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SECOND CIRCUIT REVIEW

# Associational Standing Under Section 1983 and the Mini En Banc: 'Defending Education v. Croton-Harmon Union Free School District'

**By Martin Flumenbaum and Brad S. Karp**
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In *Defending Education v. Croton-Harmon Union Free School District,* No. 24-1900,—F.4th—(2d Cir. Sept. 15, 2026), the U.S. Court of Appeals for the Second Circuit overruled a more than 50-year-old precedent that organizations lack standing to sue on behalf of their members for claims brought under 42 U.S.C. §1983.

That rule, first announced in *Aguayo v. Richardson*, 473 F.2d 1090 (2d Cir. 1973), had left the Circuit an outlier among the federal courts of appeals and stood "in direct conflict with current Supreme Court decisions" recognizing Section 1983 claims by organizations on behalf of their members.

In a unanimous opinion authored by Circuit Judge William J. Nardini, joined by Senior Circuit Judges Guido Calabresi and Barrington D. Parker Jr., the court held that associations may now pursue Section 1983 claims in a representative capacity under the three-part test articulated by the Supreme Court in *Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333, 343 (1977).


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Notably, the court overruled *Aguayo* not through an en banc vote of all active judges of the Circuit, but through the "mini en banc" procedure, in which a panel overturns a Circuit precedent once assured of consensus among the Circuit's judges.

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The decision brings the Second Circuit in line with the Supreme Court and every other circuit and is likely to have significant consequences for civil rights litigation in the Circuit, where advocacy groups, trade associations, and parent organizations have long been forced to rely on individual plaintiffs or strained theories of organizational injury to bring constitutional challenges.

**Background**

Defending Education is an association of parents, students, and concerned citizens. In June 2024, it filed suit in the U.S. District Court for the Southern District of New York on behalf of three anonymous parent-members whose children attend public schools in the Croton-Harmon Union Free School District.

The complaint challenged the school district's policies prohibiting discrimination, harassment, and bullying by students both on and off school grounds, alleging that the policies "discriminate[] based on viewpoint, require[] a student to affirm another student's gender identity when inconsistent with that student's sex, prohibit[] a substantial amount of protected speech, and use[] vague terms that an average student cannot understand."

Defending Education asserted that the policies violated the First and Fourteenth Amendments and that its members' children were refraining from sharing their social and political views out of fear of discipline.

The day after filing suit, Defending Education moved for a preliminary injunction, while candidly acknowledging that two then-existing Second Circuit precedents foreclosed relief: *Aguayo*, which categorically barred associational standing in Section 1983 suits, and *Do No Harm v. Pfizer Inc.*, 96 F.4th 106 (2d Cir. 2024), which required an association seeking a preliminary injunction to identify by name at least one injured member. Relying on both decisions, Judge Cathy Seibel denied the motion and dismissed the action.

Defending Education appealed and petitioned for initial hearing *en banc* to overturn both precedents. After the Second Circuit denied the petition, the organization moved for summary affirmance so that it could then seek reconsideration *en banc*.

While that motion was pending, the *Do No Harm* panel vacated and revised its decision, leaving *Aguayo's* holding as the sole Circuit-level bar to *Defending Education's* standing. On April 22, 2025, the panel summarily affirmed the district court's judgment, and *Defending Education* then petitioned for reconsideration *en banc*.

**The Second Circuit's Analysis**

*The "Mini En Banc" Procedure*

The panel began by acknowledging the general rule that a panel is bound by the decisions of prior panels unless they are overruled by the Second Circuit sitting *en banc* or by the Supreme Court.

The panel then explained that the Second Circuit has "long followed... the salutary practice of allowing a panel to revisit the holding of a prior panel in extraordinary circumstances such as these, where it has become pellucid that our earlier precedent is erroneous."

Under this practice, which the court has termed a "mini en banc," a panel circulates its proposed opinion to the active judges of the court, with copies to the senior judges, and files the opinion if there is no objection or call for an *en banc* poll.

*Reexamining Aguayo*

Turning to the merits, the court explained that the rule adopted in Aguayo had "outlived

its usefulness," quoting Judge Dennis Jacobs' dissent in *Centro de la Comunidad Hispana de Locust Valley v. Town of Oyster Bay*, 868 F.3d 104, 122 (2d Cir. 2017). *Aguayo* was the first court of appeals decision to hold that membership associations lacked standing to sue on behalf of their members under Section 1983, and in the more than fifty years since, "not one of our sister circuits has reached the same conclusion."

The court collected decisions from eleven sister circuits applying *Hunt* to Section 1983 claims, and noted that the Supreme Court itself has regularly decided Section 1983 cases brought by associations, including those of parents suing school districts on behalf of their children.

The court also observed in a footnote that *Aguayo* is "hard to square" with *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181 (2023), where the Supreme Court applied Hunt to uphold an association's standing without appearing to distinguish between its Title VI and Section 1983 claims.

The court then concluded that *Aguayo's* special treatment of Section 1983 "lacks a doctrinal basis." *Aguayo* had not identified anything in the text or history of the Civil Rights Act of 1871 that expressly barred associations from vindicating their members' rights.

Instead, it rested primarily on *Hague v. Committee for Industrial Organization*, 307 U.S. 496 (1939), in which the Supreme Court dismissed the organizational plaintiffs' claims on the ground that the constitutional provisions at issue protected only natural persons. But, as Judge Jacobs had observed, Hague "says nothing about whether [such organizations] can stand in the place of their members."

Subsequent Supreme Court decisions, the panel reasoned, confirmed the error. In *Warth v. Seldin*, 422 U.S. 490, 511 (1975), the Supreme Court—reviewing a Second Circuit decision that had expressed doubt that an organization could represent its members under Section 1983—stated that "[e]ven in the absence of injury to itself, an association may have standing solely as the representative of its members." *Hunt* then built on *Warth* to formulate the now-familiar three-part test for associational standing.

In light of these decisions, the court was blunt: "to the extent that our decision in *Aguayo* held that federal courts lack subject matter jurisdiction under Article III when an association sues on behalf of its members, we were simply wrong."

The panel also rejected the alternative rationale that panels offered to defend Aguayo. In *League of Women Voters of Nassau County v. Nassau County Board of Supervisors,* 737 F.2d 155, 160 (2d Cir. 1984), for instance, the Second Circuit ruled that Section 1983 does not permit organizations to sue as representatives of their members because the rights secured by that provision are "personal." Now, however, the panel recognized that "in truth, §1983 does not itself secure any specific rights"; as the Supreme Court put it in *Wallace v. Kato*, 549 U.S. 384, 387 (2007), the statute merely "provides a federal cause of action" to vindicate rights created elsewhere in federal law.

Finally, the court highlighted a practical cost of *Aguayo*: in attempting to harmonize the rule with Supreme Court precedent, the Circuit had "indulged 'increasingly tenuous and pretextual claims of injury to organizations themselves' under diversion-of-resources theories."

The Supreme Court recently rejected such a theory in *FDA v. Alliance for Hippocratic*

*Medicine*, 602 U.S. 367, 394–95 (2024), holding that an organization "cannot spend its way into standing simply by expending money to gather information and advocate against the defendant's action."

*The New Rule and Remand*

Having overruled *Aguayo's* associational standing holding—as well as the holdings of subsequent cases that relied on it to deny standing—the court adopted the framework followed by the Supreme Court and its sister circuits.

An organization pursuing a Section 1983 claim may establish Article III standing in two ways: it may show that it suffered an injury in its own right, or it may assert "standing solely as the representative of its members."

To proceed in a representative capacity, the organization must demonstrate that "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Hunt*, 432 U.S. at 343. The court made clear that it would not distinguish between Section 1983 claims and the other contexts in which it has already applied *Hunt*.

The court remanded for the district court to address Defending Education's standing under *Hunt* in the first instance, and it expressly declined to opine on whether, if standing is established, Defending Education has met the standard for a preliminary injunction.

**Conclusion**

*Defending Education v. Croton-Harmon Union Free School District* removes a long-standing barrier to civil rights litigation in the Second Circuit. Organizations may now bring Section 1983 claims on behalf of their members, subject to the same *Hunt* requirements that apply in other circuits.

Practitioners should expect organizational plaintiffs to take advantage of the new rule in challenges to state and local government action throughout the Circuit, with less need to rely on the diversion-of-resources theories the Supreme Court limited in Alliance for Hippocratic Medicine.

The decision is also a notable example of the Second Circuit's use of its "mini en banc" procedure to overturn precedent without the time and expense of a full *en banc* proceeding. By reserving the procedure for issues on which there is the "fullest consensus," the Second Circuit has preserved the general rule of panel adherence to precedent while providing a mechanism to align Circuit law with the Supreme Court and sister circuits when appropriate.

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