

Birthright Ruling Could Alter Consumer Financial Litigation

By **Alan Kaplinsky** (May 28, 2025)

What in the world does birthright citizenship have to do with consumer financial services?

The short answer is that the outcome of the U.S. Supreme Court's May 15 **oral argument** in the consolidated cases Trump v. CASA Inc., Trump v. Washington and Trump v. New Jersey is of immense importance to all stakeholders in the consumer financial services industry.



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If the Supreme Court stays the lower courts' issuance of universal or nationwide injunctions invalidating President Donald Trump's executive order seeking to end birthright citizenship, that could make it much harder for a trade association to obtain nationwide relief enjoining a federal agency from enforcing an invalid regulation.

The Supreme Court Birthright Citizenship Case

The 14th Amendment states: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."

The executive order effectively ends birthright citizenship for children born to mothers who are unlawfully present or temporary lawful residents in the U.S. and whose fathers are not lawful permanent residents at the time of the child's birth.

One day after it was signed, four states and three individuals challenged this order in Trump v. Washington in the U.S. District Court for the Western District of Washington, which three days later granted a universal temporary restraining order enjoining the government from implementing this order.

Two weeks later, this became a nationwide injunction. Other similar nationwide injunctions have since been issued by the U.S. District Court for the District of **Maryland** and the U.S. District Court for the District of **Massachusetts**. The government has appealed all of these, and whether the Supreme Court should stay the district courts' preliminary injunctions — except as to the individual plaintiffs and identified members of the organizational plaintiffs or states — was recently argued on May 15.

It is very difficult to predict what the Supreme Court will do based on the more than two hours of oral argument or when the opinion will be issued other than to say that it is likely that an opinion will be issued by early July when the Supreme Court's term ends.

While there was virtually no support among the justices for generally validating the use of universal injunctions, there was grave concern expressed by many of the justices for the chaos, inequity and arbitrariness that might result if the court were to limit the beneficiaries of the lower courts' injunctions to just the named plaintiffs in the three lawsuits. This seemed particularly unfair in cases like these three cases, where the Constitution and four binding Supreme Court precedents clearly hold that birthright citizenship cannot be limited in the way the executive order purports to limit it.

There was some support among the conservative justices for requiring plaintiffs seeking a universal injunction to initiate a nationwide class action under Rule 23(b)(2) of the Federal Rules of Civil Procedure. However, that idea ultimately seemed to wane during the course of the argument as the justices appreciated the difficulty of getting class actions certified because of a number of stringent requirements that must be satisfied.

Another idea proffered by a few justices was to postpone ruling on the stay until the court could consider the merits issue of whether the executive order is constitutional. There is a distinct possibility that the court will decide that these cases are not the right vehicle for the court to out-and-out ban universal injunctions, and that the court will find a way to deny the stays sought by the Trump administration and postpone until a future case the precise circumstances under which universal injunctions should be permitted.

The Supreme Court at this juncture has not been asked by the Trump administration to consider the constitutionality of the executive order itself. Instead, the sole issue before the Supreme Court is whether it was proper to enjoin the executive order universally even as to persons who are not plaintiffs in the three lawsuits. In other words, should the lower courts have limited the beneficiaries of the injunctions to just the plaintiffs or members of the plaintiff organizations?

The Implications for Consumer Financial Services

There is a direct connection between these cases and the consumer financial services world.

Anyone who follows closely the developments at the Consumer Financial Protection Bureau knows that the CFPB issued a raft of regulations during the tenure of former Director Rohit Chopra. Included was a regulation limiting late fees charged on credit cards issued by large banks to \$8 and an amendment to a CFPB exam manual on unfair, deceptive or abusive acts or practices that defined "unfairness" to encompass discrimination.

While most of Chopra's final regulations that were challenged in court have been invalidated by consent of the acting director of the CFPB under the Trump administration or through resolutions adopted by Congress under the Congressional Review Act, in each lawsuit there was always uncertainty as to whether the court could lawfully issue a universal injunction or the only beneficiaries could be members of the trade associations that initiated the lawsuits.

There are many instances in which courts have issued universal or nationwide injunctions in order to preclude a federal agency from enforcing a regulation against entities otherwise covered by the regulation who are not plaintiffs or members of plaintiff associations.

If the Supreme Court grants a stay of the preliminary injunctions issued in the birthright citizenship cases, that could result in it being unlawful for a court to issue a universal or nationwide injunction against an unlawful regulation.

A related concern is whether the Supreme Court might use the birthright citizenship cases to say something about the continued viability of the concept of associational standing. The Supreme Court has previously held that, under certain circumstances, members of plaintiff associations are beneficiaries of injunctions issued in favor of such associations. Justice Clarence Thomas has in another case urged the court to revisit that doctrine on the basis that it unconditionally confers standing on nonparties.

Even if the court decides not to use these cases as the vehicle for determining the continued

viability of universal injunctions and associational standing, it seems likely that the Supreme Court will soon address both of these issues in one or more other cases because of bipartisan support for eliminating abuses of the judicial process, like judge shopping.

We will likely have more clarity about the future of universal injunctions once the Supreme Court decides the birthright citizenship cases.

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