

SECOND CIRCUIT REVIEW

Clarifying *Parens Patriae* Standing

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In *People of the State of New York v. Niagara-Wheatfield Central School District*, (2d Cir. 2024), the U.S. Court of Appeals for the Second Circuit addressed when a state can establish standing pursuant to the *parens patriae* doctrine, and, in particular, the contours of the requirement that a state show that there has been an injury to a substantial segment of the state's population.

In an opinion authored by Circuit Judge Robert D. Sack and joined by Circuit Judge Sarah A. L. Merriam, with a separate concurrence by Circuit Judge José A. Cabranes, the court held that it is not necessary for a state to show enforcement of an injurious policy or practice against a target population to establish *parens patriae* standing. It therefore held that New York had *parens patriae* standing to pursue a case against a school district even though its claim was based on four factually distinct instances of inaction by the district in response to reports of sexual assault, sexual harassment, and gender-based violence and bullying.



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Judge Cabranes agreed with the district court that New York lacked *parens patriae* standing, but nevertheless concurred *dubitante* because of the confused state of the law. The decision clarifies that states may be able to establish standing even if the conduct they are challenging cannot be characterized as a harmful policy or procedure. That said, as Judge Cabranes recognized, the law differs across circuits. It is therefore possible that the Supreme Court may address the contours of the doctrine in the future—indeed, Judge Cabranes expressly welcomed a grant of certiorari.

The *Parens Patriae* Doctrine

Parens patriae standing permits a state to bring certain actions in federal court on behalf of its citizens. *Parens patriae* standing arises when a

state has a quasi-sovereign interest in a controversy that differs from the interest that a private party might have, such as when a state sues to protect part of the community that cannot vindicate its rights without the state's involvement.

As noted in Judge Cabranes' concurrence, the test for when a state has *parens patriae* standing has been expressed in different ways. In the Second Circuit, a state suing in *parens patriae* must establish (1) injury to a sufficiently substantial segment of the state's population; (2) a quasi-sovereign interest; and (3) an inability for individual plaintiffs to obtain complete relief.

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New York v. Griep, 991 F.3d 81, 131 (2d Cir. 2021), *vacated on other grounds on rehearing*, 11 F.4th 174 (2d Cir. 2021). In the present case, the issue was whether the state of New York had established "injury to a sufficiently substantial segment of the state's population." In assessing whether the "substantial segment" requirement has been met, courts consider whether there has been (1) an "injury to an identifiable group of individual[s]", and (2) "indirect effects of the injury" extending beyond that identifiable group. *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 607 (1982).

The District Court's Decision

This case arose from allegations of inaction by the Niagara-Wheatfield Central School District

in response to repeated complaints of sexual assault, sexual harassment and gender-based violence and bullying within the student population. The complaint details the experiences of four students who had experienced gender-based harassment and violence within the school district, and were allegedly met with inaction when they sought support from their schools and the district. One student was raped by another student (who subsequently pleaded guilty), and was allegedly bullied and harassed by other students after reporting the rape. The state alleged that the school failed to adequately respond, and that it planned to allow the offender to attend school functions, even after he was convicted.

The District Court for the Western District of New York granted the school district's motion to dismiss the complaint on the pleadings. The court concluded that the State lacked standing because it could not satisfy the "substantial segment" prong of the test for *parens patriae* jurisdiction. It held that the state could not show the suit implicated a "substantial segment" of the targeted population because its claims were based on only four factually distinct incidents rather than any discriminatory policy or practice of failing to protect victims of gender-based assault, harassment, and bullying.

The Second Circuit Decision

The Second Circuit characterized the approach taken by district court as adding a "gloss" on the "substantial segment" standard. The court rejected the district court's approach, noting that controlling Second Circuit law "nowhere states or even suggests that a defendant's challenged conduct must amount to a policy or practice enforced against a target population to satisfy the substantial-segment prong of the *parens*

patriae test.” It explained that a state seeking standing “need not plead, nor later prove, a policy or practice, or any repeat conduct routinely aimed at a single target population.” Rather, a single challenged act by a defendant could meet the “substantial segment” standard, so long as it has the requisite direct and indirect effects.

The court concluded that the state’s allegations met the standard, acknowledging the requirement that courts treat the allegations in a plaintiff’s complaint as true when deciding motions to dismiss. According to the court, the four individuals identified in the complaint suffered direct and

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tangible impacts from the school district’s inaction, including panic attacks and missing school. The court identified several indirect effects of the school district’s inaction, including putting future students at risk and creating a culture

where parents and other students feared that the school district would not protect students who reported violence or harassment in the future.

Taken together, the court was satisfied that a “substantial segment” of the population was affected by the school district’s inaction. Because the remainder of the test for *parens patriae* standing was conceded, the court reversed the dismissal by the district court.

In his concurrence, Judge Cabranes expressed reservations about both the outcome and the state of the law. He characterized the test for identifying *parens patriae* standing as a “doctrinal muddle” and invited a grant of certiorari by the Supreme Court.

Conclusion

The Second Circuit’s holding clarifies the “substantial segment” requirement for *parens patriae* standing. The decision shows that states are not required to identify a policy or practice of harmful conduct, but instead may rely on more isolated conduct—even a single incident—if they can show the requisite direct and indirect effects of the harmful conduct. It remains to be seen whether the school district will take up Judge Cabranes’ entreaty to seek clarification from the Supreme Court.