IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

CITY OF CHICAGO,

Plaintiff-Appellee,

v.

JEFFERSON B. SESSIONS III, ATTORNEY GENERAL OF THE UNITED STATES,

Defendant-Appellant.

No. 17-2991

REPLY IN SUPPORT OF DEFENDANT-APPELLANT'S MOTION FOR PARTIAL STAY OF PRELIMINARY INJUNCTION PENDING APPEAL

Chicago's opposition to our motion for a partial stay underscores the district court's error in issuing an injunction that applies to entities other than Chicago—the only plaintiff in this case. Chicago does not dispute that an injunction limited to the City of Chicago would provide it with complete relief. This Court has already held that, in such circumstances, a court lacks authority to grant broader relief to entities that are not parties to the litigation. Chicago likewise provides no explanation for why nonparties should be entitled to the benefits of a favorable decision without facing the burdens of an adverse decision, nor can it justify foreclosing decisions by other courts on the legal issue presented here.

I. Chicago has no standing to seek relief for nonparties.

This Court squarely held in *McKenzie v. City of Chicago*, 118 F.3d 552 (7th Cir. 1997), that because no class had been certified and the plaintiff's "interests c[ould] be protected by an injunction that prevents the City from demolishing their properties," the district court lacked authority to "enjoin the entire program." *Id.* at 555. The City apparently believes that this is a principle that applies when Chicago is a defendant but not when it is a plaintiff. Chicago asserts—without citation—that this Court's unambiguous ruling in fact rested on the conclusion that "plaintiffs brought fact-dependent claims, which even if meritorious would not have proven the ordinance unlawful as to other plaintiffs in different circumstances." Opp'n 13. This Court said nothing of the kind. Instead, the basis of this Court's reasoning was that the plaintiffs in that case "c[ould] be protected by an injunction forbidding fast-track demolition of

their properties." *McKenzie*, 118 F.3d at 555. Here, similarly, Chicago can be protected by an injunction forbidding the inclusion of the notice and access conditions in connection with its own grant; indeed, Chicago does not even contend otherwise.

Likewise, in *Scherr v. Marriott International, Inc.*, this Court held that the plaintiff did not have standing to seek an injunction that went beyond remedying her personal injury, even though the defendant allegedly committed the same legal violation more broadly. 703 F.3d 1069 (7th Cir. 2013). This Court reasoned that although the plaintiff had established that she was suffering an imminent injury from the defendant's use of spring-hinged door closers at one particular hotel, she had not established that she would be imminently injured by the defendant's use of the same door closers at the defendant's other hotels, and thus she did not have standing to pursue injunctive relief relating to other hotels. *Id.*

The government's position is not, as Chicago suggests, that federal courts lack authority "to order injunctive relief that incidentally also benefits others besides the plaintiff." Opp'n 10. The imposition of nationwide relief here does not "incidentally" benefit entities other than Chicago. Rather, the award of relief beyond Chicago *only* benefits other jurisdictions, and does nothing to remedy Chicago's own injury. That was the jurisdictional problem in *McKenzie*, and it is the same jurisdictional problem here.

The City appears not to perceive the relevant inquiry when it declares that the Attorney General's Article III argument "ignores that *he is a party in this case*." Opp'n 1 (emphasis in original). The issue is not whether the defendant is a party. Indeed, *any* injunction against the Attorney General would be very problematic if he were not a party. The relevant issue under Article III is whether an injunction would remedy any cognizable injury suffered by the plaintiff.

Unable to distinguish binding precedent from this Court, Chicago cites cases from various courts in which broad injunctions have been upheld. But Chicago does not dispute our assertion that those cases "did not 'address the relevant issues.'" Opp'n 12 (quoting Mot. 13). Instead, Chicago urges that this Court should rely on those cases as if they had issued holdings on the subject, "in light of federal courts' obligation to address their own jurisdiction, *sua sponte* if necessary." *Id.* In other words, Chicago cites for their persuasive value decisions that do not address the issue presented on the theory that those courts considered the issue and accepted the City's position. It is unclear how these nonexistent analyses could be persuasive, and the scope of proper relief is of course to some extent fact-dependent. *See McKenzie*, 118 F.3d at 555 (observing that "[s]ometimes a judge may overhaul a statutory program without a class action," such as when "it is not possible to award effective relief to the plaintiffs without altering the rights of third parties"). More fundamentally, the Supreme Court has "repeatedly held that the existence of unaddressed jurisdictional defects has no precedential effect." *Lewis v. Casey*, 518 U.S. 343, 352 n.2 (1996). And

the Article III issue raised here has not "gone essentially unmentioned," Opp'n 12, but rather has been expressly addressed in a holding of this Court. *See McKenzie*, 118 F.3d at 555 n.* ("[T]he injunction exceeded the district judge's powers under Article III of the Constitution . . . .").

Chicago similarly errs in relying on *Trump v. International Refugee Assistance Project*, 137 S. Ct. 2080 (2017) (per curiam), in which the majority opinion contains no discussion relevant to the issue presented here. Chicago instead contends that because the dissenters—the only Justices to mention the issue raised here—agreed with the government's position, "[p]lainly, a majority of the Court *rejected* that jurisdictional argument." Opp'n 12 (emphasis in original). There is no basis for presuming that the Supreme Court resolved the issue without discussing it, much less for reading the case to overrule *sub silentio* this Court's decision in *McKenzie*. The majority was under no obligation, in a discretionary assessment of whether a stay was appropriate, to reach every issue, and indeed emphasized its discretion in balancing the equities. *International Refugee Assistance Project*, 137 S. Ct. at 2087.[1]

[1] Chicago also seeks to rely on the Fourth Circuit's conclusion in *International Refugee Assistance Project* that "*[p]laintiffs* [were] dispersed throughout the United States." *International Refugee Assistance Project v. Trump*, 857 F.3d 554, 605 (4th Cir. 2017), *vacated as moot*, No. 16-1436, 2017 WL 4518553 (U.S. Oct. 10, 2017)) (emphasis added). The City urges that "[t]he local governments affected by the unlawful conditions here *are* also 'dispersed throughout the United States.'" Opp. 15 n.7 (emphasis in original). The point, however, is that the other local governments are not plaintiffs in this case. The only plaintiff here is the City of Chicago. Moreover, while the Fourth Circuit concluded that the plaintiffs' injury under the Establishment Clause could not be fully

II. Equitable principles also favor a partial stay.

Chicago's opposition also underscores the inequities inherent in its position. The same issue presented here is being considered by district courts in other circuits. *See City of Philadelphia v. Sessions*, No. 17-3894 (E.D. Pa.); *City & County of San Francisco v. Sessions*, No. 17-4642 (N.D. Cal.). In Chicago's view, a district court in Illinois can preempt the rulings in other circuits—but only if it rules for the City. No one suggests that a ruling in the federal government's favor in the Northern District of Illinois would be determinative in a suit brought by Philadelphia in the Eastern District of Pennsylvania. Chicago's theory of district court authority provides challengers to government action with all the benefits of a class action without any of the obligations or burdens, including assurance that other parties will be bound by an adverse judgment.

The operation of this theory is highlighted by the amicus briefs filed by California and Illinois. They urge that the injunction should apply to their grants but would never suggest that a ruling in the federal government's favor would preclude suits in which they were parties. Similarly, if another district court were to issue a nationwide injunction against the condition on which the government prevailed, Chicago would be the beneficiary despite having lost on the issue in its own case.

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redressed without relief extending beyond the parties to the case, Chicago makes no effort to assert that its own injury cannot be redressed without an injunction extending to nonparties.

Chicago's discussion of class actions, relegated to a footnote, acknowledges that Rule 23(b)(2) was designed to use the class-action mechanism in circumstances in which similarly situated entities seek injunctive relief. Opp'n 9-10 n.3. The amendments to Rule 23 that Chicago cites were designed to "provide[] that all class actions maintained to the end as such will result in judgments including those whom the court finds to be members of the class, *whether or not the judgment is favorable to the class*." Fed. R. Civ. P. 23 (1966 Advisory Committee Notes) (emphasis added). Here, Chicago has not sought class certification, but makes quite clear that it seeks an injunction in favor of nonparties who would not be bound by a judgment in the federal government's favor.

Chicago also complains of the possibility of a "proliferation of needless lawsuits." Opp'n 19. But litigation in other fora would not be "wasteful" or cause "the judiciary [to] be harmed," *id.*; rather, precluding such litigation would "have a detrimental effect by foreclosing adjudication by a number of different courts and judges." *Los Angeles Haven Hospice, Inc. v. Sebelius*, 638 F.3d 644, 644 (9th Cir. 2011) (quoting *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979)). Chicago provides no response to this reasoning.

Chicago asserts that "a stay would waste *this* Court's resources" because the government's argument "may be mooted" by the intervention of the U.S. Conference of Mayors, whose motion to intervene was pending at the time of Chicago's

opposition. Opp'n 19. On November 16, 2017, that motion was denied by the district court. Dkt. 125.

The critical point on the balance of harms in this case is one that is not disputed: granting the stay would cause no harm, irreparable or otherwise, to Chicago—the only plaintiff in this case—while the nationwide injunction puts the federal government to the choice of issuing awards subject to the injunction or delaying the awards to the detriment of recipients across the country. A partial stay is warranted.

Respectfully submitted,

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NOVEMBER 2017

CERTIFICATE OF COMPLIANCE

I hereby certify that this reply satisfies the type-volume limitation in Rule 27(d)(2)(C) because it contains 1,676 words. This reply was prepared using Microsoft Word 2013 in Garamond, 14-point font, a proportionally-spaced typeface.

s/ Daniel Tenny
Daniel Tenny

CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2017, I electronically filed the foregoing with the Clerk of the Court by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

s/ Daniel Tenny
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