

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

CHAMBERS OF
JEFFREY S. SUTTON
CIRCUIT JUDGE



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October 1, 2026

The Honorable Sarah S. Vance
Chair of the Advisory Committee on Civil Rules
Judicial Conference of the United States
500 Poydras Street, Room C255
New Orleans, LA 70130

Re: Proposed Amendments to Civil Rule 23

Dear Sarah:

I propose amending Rule 23 to limit the availability of nationwide relief in the context of class actions seeking an injunction. As the Supreme Court explained in *Califano v. Yamasaki*, nationwide injunctive classes “have a detrimental effect” on both the Court and the legal system. 442 U.S. 682, 701–703 (1979). They prevent percolation of issues by “foreclosing adjudication by a number of different courts and judges.” *Id.* at 702. And they add to the “pressures” on the Supreme Court’s docket, including its emergency docket today. *Id.* The Rule, then and now, stood silent on the certification of a nationwide class, and the Supreme Court as a result permitted the certification of nationwide classes despite these concerns. Nationwide injunctive class actions now increasingly encourage litigants to shop for favorable circuits and cause friction with many of the principles reaffirmed by the Court in *Trump v. CASA, Inc.*, 606 U.S. 831 (2025).

I propose modifying Rule 23(b)(2) in one of two ways. The first amendment (Proposal A) would restrict classes seeking an injunction to relief no broader than the circuit in which the case is filed. An alternative amendment (Proposal B) would limit class membership to those domiciled within the circuit in which the case is filed. Any amendment presumably would not go into effect until early 2029. Please find these proposed amendments attached.

Sincerely,

/s/

Jeffrey S. Sutton

85 MARCONI BOULEVARD, COLUMBUS, OHIO 43215

cc: The Honorable James C. Dever III

Response to *Califano v. Yamasaki*, 442 U.S. 682 (1979), & Narrowing of Rule 23(b)(2) Classes

Proposed Amendments to Federal Rule of Civil Procedure 23(b)(2):

Proposal A:

(b) Types of Class Actions. A class action may be maintained if Rule 23(a) is satisfied and if:

(1) prosecuting separate actions by or against individual class members would create a risk of:

(A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or

(B) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests;

(2) the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole, **provided that the class seeks relief no broader than the geographic boundaries of the circuit in which the case is filed**; or

(3) the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The matters pertinent to these findings include:

(A) the class members' interests in individually controlling the prosecution or defense of separate actions;

(B) the extent and nature of any litigation concerning the controversy already begun by or against class members;

(C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and

(D) the likely difficulties in managing a class action.

Proposal B:

(b) Types of Class Actions. A class action may be maintained if Rule 23(a) is satisfied and if:

(1) prosecuting separate actions by or against individual class members would create a risk of:

(A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or

(B) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests;

(2) the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole, **provided that the class includes no members domiciled outside the geographic boundaries of the circuit in which the case is filed**; or

(3) the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The matters pertinent to these findings include:

(A) the class members' interests in individually controlling the prosecution or defense of separate actions;

(B) the extent and nature of any litigation concerning the controversy already begun by or against class members;

(C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and

(D) the likely difficulties in managing a class action.