

# A New Paradigm: Leveraging Defense-Side Class Actions in the New Legal Landscape

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**T**HE current legal environment is marked by unprecedented shifts stemming from landmark Supreme Court rulings that have dismantled nationwide injunctions; eliminated *Chevron* deference; and promoted independent statutory interpretations. Collectively, these rulings have contributed to a fragmented federal court landscape with diminished agency authority.

As an example of the impact of diminished agency authority on in an emerging area of the law, reduced agency authority exacerbates the complexity of AI-related litigation, which encompasses claims of data privacy breaches, algorithmic bias, and “algorithmic malpractice.” AI-

related litigation is multiplying across diverse jurisdictions. In this new environment, defense-side class actions are emerging as an essential, albeit underutilized, strategic tool. This novel approach provides corporations with new tools to secure binding, nationwide rulings; manage systemic risks effectively; and address emerging legal uncertainties.

## **I. Landmark Supreme Court Rulings and Their Impact**

To briefly recap the Supreme Court’s recent edicts reshaping the litigation status quo:

- *Loper Bright Enterprises v. Raimondo*: In June 2024, the

Court overturned *Chevron* deference, mandating courts independently interpret statutory ambiguities without agency guidance, increasing judicial unpredictability.<sup>1</sup>

- *Trump v. CASA, Inc.*: In June 2025, the Supreme Court categorically barred nationwide injunctions, restricting judicial relief to specific parties in litigation. This fosters disparate outcomes across jurisdictions, complicating compliance.<sup>2</sup>
- *McLaughlin Chiropractic Associates v. McKesson Corp.*: Following this June 2025 opinion, district courts now must independently interpret statutes previously guided by agencies like the FCC, notably affecting cases involving

regulatory compliance, like TCPA suits.<sup>3</sup>

These rulings have changed things for litigators, especially plaintiffs' counsel. Collectively, the rulings have created new markers to guide what has become a fragmented landscape:

- Absence of Nationwide Uniformity: Businesses must now navigate divergent rulings and interpretations across multiple courts, eliminating the efficiency of "one-stop" litigation.
- Disruption of Agency Deference: The shift toward independent judicial interpretations of statutes generates significant uncertainty, complicating risk assessments.

<sup>1</sup> *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 371–375, 144 S. Ct. 2244, 2247–2250 (2024) (overturning *Chevron* deference and mandating that courts independently interpret statutes under the APA rather than defer to agency views, and finding that factors such as precedent quality, practicality, and reliance interests do not justify maintaining *Chevron's* framework).

<sup>2</sup> *Trump v. CASA, Inc.*, 145 S. Ct. 2540, 2544–2545 (2025) (acknowledging that nationwide injunctions likely exceed the powers that Congress granted in the Judiciary Act of 1789—because such relief was unknown at that time and federal courts have no authority to issue it—and warning that the government would be irreparably harmed by injunctions

exceeding that statutory authority, while noting that a partial stay would not injure the respondents, who would continue to receive all necessary protection under the existing preliminary injunctions).

<sup>3</sup> *McLaughlin Chiropractic Assocs. v. McKesson Corp.*, 145 S. Ct. 2006, 2010–2011 (2025) (recognizing that the default rule of judicial review, the language of 5 U.S.C. § 703, and longstanding practice require district courts in enforcement proceedings to independently assess an agency's statutory interpretation, and concluding that the Hobbs Act does not prevent a party from challenging the FCC's interpretation of the TCPA in such proceedings).

The practical consequence to defendant providers of AI models of this new landscape will be increased litigation costs from repetitive defense in multiple circuits; inconsistent jury verdicts regarding identical AI models; and escalating compliance complexity and uncertainty.

## II. Building the Strategic Defense Class-Action Playbook

Rule 23 Defense-side class actions are often described as “unicorns” due to their rarity, but they can be a valuable tool in specific circumstances.<sup>4</sup> To maintain a defense-side class action, all the general prerequisites of Rule 23(a) must first be met, just as they would for a plaintiff class:<sup>5</sup>

- **Numerosity:** The class of defendants must be so numerous that joinder of all individual defendants is impracticable.

- **Commonality:** There must be questions of law or fact common to the class of defendants.
- **Typicality:** The defenses of the representative parties must be typical of the defenses of the class.
- **Adequacy of Representation:** The representative parties must fairly and adequately protect the interests of the class.

In addition to these Rule 23(a) prerequisites, cases must fall under one of the categories under Rule 23(b):<sup>6</sup>

1. **Rule 23(b)(1) - “Prejudice” Class Actions:** This is often the most suitable category for defense class actions. Rule 23(b)(1) allows for certification if prosecuting separate actions by or against individual class members would create a risk of inconsistent or

<sup>4</sup> FED R. CIV. P. 23.

<sup>5</sup> FED R. CIV. P. 23(a) (2025) (requiring numerosity, commonality, typicality, and adequate representation as prerequisites to class-action treatment).

<sup>6</sup> FED R. CIV. P. 23(b) (2025) (permitting class actions where Rule 23(a) is met and the action falls within one of three categories: (1) risk of inconsistent or dispositive adjudications (23(b)(1)(A)-(B)); (2) uniform grounds for injunctive or declaratory relief (23(b)(2)); or (3) predominance of common questions and superiority of the class mechanism, considering factors such as individual control, existing litigation, forum concentration, and manageability (23(b)(3)(A)-(D))).

varying adjudications or impair the interests of other parties. This often arises in “limited fund” cases, where a fixed pool of money needs to be distributed among many claimants, and individual lawsuits could exhaust the fund before everyone has a chance to claim.

2. Rule 23(b)(2) - “Injunctive or Declaratory Relief” Class Actions: This is where the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief concerning the class as a whole.
3. Rule 23(b)(3) - “Damages” Class Actions: This is the most common type for plaintiff class actions seeking monetary damages and requires predominant questions of law or fact common to the members of the class and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

Defense-side class actions must fulfill Rule 23(a) prerequisites:

numerosity, commonality, typicality, and adequacy of representation.

However, strategically, corporations should focus on Rule 23(b)(1) to ask courts to address the risks of inconsistent adjudications that create incompatible standards of conduct in addressing specific cases.

Rethinking traditional class action rules, corporations should proactively pursue defense-side class actions. By certifying a defendant class to address widespread claims or ambiguities, defendants achieve comprehensive resolutions or definitive statutory interpretations. This tactic has certain core advantages:

- Nationwide Finality: A single binding judgment eliminates the risk of contradictory rulings.
- Risk Quantification: A single judgment also caps aggregate liability, particularly crucial in mass-market AI applications.
- Efficiency and Consistency: Defendants will also benefit from centralized discovery, expert testimony, and streamlined litigation procedures, which reduce costs and ensure coherent judicial outcomes.

This approach requires a great deal of strategy. Ideally, a defense-side class action should be

considered when a situation meets the following criteria:

- **Systemic:** The situation affects a large number of defendant individuals or entities similarly.
- **Repetitive:** The facts lead to numerous similar disputes or potential disputes.
- **Risk-Prone:** Individual litigation would pose significant risks of inconsistent obligations, the exhaustion of limited funds, or inefficient resolution of a common issue.

The primary objective of a defense-side class action is to achieve a single, binding resolution that addresses the common legal or factual questions raised by the numerous potential defendants. Utilizing such an approach can help all companies bring efficiency and consistency to their litigation processes.

- Optimizing forum selection based on favorable precedents, judicial expertise, and availability of specialized multidistrict litigation (MDL) dockets for technology and AI issues.
- Emphasizing common legal issues inherent in the implementation of consumer or commercial

policy with a limited merits inquiry during class certification.

- Centralizing expert testimony under master experts to prevent fragmented, costly dueling expert scenarios.

In certain circumstances, corporations that make multiple similar claims should strategically assert defense-side class action counterclaims, gaining litigation narrative control and proactively resolving potential liabilities.

### III. Specific Approaches in Trending Class Action Scenarios

#### **TCPA “Autodialer” Suits:**

These suits provide an example of a defense class action seeking uniform interpretation post-*McLaughlin* to limit exposure. In Telephone Consumer Protection Act (TCPA) litigation, different district courts can now decide for themselves whether an FCC order correctly interprets the terms “telephone facsimile machine” or “automatic telephone dialing system.” Businesses operating in heavily regulated sectors, or those frequently targeted by private enforcement actions (like those under the TCPA), are now more exposed to a fragmented legal landscape. If one district court decides an agency’s interpretation of a rule is incorrect, but another

upholds it, a business faces contradictory obligations and unpredictable liability for the same conduct. This scenario demands a consolidated defensive strategy to avoid a piecemeal approach to compliance and litigation.

**Vindication of Consumer or Commercial Terms:** When standardized contracts include critical clauses—arbitration agreements, class action waivers, and consents to electronic communications—that have withstood continual attack, businesses can seek resolution through a defense class action, seeking a declaratory judgment against a class of all contract holders. Such judgment could confirm the validity and enforceability of these critical terms and directly addresses the “inconsistent obligations” problem of having to repeatedly defend the same contractual language in different forums, primarily if the legality of a clause or term depends on a federal standard or interpretation previously influenced by *Chevron* deference (now gone).

**Public Nuisance or Environmental Claims:** A manufacturing plaintiff faces numerous public nuisance lawsuits or environmental claims (e.g., related to PFAS contamination, carbon emissions, or water rights) brought by individual property

owners, local governments, or ecological groups (defendant class) in different jurisdictions. The core legal questions revolve around the scientific causation, the applicable standard of care, or the interpretation of complex environmental statutes. The ecological impact or alleged nuisance stems from the company’s core operations. Different courts may reach inconsistent conclusions on complex scientific or ecological legal issues, resulting in incompatible abatement orders or liability standards for the company’s operations across various sites or jurisdictions. A defense class action could seek a unified declaratory judgment on key factual or legal predicates for liability. The CASA ruling means that individual plaintiffs will only get localized injunctions, forcing the company to consolidate its defensive posture to avoid a myriad of contradictory obligations.

**Challenges to New Business Models or AI Technologies:** Firms launching an innovative service (e.g., AI-driven legal advice, personalized genetic testing, a new form of digital currency) nationwide concerned with legal ambiguity under existing federal, state or local laws could seek systematic redress and avoid the risk of a “patchwork” of rulings by seeking a declaratory judgment on the legality of the service model, binding all other challengers. This

would be especially crucial if the legality hinges on interpreting an ambiguous federal statute that agencies previously held sway over.

Timing will be critical in a defense-side class action practice—moving too early risks a premature fight on the merits, while moving too late can allow plaintiffs to lock in favorable procedural rulings and build irreversible momentum. In some instances, the best strategy could be to utilize statutory provisions for declaratory judgment purposes, then anchor relief in a more fact-intensive tort theory, providing the procedural benefit of class-certification standards combined with the persuasive force of a tangible harm narrative. Similarly, when faced with repetitive, formulaic class actions—where plaintiffs’ lawyers repurpose the same playbook with minimal customization—consider flipping the script through defense-side counterclaims. By asserting your class-wide claims (for example, breach of contract, unjust enrichment, or declaratory relief on ambiguous statutory language), you can:

- Neutralize procedural advantages by forcing plaintiffs to litigate on your chosen battleground;
- Leverage discovery to pry open plaintiffs’ internal

communications and expose weaknesses in how they sourced or assembled their “cookie-cutter” classes; and

- Shift the risk calculus by putting pressure on the bar to defend against high-stakes counter-allegations rather than shop for quick settlements.

Using separately or in combination—precise certification timing, a tailored tort/statutory mix, and well-targeted counterclaims—defense-side class actions become a powerful tool not just for defeating mass filings, but for reshaping the litigation landscape in your industry.

#### **IV. Actionable Recommendations for In-House Counsel and the C-Suite**

In today’s fragmented legal landscape, C-suite leaders must move beyond one-off firefighting and adopt a systemic risk-management mindset by engaging experienced litigation counsel to audit operations for vulnerabilities—such as ambiguous statutes, new executive actions, or standardized contracts—and pinpoint areas prone to repetitive challenges.

Two seminal cases—*Washington v. Lee*,<sup>7</sup> and *Hansberry v. Lee*,<sup>8</sup>—demonstrate the contours of binding class-wide injunctive relief on defendants. In *Washington v. Lee*, Black inmates challenged segregated prison conditions and secured a Rule 23(b)(2) certification of all Alabama wardens, ensuring a statewide injunction. *Hansberry v. Lee* predates Rule 23 but underscores due-process limits; a racially restrictive covenant enforced via a “defendant class” could not bind unrepresented property owners. Together, these decisions teach corporate litigators that defense-side classes can aggregate challenges to systemic policies—regulatory, enforcement, or contractual—only if class representatives share uniform interests and absent members receive adequate notice, as courts will rigorously apply the standards of adequacy and fairness. However, when appropriately crafted, such classes deliver efficient and uniform relief across multiple decision-makers.

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<sup>7</sup> 263 F. Supp. 327, 328–329 (M.D. Ala. 1966) (current and former Alabama prisoners brought a class action challenging state-mandated racial segregation statutes under the Eighth and Fourteenth Amendments; holding that, although segregation did not constitute cruel and unusual punishment, it violated equal protection and ordering desegregation of all state penal institutions).

Rather than waiting to defend, businesses should consider defense-side class actions as a proactive strategy to secure uniform, binding rulings under Rule 23, preempt future suits, and resolve widespread uncertainties. Success will depend on getting the certification timing right, choosing between tort and statutory claims, and thoroughly documenting commonality factors. To operationalize these strategies, organizations:

- **Form a cross-functional risk committee** to oversee widespread regulatory issues.
- **Deploy early-warning analytics** to track complaint volumes and regulatory inquiries.
- **Update compliance playbooks and vendor agreements** with explicit audit and documentation rights.
- **Produce board-level reports** that translate

<sup>8</sup> 311 U.S. 32, 37–39 (1940) (certiorari granted where African-American lot-owners challenged enforcement of a racially restrictive covenant; holding that a prior decree enforcing the covenant was not *res judicata* as to petitioners because they were not parties to the earlier suit and their interests had not been adequately represented, such that binding them would violate due process).

litigation metrics into clear, actionable insights.

By partnering with counsel who master these procedural tools—and by institutionalizing these multidisciplinary practices—companies will demonstrate the sophistication and resilience needed to thrive in an opportunity-rich, yet legally complex, environment.

## **V. Conclusion**

Businesses face a fragmented litigation landscape, characterized by the absence of nationwide injunctions or predictable agency interpretations, which significantly complicates risk management, particularly in the context of emerging AI-related legal liabilities. Defense-side class actions are not merely an innovative legal tactic; they will soon be essential for corporate risk management, offering uniform resolutions and predictable litigation outcomes. Proactive integration of defense-side class actions into strategic planning is crucial. Companies should engage in rigorous stress testing and legal budgeting, anticipating the evolving AI liability landscape, to avoid systemic legal challenges. This forward-thinking approach mitigates risk and enhances strategic resilience in an increasingly fragmented legal environment.