

# Three legislative proposals for fixing nationwide injunctions

Fix the Court | June 2022

1. **Transfer:** In lawsuits that might result in nationwide injunctions, the **U.S. can make a motion to transfer the case to the D.C. District**, which will then choose a judge at random to hear the case

Draft text: Upon motion of the United States, a District Court shall transfer a case or proceeding seeking injunctive relief against the United States to the United States District Court for the District of Columbia, unless such relief is applicable only to the parties to the case or proceeding. The Court shall have the power to consolidate several cases concerning the same matter into a single case.

Pros: D.D.C. will have greater expertise in administrative law than whichever district the suit in question is originally brought in (cf., the mask mandate in M.D. Fla.)

Cons: Could seem a bit like forum-shopping

Leading resource on this: Several

2. **Transfer + three judges + SCOTUS appeal:** In lawsuits that might result in nationwide injunctions, the U.S. can make a motion to transfer the case to the D.C. District, which will then **choose a three-judge panel at random to hear the case**, which is then **directly appealable to the Supreme Court**

Draft text: Upon motion of the United States, a District Court shall transfer a case or proceeding seeking injunctive relief against the United States to a three-judge panel the United States District Court for the District of Columbia unless such relief is applicable only to the parties to the case or proceeding. The Court shall have the power to consolidate several cases concerning the same matter into a single case. The ruling of such a panel shall be directly appealable to the Supreme Court of the United States.

Pros: D.D.C. will have greater expertise in administrative law than whichever district the suit in question is originally brought in; a three-judge panel has a more authoritative voice than that of a single judge, especially in matters of national import; a three-judge panel will likely comprise both Republican and Democratic appointees; the direct appeal of an order of a three-judge district court panel to the Supreme Court tracks with [28 U.S.C. §2284](#); the direct appeal of a nationwide injunction ruling to the Supreme Court tracks with the GOP-led Court Shopping Deterrence Act ([H.R.893](#)), though this bill does not add the three-judge panel provision

Cons: Seems a bit like forum-shopping, and the direct appeal to the Supreme Court should be carefully considered

Leading resource on this: Fifth Circuit Judge Gregg Costa, [link](#)

3. **Transfer + lottery:** In lawsuits that might result in nationwide injunctions, a motion can be filed by any party within a certain timeframe that would set in motion a **nationwide lottery process**, so litigants won't simply be able to file in a "friendly" venue

Draft text: In a District Court case or proceeding seeking injunctive relief against the United States, any party may, within 10 days of the initial filing, file a motion for consolidation to United States Judicial Panel on Multidistrict Litigation. The Panel shall, by means of random selection, designate one District Court, from among the District Courts in which similar petitions seeking injunctive relief against the United States have been filed and received within the 10-day period, and shall issue an order consolidating the petitions in that District Court.

Pros: Greater randomness than the other proposals; the 10-day deadline tracks with [28 U.S.C. §2112](#)

Cons: This process still results in a single judge deciding on whether or not to issue a nationwide injunction

Leading resource on this: Adam White, American Enterprise Institute, [link](#)