

No. 25-2487
(consolidated with No. 25-2461)

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

AMERICAN ALLIANCE FOR EQUAL RIGHTS,

Plaintiff

and

UNITED STATES OF AMERICA,

Intervening Plaintiff-Appellant

v.

STATE OF ILLINOIS, *et al.*,

Defendants-Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

District Court No. 1:25-cv-669-SJC
The Honorable Sharon Johnson Coleman

REPLY BRIEF FOR THE UNITED STATES
AS INTERVENING PLAINTIFF-APPELLANT

(See inside cover for continuation of counsel)

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INTRODUCTION

The district court dismissed the United States’ Complaint in an unprecedented decision: the United States has no Article III standing to enforce Americans’ Fourteenth Amendment rights despite express statutory authority to do so. App. 18-19.¹ Then, in the same order, it denied the United States’ request for injunctive relief as “moot.” App. 20.

The standing decision was wrong—now, undisputedly so.

After pressing this novel standing theory in the district court, defendants all but expressly disavow it on appeal. They omit it from various summaries of their arguments below (Ill. Br. 7, 14-15); do not list it among their proposed jurisdictional defects (*id.* at 1); and decline to even suggest it as a basis to affirm (*id.* at 18-50). Indeed, if this Court reviews the dismissal, defendants appear to agree the Court must reverse. *See id.* at 19, 49 (urging affirmance of AAER’s dismissal only).

¹ “App. __” refers to the page number of the Joint Appellants’ Appendix. “Doc. __, at __” refers to the docket entry and ECF page number of documents filed in the district court, No. 1:25-cv-669-SJC (N.D. Ill.). “AAER Br. __” refers to the opening brief filed by plaintiff American Alliance for Equal Rights (AAER) and internal page numbers therein. “Ill. Br. __” refers to the brief filed by defendants and internal page numbers therein. “U.S. Br. __” refers to the opening brief filed by the United States and internal page numbers therein.

Rather than offer one word of defense for the ruling they sought, defendants now urge this Court to ignore standing entirely. They never suggest this Court cannot review that aspect of the district court's order—only that doing so is “unwarranted” because this Court can affirm the denial of the United States' request for injunctive relief on alternative grounds. Ill. Br. 49. Buyer's remorse is understandable, but it is no reason to ignore the decision below.²

ARGUMENT

This Court can and should review the dismissal of the United States' Complaint for lack of standing.

It is common ground that this Court has appellate jurisdiction to review the district court's “[i]nterlocutory order[] . . . refusing” the United States' Motion for a Preliminary Injunction. 28 U.S.C. 1292(a)(1). The district court refused the United States' request for one reason and one reason only: it had “dismiss[ed] the United States' Amended Complaint in Intervention for lack of standing” just one page earlier, rendering the request for injunctive relief “moot.” App. 19-20.

² Because defendants do not dispute the United States' standing in their brief, the United States addresses only jurisdiction in its reply.

Accordingly, any meaningful review of the district court's denial of injunctive relief must include review of the underlying dismissal. The dismissal and denial of injunctive relief are, moreover, inextricably intertwined because they both rest on an identical legal conclusion: that the United States lacks standing. And there are compelling reasons to review the dismissal now.

A. This Court has jurisdiction to review the dismissal of the United States' Complaint for lack of standing.

Defendants never dispute that this Court's jurisdiction extends to the district court's dismissal. *Cf.* Ill. Br. 4 (arguing that this Court "need not" address the issue). For good reason: The sole rationale for the district court's denial of preliminary injunctive relief was that it had already dismissed the United States' Complaint for lack of standing.

1. The validity of the denial of injunctive relief turns on the validity of the dismissal.

a. The "scope" of this Court's review of a preliminary-injunction order extends to "any ruling on which the validity" of the district court's order "turns." *Asset Allocation & Mgmt. Co. v. Western Emps. Ins. Co.*, 892 F.2d 566, 568-569 (7th Cir. 1989). On appeal from a final judgment, the general rule is that the appeal "opens the record and permits review

of all rulings that led up to the judgment.” *Dupree v. Younger*, 598 U.S. 729, 734 (2023) (citation omitted). “The principle is no different” when an appellate court takes up review of an interlocutory order; “all prior rulings that affect the validity of that decision” are properly before the court. *Asset Allocation & Mgmt.*, 892 F.2d at 569.

The district court’s dismissal of the United States’ Complaint was “essential to the validity” of its denial of injunctive relief. *Asset Allocation & Mgmt.*, 892 F.2d at 569. By “den[ying] the United States’ motion for [a] preliminary injunction as moot” without providing any analysis of the motion (App. 20), the district court “relied on” its decision to dismiss the United States’ Complaint as the “principal” and sole “legal basis” to deny the injunction. *Law v. NCAA*, 134 F.3d 1010, 1015-1016 (10th Cir. 1998) (reviewing on interlocutory appeal a summary-judgment order that provided the basis for a grant of injunctive relief); *see, e.g., In re Al-Nashiri*, 835 F.3d 110, 117 & n.2 (D.C. Cir. 2016) (reviewing a stay order that rendered a motion for injunctive relief moot). Because the district court “ended its consideration of whether injunctive relief was warranted . . . after dismissing” the United States’ Complaint, review of that dismissal is necessary to “ensure meaningful review” of the denial of

injunctive relief. *Siemens USA Holdings Inc. v. Geisenberger*, 17 F.4th 393, 410-411 (3d Cir. 2021).

b. The jurisdictional nature of the underlying decision here (dismissal for lack of standing) further compels review. See 16 Edward H. Cooper, *Federal Practice & Procedure* § 3921.1 (3d ed.) (stating that “[s]ubject-matter jurisdiction always is open” on interlocutory review). “Under [28 U.S.C.] 1292(a)(1), [courts] have jurisdiction to decide any ‘predicate issue’ that would prevent a district court from granting an injunction.” *Catholic Healthcare Int’l, Inc. v. Genoa Charter Twp.*, 82 F.4th 442, 447 (6th Cir. 2023) (citation omitted). Because a district court cannot “properly order [a party] to do or not do anything” “without jurisdiction,” *Asset Allocation & Mgmt.*, 892 F.2d at 569, the district court’s jurisdiction constitutes a “predicate issue” that is reviewable under 28 U.S.C. 1292(a)(1). *Catholic Healthcare*, 82 F.4th at 447 (citation omitted); see, e.g., *Deckert v. Independence Shares Corp.*, 311 U.S. 282, 287 (1940).

That remains true when the district court has cited a jurisdictional defect to *deny* injunctive relief. In *Catholic Healthcare*, the district court granted a motion to dismiss some of plaintiff’s claims as “unripe” and

“incorporated by reference its ripeness determination from [the] motion-to-dismiss order” into a separate order “issued the same day” denying the plaintiff’s motion for a preliminary injunction. 82 F.4th at 447-448. The Sixth Circuit found that the “ripeness determination from [the district court’s] motion-to-dismiss order” was “obviously” within the scope of interlocutory appellate review. *Id.* at 448.

2. The dismissal and denial of injunctive relief are inextricably intertwined.

Even assuming that the validity of the dismissal is not “essential to the validity” of the denial of injunctive relief, *Asset Allocation & Mgmt.*, 892 F.2d at 569, both aspects of the district court’s order are “inextricably intertwined.” *Jamie S. v. Milwaukee Pub. Schs.*, 668 F.3d 481, 492 (7th Cir. 2012) (citation omitted). Appealable and non-appealable orders are inextricably intertwined at least when they “concern the same single issue.” *Research Automation, Inc. v. Schrader-Bridgeport Int’l, Inc.*, 626 F.3d 973, 977 (7th Cir. 2010).

Then-Judge Sotomayor’s opinion in *Lamar Advertising of Penn, LLC v. Town of Orchard Park* is on point. 356 F.3d 365 (2d Cir. 2004). There, a district court denied a plaintiff’s motions for summary judgment and injunctive relief based on the conclusion that the plaintiff lacked

standing and that some of its claims were moot. *Id.* at 368. Judge Sotomayor explained that the court of appeals’ review of the denial of injunctive relief could extend to “revisit[ing] the district court’s summary judgment rulings on standing and mootness.” *Id.* at 371. Because the district court denied the motions for summary judgment and injunctive relief “for the very same reasons,” “the issues of whether [the plaintiff] ha[d] standing and whether its claims [we]re moot [we]re indeed inextricably intertwined with the plaintiff’s motion for preliminary injunction.” *Id.* at 372. The Second Circuit vacated both orders insofar as they rested on standing. *Id.* at 380.³

The same conclusion is warranted here. Whether the United States’ Motion for a Preliminary Injunction was moot depends on whether the district court properly dismissed the United States’ Complaint for lack of standing. App. 19-20; *see Catholic Healthcare*, 82 F.4th at 448; *Al-Nashiri*, 835 F.3d at 117 (reviewing the stay order that

³ The Second Circuit noted, but did not resolve, the possibility that it could have reached the same conclusion by holding that review of the summary-judgment order was “necessary to ensure meaningful review of” the denial of injunctive relief. *Lamar Advert.*, 356 F.3d at 371 n.7 (citation omitted).

rendered the request for injunctive relief moot). They are “the head and tail of the same coin.” *Abelesz v. OTP Bank*, 692 F.3d 638, 648 (7th Cir. 2012) (citation omitted). If the district court properly dismissed the United States’ Complaint, then it properly denied the request for injunctive relief as moot; but if not, then not. *See Research Automation*, 626 F.3d at 977 (reviewing denial of injunction and transfer order based on district court’s view of proper venue); *Arc of Cal. v. Douglas*, 757 F.3d 975, 993-994 (9th Cir. 2014) (reviewing denial of injunction and dismissal of complaint based on district court’s view that plaintiff had “no chance of success on the merits”) (citation omitted). It is therefore impossible to review the denial of injunctive relief “in isolation from” the dismissal of the Complaint. *Jamie S.*, 668 F.3d at 492.

B. There are “compelling reasons” to review the dismissal of the United States’ Complaint.

This Court has sometimes called for “compelling reasons” to review an order that is not itself immediately appealable. *Abelesz*, 692 F.3d at 647 (citation omitted).⁴ Compelling reasons exist at least when “it is

⁴ There is no need to decide in this case whether additional compelling reasons are necessary when the injunction order’s “validity” “turns” on the otherwise non-appealable order. *See Asset Allocation &*

‘practically indispensable’ that [the Court] review” the otherwise-non-appealable order. *Jamie S.*, 668 F.3d at 492 (citation omitted); see Ill. Br. 4.

The only means by which defendants suggest (Ill. Br. 4-5) this Court may dispense with review of the dismissal is to “affirm the denial of preliminary injunctive relief . . . on alternative grounds”—namely, that the United States is unlikely to succeed on the merits of its Equal Protection Clause claim (*id.* at 43-47); that the United States has not shown irreparable harm (*id.* at 47); and that the public interest weighs against injunctive relief (*id.* at 47-48). See *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Defendants’ invitation is neither a viable nor a preferable alternative.

1. Any attempt to review the injunctive order “in isolation from” the dismissal to see whether the United States can satisfy the preliminary-injunction factors would be “meaningless.” *Jamie S.*, 668 F.3d at 492. The dismissal kicks the United States out of the district-

Mgmt., 892 F.2d at 569 (distinguishing between “ruling[s] on which the validity of the injunction turns,” which are “reviewable,” and “rulings that are related but not essential to the validity of the injunction,” which “the appellate court can in its discretion review”).

court proceedings and extinguishes the United States’ right to secure any relief—injunctive or otherwise, preliminary or final.⁵ So long as the United States cannot obtain *any* relief, its entitlement to a preliminary injunction is “academic.” *Precision Shooting Equip. Co. v. Allen*, 646 F.2d 313, 316 (7th Cir. 1981).

Indeed and relatedly, Illinois gets the ordinary order of operations precisely backwards. In the past, some courts avoided “jurisdictional objections” (like standing) and “proceed[ed] immediately to the merits,” at least where the latter were “more readily resolved” and the party asserting jurisdiction would lose either way. *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 93 (1998). But those exercises of “[h]ypothetical jurisdiction produce[d] nothing more than a hypothetical judgment—which c[ame] to the same thing as an advisory opinion”—and the Supreme Court disapproved the practice. *Id.* at 101.

Even if *Steel Co.* does not bar courts from denying preliminary relief before assessing jurisdiction, *compare United States v. Abbott*, 110 F.4th

⁵ It is irrelevant that the dismissal was “without prejudice” (Ill. Br. 19, 49); the district court rejected the United States’ interests as sovereign and *parens patriae* as a matter of law—not for a failure of adequate pleading. App. 18-19; *see* App. 18 n.5.

700, 722-723 (5th Cir. 2024) (en banc) (Oldham, J., concurring), *with id.* at 739-740 (Ho, J., concurring in the judgment in part and dissenting in part) (debating a similar issue), the case certainly counsels caution before skipping over standing to get to the likelihood of success on the merits when the former (but not the latter) was squarely addressed below. That caution should be heightened when, as here, the merits involve wading into constitutional waters. *See Ashwander v. Tennessee Valley Auth.*, 297 U.S. 288, 346-347 (1936) (Brandeis, J., concurring).⁶

2. In any event, if this Court agrees it should affirm the denial of injunctive relief on defendants’ proposed grounds, declining to also review the dismissal of the United States’ Complaint will lead to precisely the type of “piecemeal appealability,” *Asset Allocation & Mgmt.*, 892 F.2d at 569, that the final-judgment rule is meant to avoid, *Abelesz*, 692 F.3d at 649; *see* Ill. Br. 3-4 (citing the final-judgment rule).

⁶ Such concerns may be reduced if this Court evaluates AAER’s entitlement to injunctive relief (AAER Br. 35-50), but an assessment of AAER’s likelihood of success on the merits of its Equal Protection Clause claim is not a foregone conclusion. AAER notes (AAER Br. 50) and defendants encourage (Ill. Br. 20-35) the possible resolution of AAER’s appeal without such an assessment.

A decision holding that the United States is not entitled to a preliminary injunction would not “conclusively resolve the rights of the parties on the merits.” *Lackey v. Stinnie*, 604 U.S. 192, 201 (2025). This case would thus continue on (the first) remand to the merits of AAER’s remaining claims. *See* App. 15, 20. Then, upon a final judgment, the United States would bring a second appeal of the dismissal of its Complaint, *see* 28 U.S.C. 1291, pressing the exact same argument it has already briefed to this Court. It appears that defendants would decline to defend the ruling below, *see* p. 1, *supra*, and this Court would likely agree that it must reverse for all the reasons the United States has briefed.

The case would then go back to the district court for a second remand to litigate the United States’ Fourteenth Amendment claim. Depending on the outcome of AAER’s case in this first appeal (or perhaps a second appeal following the first remand), there may be binding precedent applicable to the United States’ claim that would dictate the trial-court proceedings. Or there may not be. Either way, the losing party may then appeal the second final judgment, returning the case once again to this Court—now for a third time.

That is “piecemeal appealability with a vengeance.” *Asset Allocation & Mgmt.*, 892 F.2d at 569; *Jamie S.*, 668 F.3d at 493. And it is entirely preventable.

3. Defendants seem to realize just how wrong the district court’s standing decision is, and there is no justification to shield it from immediate repudiation. *See* p. 1, *supra*. After insisting below (Doc. 73, at 6-7; Doc. 86, at 4-5; Doc. 95, at 51) that the United States lacks Article III standing, defendants received the very groundbreaking and unprecedented ruling they sought (App. 18-19). Yet they muster not one word to defend that ruling on appeal.

Nonetheless, the district court’s decision could have wide-ranging consequences if followed by other courts or in other contexts. U.S. Br. 32-33, 35-38. This Court should correct the error now.

CONCLUSION

For the foregoing reasons and those in the United States' Opening Brief, this Court should: reverse the district court's order insofar as the district court dismissed the United States' Complaint; vacate the order insofar as the district court denied the United States' Motion for a Preliminary Injunction as moot; and remand for consideration of the United States' motion on its merits.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This reply brief complies with the type-volume limit of Seventh Circuit Rule 32(c) because it contains 2692 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f). This reply brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5) and (6), and Seventh Circuit Rule 32(b), because it was prepared in Century Schoolbook 14-point font using Microsoft Word for Microsoft 365.

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