Barrett, J., concurring in the partial grant of the application for stay) ("If a district court decides that agency guidance violates the APA, it may vacate the guidance, preventing the agency from using it going forward."); *id.* at 2662-63 (Roberts, C.J., concurring in part and dissenting in part) (contending, in an opinion joined by Justices Sotomayor, Kagan, and Jackson, that the district court's "vacatur of the

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associations' *standing* to seek vacatur on their members' behalf. Going forward, these aspects of these orders should "inform" how lower courts craft remedies "in like cases."[128]

To summarize, *CASA*'s many boundaries and gray areas have so far preserved (prudently[129]) a broad terrain in which lower courts may still—fully in keeping with *CASA*—issue orders that check the executive branch in a blanket or near-blanket way. Litigants have adjusted and will continue to adjust their conduct to make use of these avenues (and others[130]) so far as they are able. Consequently, broad or universal remedies against the federal government will ensue in a nontrivial number of cases. *CASA* has helped the federal government, to be sure, but it has not been the panacea that some had sought. Yet rather than take the bitter with the sweet, the Trump Administration has responded to *CASA* in a way that might cause damaging consequences down the line. The next Part explores this point.

II. Misreading *CASA*

The day *CASA* was decided, the Trump Administration told the public loudly and without qualification that the Court had brought an end to the era of the universal injunction. A White House statement cast the decision as a "huge win" that would stop "rogue, activist judges" from "abus[ing] their authority to dictate the executive powers of the President of the United States."[131] The Attorney General claimed at a White House press conference that *CASA* had ended universal remedies: "No longer will we have rogue judges striking down President Trump's policies across the entire nation. No

challenged directives" was "well within the scope of the District Court's jurisdiction" under the APA); *id.* at 2671 (Jackson, J., concurring in part and dissenting in part) ("[D]istrict courts may still exercise jurisdiction over—and vacate—grant-related policies that contravene federal law . . . .").

128. Trump v. Boyle, 145 S. Ct. 2653, 2654 (2025).

129. *See* ZECHARIAH CHAFEE, JR., SOME PROBLEMS OF EQUITY 246-47 (1950) ("It is always dangerous for a court, when it is laying down the law for years ahead, to enunciate an exclusive list of a definite number of possibilities for relief and deny that there are any others.").

130. *See, e.g.*, City & Cnty. of S.F. v. Trump, 783 F. Supp. 3d 1148, 1160 (N.D. Cal. 2025) (allowing joinder of many cities and counties from different states).

131. *"A BIG WIN": Supreme Court Ends Excessive Nationwide Injunctions*, WHITE HOUSE (June 27, 2025), https://perma.cc/Y28R-F9XQ; *see* Associated Press, *Supreme Court Limits Judges' Power on Nationwide Injunctions, but Fate of Trump Birthright Citizenship Order Unclear*, PBS NEWS (updated June 27, 2025, 10:32 AM EDT), https://perma.cc/EGE2-RJR9.

longer."[132] She added, "if there's a birthright citizenship case in Oregon, it will only affect the plaintiff in Oregon."[133]

Setting aside (for now) the rhetoric about judicial activism and abuse of authority, this portrayal of *CASA* was simply factually wrong. As just outlined, *CASA* provided sound reasons to *uphold*, not to reject, many of the universal remedies that in recent years have caused such uproars: among them, the border wall injunction,[134] the census questionnaire injunction,[135] the universal stay of the workplace vaccine mandate,[136] the universal vacatur of the eviction moratorium,[137] the injunction of the Muslim ban,[138] and the injunction of the deferred action program.[139] And, of course, on remand from *CASA*, and consistent with it, district courts addressing the birthright citizenship case rapidly certified nationwide class actions and issued complete-relief injunctions that "affected" many more individuals than the Attorney General's imagined solitary "plaintiff in Oregon."[140]

When there is a wide disconnect between what is loudly proclaimed as a mission accomplished and what is actually achieved, it tends to exact a toll.[141] Often—and justly—that toll is felt by the officials doing the exaggerating. Here, however, those same officials are attempting to externalize that toll—unjustly—upon the courts.

In press briefings and public statements after *CASA*, the Trump Administration has characterized lower court decisions granting broad remedies—regardless of their legal bases—as acts of politically motivated resistance by an activist judiciary. After a district court certified a nationwide

132. Pam Bondi, U.S. Att'y Gen., Remarks on the U.S. Supreme Court Decision on Nationwide Injunctions from Lower Federal Courts and an Exchange with Reporters (June 27, 2025), https://perma.cc/9F7J-S7JK (to locate, click "View live page").

133. *Id.*

134. Sierra Club v. Trump, 963 F.3d 874, 897 (9th Cir. 2020), *vacated sub nom.*, Biden v. Sierra Club, 142 S. Ct. 46 (2021) (mem.).

135. New York v. U.S. Dep't of Com., 351 F. Supp. 3d 502, 676-77 (S.D.N.Y.), *aff'd in part, rev'd in part*, 139 S. Ct. 2551 (2019).

136. Nat'l Fed'n of Indep. Bus. v. Occupational Safety & Health Admin., 142 S. Ct. 661, 662-63 (2022) (per curiam).

137. Ala. Ass'n of Realtors v. Dep't of Health & Hum. Servs., 141 S. Ct. 2485, 2490 (2021) (per curiam).

138. Washington v. Trump, 847 F.3d 1151, 1169 (9th Cir. 2017) (per curiam).

139. United States v. Texas, 579 U.S. 547, 548 (2016).

140. *See supra* note 132 and accompanying text.

141. *See* Don Gonyea, *Tracing the Highs and Lows of the Bush Presidency*, NPR (Jan. 7, 2009, 4:40 PM ET), https://perma.cc/CJ8Q-4NZF (noting the George W. Bush Administration's presentation of the Iraq War as a "Mission Accomplished" and the President's praise of the FEMA Director as doing a "heck of a job" in the aftermath of Hurricane Katrina).

class in the birthright citizenship case,[142] a White House spokesman called the ruling an "obvious and unlawful attempt to circumvent the Supreme Court's clear order" by a "rogue district court judge[]" who was "abusing class action certification procedures."[143] Following a stay of the effective date of an agency action under the APA, the Attorney General claimed that another "rogue district court judge" was trying to "circumvent the Supreme Court's recent ruling,"[144] while Deputy Chief of Staff Stephen Miller described the court's order as a "judicial coup."[145] After a district court held that complete relief for the plaintiffs required a universal injunction within a single judicial district, and the Ninth Circuit agreed, the Solicitor General complained that the district court had "flouted" and "evaded" *CASA*.[146] Some academics have also portrayed lower courts as defiant, mutinous, and even "malicious."[147]

Of the diverse harms that the government's rhetoric may produce,[148] one that looms in the offing is corrosion of the internal institutional fabric of

142. *See* Barbara v. Trump, 790 F. Supp. 3d 80, 89 (D.N.H. 2025), *cert. granted*, 146 S. Ct. 879 (2025) (mem.).

143. Devan Cole & John Fritze, *Federal Judge Issues New Nationwide Block Against Trump's Order Seeking to End Birthright Citizenship*, CNN (updated July 10, 2025, 8:14 PM EDT), https://perma.cc/FM9W-YLWW.

144. Pamela Bondi (@AGPamBondi), X (July 2, 2025, 3:15 PM PDT), https://perma.cc/SVY6-PJDR.

145. Stephen Miller (@StephenM), X (Aug. 30, 2025, 8:19 AM PDT), https://perma.cc/XU5G-VKFG ("The judicial coup continues . . . .").

146. Application to Stay the Order by the United States District Court for the Central District of California and Request for an Immediate Administrative Stay at 4-5, Noem v. Vasquez Perdomo, No. 25A169, 2025 WL 2323447 (U.S. Sept. 8, 2025) (mem.) ("[T]he district court flouted this Court's recent decision in *Trump v. CASA, Inc.*, 145 S. Ct. 2540 (2025), prohibiting such universal injunctions. . . . *CASA* is not so easily evaded."). But the district court had provided cogent explanations for why universal scope was needed, and the court of appeals had agreed. *See* Vasquez Perdomo v. Noem, 790 F. Supp. 3d 850, 887-88 (C.D. Cal. 2025), *appeal dismissed*, No. 25-4312, 2025 WL 4053197 (9th Cir. Nov. 21, 2025); Vasquez Perdomo v. Noem, 148 F.4th 656, 686-88 (9th Cir.), *stay granted*, 146 S. Ct. 1 (2025) (mem.). The Court stayed the injunction in its entirety, but it offered no explanation. *See Vasquez Perdomo*, 2025 WL 2585637, at *1. A concurrence by Justice Kavanaugh objected to the plaintiffs' standing and merits arguments, but not to the scope of the relief. *See id.* at *1-5 (Kavanaugh, J., concurring in the grant of the application for stay).

147. *See, e.g.*, Adrian Vermeule, *Someone Is Defying the Supreme Court, but It Isn't Trump*, N.Y. TIMES (July 31, 2025), https://perma.cc/D3EM-APZR (stating that "lower courts have already begun to undermine the [*CASA*] decision by certifying absurdly broad class-action suits," without explaining what makes those class-action suits "absurdly broad"); *id.* (accusing lower courts of "mutiny," "defi[ance]," "malicious compliance," "evasion," and "transparent bad faith").

148. The DOJ has employed similar rhetoric in other recent cases that do *not* involve universal remedies. In *Trump v. Boyle*, the government's stay application accused the lower courts of deliberate "circumvention." Reply in Support of Application for Stay at 1, Trump v. Boyle, 145 S. Ct. 2653 (2025) (No. 25A11), 2025 WL 2029912 ("This Court

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Article III courts. In the middle distance, there may materialize a scenario in which the Justices begin to voice the same narrative that the government is pushing and to chastise lower courts for their perceived defiance. Indeed, two Justices did so in *NIH*.[149]

Should this occur, it would be unfortunate. It is strikingly hard to find instances in which the Supreme Court has felt it appropriate to level accusations of defiance against lower courts.[150] The rarity of such accusations flows from the architecture and processes of the judicial branch itself. The judiciary's hierarchical structure is a system in which a formal, impersonal process for correcting errors exists and is sufficient to the task of ensuring the Court's supremacy. By the same token, in that structure, accusations of defiance are not only unnecessary but are actively harmful to intrabranch dialogue. The Court depends on lower court judges not just to follow orders as if they were robot infantry,[151] but to work through the realities of implementing complex decisions—a process that inevitably involves interpretation, variations in outcomes, and gradual refinement.[152] To rebrand

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should not countenance respondents' and the lower courts' circumvention of its recent precedent."). In *NIH v. American Public Health Ass'n*, the government's stay application likewise claimed that district courts were engaging in evasion and defiance of the Court's mandate. Application to Stay the Judgments of the United States District Court for the District of Massachusetts and Request for an Immediate Administrative Stay at 4, NIH v. Am. Pub. Health Ass'n, 145 S. Ct. 2658 (2025) (No. 25A103), 2025 WL 2146619 ("District-court defiance of this Court's decision in *California* has grown to epidemic proportions."); *id.* at 27 ("This Court should not allow lower courts to continue to deny preliminary relief by defying basic jurisdictional principles—and this Court's authority.").

149. *NIH*, 145 S. Ct. at 2663 (Gorsuch, J., concurring in part and dissenting in part) ("Lower court judges may sometimes disagree with this Court's decisions, but they are never free to defy them.").

150. Justice Gorsuch relied on language from an earlier decision, *Hutto v. Davis*. *See id.* (quoting Hutto v. Davis, 454 U.S. 370, 375 (1982) (per curiam)). But even in *Hutto*, the Court did not speak in terms of defiance. *See* 454 U.S. at 374-75 ("[T]he Court of Appeals could be viewed as having ignored, consciously or unconsciously, the hierarchy of the federal court system created by the Constitution and Congress.").

151. *See* Richard M. Re, *Narrowing Supreme Court Precedent from Below*, 104 GEO. L.J. 921, 927 (2016) ("Too often judges and commentators assume a simplistic relationship whereby lower courts either do or don't follow their superiors' instructions. But lower courts have a substantial interpretive gray zone available to them . . . [and] sometimes engage in a precedential dialogue with the Supreme Court." (footnote omitted)).

152. Richard H. Fallon, Jr., *Foreword: The Supreme Court, 1996 Term—Foreword: Implementing the Constitution*, 111 HARV. L. REV. 54, 124-25 (1997) ("It is notorious, even to the Justices themselves, that a broad ambit frequently exists for reasonable disagreement about how precedents are best interpreted and tests best applied."); Re, *supra* note 151, at 926 ("[A]mbiguous Supreme Court precedent can and often should be viewed as effecting a kind of delegation to lower courts, affording them legitimate space for interpretive flexibility.").

lower court percolation of the law as proof of brewing rebellion is to turn one of the Article III courts' sources of wisdom—and hence, sources of strength—into a liability. And although the Court may not have a very powerful toolkit to counter executive branch attacks on Article III courts,[153] one thing that it *can* do is hold the line against efforts to corrode this internal culture of reasoned dialogue and mutual respect.

Maintaining that institutional culture is especially critical in the current environment. The Trump Administration's attitude toward Article III courts comprises more than isolated rhetorical attacks on particular decisions or particular injunctions. Rather, the Trump Administration has been going after courts and judges in unprecedented ways, for example by suing an entire bench of judges in Maryland.[154] It has also sought to tamp the flow of legal challenges at their source by targeting law firms that have represented plaintiffs in suits against the federal government,[155] by demanding that litigants post exorbitant bonds as a precondition for challenging its policies,[156] and by transferring detainees to foreign prisons before courts could adjudicate their claims.[157] Last but not least, the Trump Administration's strategy of profligate filing of emergency applications at the Supreme Court has the triple payoff of overwhelming the Justices, forcing the Court to reach speedy and terse interim decisions that erode its standing in the public eye, and attracting media and

153. *See* William Baude, Samuel L. Bray & Marin K. Levy, *Remedies for a Constitutional Crisis*, 139 HARV. L. REV. (forthcoming 2026) (manuscript at 3), https://perma.cc/3KBW-HZZS; Curtis A. Bradley & Neil S. Siegel, *The Supreme Court Under Threat: Early Lessons in Judicial Self-Protection*, 139 HARV. L. REV. (forthcoming 2026) (manuscript at 1), https://perma.cc/6T5W-B42P.

154. This lawsuit purported to be based on the District of Maryland's issuance of two standing orders that aimed to ensure the effectiveness of judicial review of habeas petitions. *See* United States v. Russell, 797 F. Supp. 3d 552, 559-60 (D. Md. 2025).

155. *See, e.g.*, Exec. Order No. 14246, 90 Fed. Reg. 13997 (Mar. 28, 2025) (accusing law firms of "undermin[ing] bedrock American principles" through their "powerful pro bono practices" and Jenner & Block LLP of "abus[ing] its pro bono practice . . . to undermine justice and the interests of the United States"); Jenner & Block LLP v. U.S. Dep't of Just., 784 F. Supp. 3d 76, 88 (D.D.C.), *appeal filed*, No. 25-5265 (D.C. Cir. July 22, 2025).

156. Memorandum on Ensuring the Enforcement of Federal Rule of Civil Procedure 65(c), 2025 DAILY COMP. PRES. DOC. 336 (Mar. 6, 2025).

157. *See* Trump v. J.G.G., 145 S. Ct. 1003, 1006 (2025) (holding that alleged Tren de Aragua members had the due process right to advance notice and an opportunity to challenge their removal under the Alien Enemies Act); Abrego Garcia v. Noem, No. 25-1404, 2025 WL 1135112, at *1 (4th Cir. Apr. 17, 2025) ("The government is asserting a right to stash away residents of this country in foreign prisons without the semblance of due process that is the foundation of our constitutional order.").

public attention to the Administration's complaints about supposedly renegade and politicized lower courts.[158]

When surveying all that is transpiring, one should not miss the forest for the trees. The power to appoint judges is not the only way that presidential administrations can exert influence on courts and on law. The President has the power to influence the public and the judiciary, and hence the law, through a more "diffuse and indirect"[159] mechanism than judicial appointments: the power to shape what Robert Post has called "constitutional culture."[160] Presidents can promote understandings of rights and government power that are very different from what extant law recognizes;[161] in so doing, they and their followers can exert substantial pressure on the courts to change extant legal understandings to conform to their administrations' own views of those commitments.[162] Here, the extant legal understanding that is apparently under siege is meaningful judicial review simpliciter.

The Trump Administration's public portrayal of *CASA* and its inflammatory treatment of lower court decisions grappling with *CASA* should thus not be viewed in isolation or dismissed as mere political messaging narrowly aimed at specific court orders interpreting a particular decision. Rather, it should be understood as part of the Trump Administration's larger campaign to instigate a wider transformation in both constitutional culture and constitutional law such that any meaningful judicial remedy against the executive, broad or narrow, is perceived as an illegitimate usurpation of executive power rather than as a legitimate check upon it.[163] Ironically, *CASA* is especially useful for this campaign precisely because of the decision's careful limits and considered lacunae.[164] By characterizing lower courts that grant broad remedies after *CASA* as engaging in defiance, the Trump Administration is seeking to achieve indirectly through political pressure upon lower courts the same across-the-board constriction of remedies that it failed to win from the Court in *CASA*.

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158. *See* Stephen I. Vladeck, *The Supreme Court's (Self-Defeating) Supremacy*, 2025 SUP. CT. REV. (forthcoming 2026) (manuscript at 2, 36-38), https://perma.cc/68YH-LSVR; Goldsmith, *supra* note 21, at 103.

159. Mila Sohoni, *The Trump Administration and the Law of the* Lochner *Era*, 107 GEO. L.J. 1323, 1384 (2019).

160. Robert C. Post, *Foreword: Fashioning the Legal Constitution: Culture, Courts, and Law*, 117 HARV. L. REV. 4, 8 (2003).

161. *See* Sohoni, *supra* note 159, at 1327 (describing efforts by Presidents Franklin Roosevelt, Ronald Reagan, and Donald Trump to advance a particular constitutional vision).

162. *Id.* at 1384-85.

163. *See* Vladeck, *supra* note 158, at 36 ("By the end of [the Supreme Court's October 2024 Term], Stephen Miller was regularly referring to *any* district court ruling blocking a Trump initiative as part of a 'legal insurrection' . . . .").

164. *See supra* Part I.

Conclusion

The coin of legitimacy (like most coins) has two faces. There is "the virtue of preventing federal courts from inappropriately interfering with political decisions"—but there is also "the equal and opposite virtue of legitimating federal court intervention when it is necessary."[165] On the one side is the imperative of restraint—the recognition that courts must not intrude on matters properly beyond the remit of courts. On the other side is the imperative of action—the recognition that insofar as they are authorized to do so, courts must intervene, and sometimes urgently, when power exceeds its lawful limits.

CASA has, at least for now, retained the courts' capacity for "thinking fast and slow"[166]—a capacity as necessary for a functioning judiciary as it is for a functioning mind. Because the Court has left broad and even universal remedies on the table in a substantial class of cases, it has preserved some ability for the courts to give meaningful remedies for urgent legal violations while at the same time encouraging more careful deliberation. Yet this same Janus-like aspect of *CASA* has also created a risk: that the Trump Administration will mischaracterize and exploit *CASA* as part of its broader effort to undermine judicial review more generally. Whatever one thinks of the merits of *CASA* itself—and my own views are no secret[167]—it would be still more unfortunate if the decision's eventual legacy were not its holding, but its use as a pretext to weaken meaningful judicial review, full stop.

165. William A. Fletcher, *The Discretionary Constitution: Institutional Remedies and Judicial Legitimacy*, 91 YALE L.J. 635, 697 (1982).

166. *See generally* DANIEL KAHNEMAN, THINKING, FAST AND SLOW (2011) (explaining the mind's reliance on two interdependent and complementary cognitive systems, one rapid and the other deliberative).

167. *See* Mila Sohoni, Trump v. CASA *and the Future of the Universal Injunction*, SCOTUSBLOG: TERM REVIEW (July 2, 2025), https://perma.cc/V38V-J7EG.