18 CV 11657 (ER) (OTW)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHRISTA McAULIFFE INTERMEDIATE SCHOOL PTO, Inc., et al,

Plaintiffs,

-against-

BILL de BLASIO, in his official capacity as Mayor of New York, et ano.,

Defendants

DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS PLAINTIFF

STEVEN BANKS
Corporation Counsel of the City of New York
Attorney for Defendants
100 Church Street
New York, N.Y. 10007

Of Counsel: Tonya Jenerette
Abigail Strange
Tel: (212) 356-1983
Matter No.: 2018-094646

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PRELIMINARY STATEMENT

In 2018, faced with a growing lack of racial, geographic, and socioeconomic diversity at eight highly selective specialized high schools ("SHSs"), former Mayor Bill de Blasio, former Schools Chancellor Richard Carranza and the New York City Department of Education ("DOE") (collectively the "City") convened a working group to study ways to give a wider and more diverse pool of the City's best students the opportunity to attend a SHS. The City made two changes to the Discovery Program—a pre-existing path to SHS admission for high-performing disadvantaged students who would not be admitted based on their test scores alone. DOE expanded the number of SHS seats available through the program and added a new admissions criterion for the program, known as the "Economic Need Index" or "ENI," that focuses on the economic needs of the student's community as a whole (the "2018 Reforms").

Chinese American Citizens Alliance of Greater New York ("CACAGNY" or "Plaintiff") brought this suit against the City claiming that the Policy violated the Equal Protection Clause by discriminating against Asian American applicants. To maintain this action, CACAGNY must adduce facts establishing standing either as an association acting on behalf of its members or as an organization injured in its own right. It has failed to do either.

First, CACAGNY's claim to associational standing is foreclosed by longstanding Second Circuit precedent, which the Circuit upheld in this case, that organizational plaintiffs do not have standing to assert claims under 42 U.S.C. § 1983 on behalf of their members. But even if that rule did not apply, CACAGNY has failed to identify a single member of the organization who was harmed by the 2018 Reforms. Moreover, in written discovery responses and sworn deposition testimony, CACAGNY admitted that it does not maintain records that would allow it to identify any such member. Its failure to identify a member with an injury traceable to the 2018 Reforms is

fatal to its claim to associational standing under controlling Supreme Court and Second Circuit authority.

Second, CACAGNY cannot manufacture organizational standing—as it seeks to do here—by voluntarily spending resources to oppose the 2018 Reforms. That decision is a self-inflicted harm, not a cognizable Article III injury. Because Plaintiff has not adduced facts establishing a concrete, involuntary injury to its core activities traceable to the 2018 Reforms, it does not have organizational standing to prosecute this action. For these reasons, this Court does not have jurisdiction to decide this action and should dismiss the Complaint in its entirety with prejudice pursuant to Federal Rule of Civil Procedure 12(b)(1).

PROCEDURAL HISTORY

On December 13, 2018, plaintiffs filed this lawsuit pursuant to 42 U.S.C. § 1983 alleging that the 2018 Discovery Reforms discriminated against Asian Americans in violation of the Equal Protection Clause.[1] Initially, there were six plaintiffs in this action, three organizations, and three individuals;[2] CACAGNY is the sole remaining plaintiff. In the Complaint, which was never amended, CACAGNY alleged associational and organizational standing to bring this action under 42 U.S.C. § 1983. CACAGNY alleged associational standing because it "has several members with children who would like to apply to New York City's Specialized High Schools but will now be subject to an admissions policy devised to discriminate against Asian-American students."[3] In addition, CACAGNY alleged that it had organizational standing under *Havens Realty Corp. v.*

[1] (Dkt. No. 1 ("Compl.")). The initial plaintiffs were the Christa McAuliffe Intermediate School PTO, Inc., CACAGNY, Asian American Coalition for Education, Phillip Yan Hing Wong, Yi Fang Chen, and Chi Wang.

[2] The three organizations were Christa McAuliffe Intermediate School PTO, Inc., CACAGNY, and Asian American Coalition for Education. (*Id.* ¶¶ 7–9). The three individual plaintiffs were Philip Yan Hing Wong, Yi Fang Chen, and Chi Wang. (*Id.* ¶¶ 10–12).

[3] (*Id.* at ¶ 8).

Coleman, 455 U.S. 363, 379 (1982) because the association "devoted significant resources to counteracting the challenged policy.'"[4]

In 2019, the City opposed plaintiffs' motion for a preliminary injunction and moved to dismiss the plaintiff organizations on the grounds that they lacked standing to bring this action.[5] The City argued that CACAGNY lacked standing for two reasons. First, that it is well settled in the Second Circuit that an organization lacks standing to sue under 42 U.S.C. § 1983 for the alleged injuries of its members.[6] Second, that while an organization may have standing if there is an injury to the organization itself, CACAGNY's only claimed harm, that it has advocated against the challenged policy, is not a legally cognizable injury.[7] The City argued that "[a]n organization's abstract concern with a subject that could be affected by an adjudication does not substitute for the concrete injury required by Art. III."[8] This Court then ordered CACAGNY to adduce facts establishing organizational injury.[9] In response to the Court's directive, CACAGNY submitted the Second Declaration of Wai Wah Chin asserting the organization's expenditure of $2,800 and advocacy opposing the 2018 Reforms as the factual basis for standing under *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982).[10]

This Court denied plaintiffs' motion for a preliminary injunction but held that CACAGNY and the other organizational plaintiffs satisfied requirements for Article III standing because "all expended resources outside of this litigation organizing public events, speaking to the press, and

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[4] (*Id.*; *see also* Dkt. No. 13 ("1st Chin Decl.")).
[5] (*See* Dkt. No. 51 at 12).
[6] (*Id.* at 5).
[7] (*Id.* at 6).
[8] (*Id.* at 5 (quoting *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 40 (1976))).
[9] (Dkt. No. 60).
[10] (*See* Dkt. No. 63 ("2d Chin Decl.") ¶ 6 (attesting that CACAGNY spent approximately $2,800 organizing events "in an attempt to shift public opinion on the Mayor and Chancellor's specialized high schools policy.")).

lobbying officials to combat the proposed changes to the Discovery program." *Christa McAuliffe Intermediate Sch. PTO, Inc. v. DeBlasio,* 364 F. Supp. 3d 253, 272 (S.D.N.Y.), *aff'd,* 788 F. App'x 85 (2d Cir. 2019). Citing *Havens Realty Corp. v. Coleman*, the Court reasoned that "[s]uch a 'drain on the organization's resources' is 'far more than simply a setback to the organization's abstract social interests.'" *Id.* (quoting *Havens Realty Corp.*, 455 U.S. at 379).

On plaintiffs' interlocutory appeal to the Second Circuit, the Court affirmed that plaintiffs "d[id] not have standing to assert claims under 42 U.S.C. § 1983 on behalf of their members" because the Circuit has "'interpret[ed] the rights [§ 1983] secures to be personal to those purportedly injured,'" foreclosing CACAGNY's claim to associational standing. *Christa McAuliffe Intermediate Sch. PTO, Inc. v. de Blasio,* 788 F. App'x 85 (2d. Cir. 2019) (quoting *Nnebe v. Daus*, 644 F.3d 147, 156 (2d Cir. 2011)). However, the Circuit also held that CACAGNY's standing defect may be cured if it could show that the organization was harmed by the challenged policy. In a subsequent letter to the Court explaining the basis for CACAGNY's standing, Plaintiff argued that its plan to continue expending resources to challenge the 2018 Reforms until they are repealed is a future injury sufficient to establish standing under *Havens Realty Corp.*[11]

After bifurcated discovery on discriminatory impact revealed that the 2018 Reforms actually benefited Asian-American students, this Court granted the City's summary judgment motion and dismissed the complaint.[12] This Court concluded that, because 2018 Reforms were undisputedly facially neutral and evenhandedly applied, plaintiffs could prevail on their equal protection claim only by showing that the policy both had a discriminatory effect on Asian-

[11] (Dkt. No. 120).

[12] (Dkt. No. 168).

American students and was motivated by discriminatory intent. And the Court did not reach the issue of intent because, by any metric, the new admissions policy indisputably had no overall discriminatory effect on Asian-American applicants. All of the plaintiffs — except CACAGNY— accepted the Court's ruling and ended their challenge to the 2018 Reforms. CACAGNY appealed the Court's ruling to the Second Circuit, which remanded the case for discovery on the issue of discriminatory intent. *See CACAGNY v. Adams*, 116 F.4th 161 (2d Cir. 2024). However, while the case was pending before the Second Circuit, the Supreme Court abrogated the interpretation of *Havens Realty Corp.* that was the basis for CACAGNY's organizational standing.

In *F.D.A. v. All. for Hippocratic Med.*, the Supreme Court clarified that "an organization that has not suffered a concrete injury caused by a defendant's actions cannot spend its way into standing simply by expending money to gather information and advocate against the defendant's actions. An organization cannot manufacture its own standing in that way." 602 U.S. 367, 394 (2024). "Indeed, that theory would mean that all organizations in America would have standing to challenge almost every federal policy that they dislike, provided they spend a single dollar opposing those policies. *Havens* does not support such an expansive theory of standing." *Id.* at 395. "Like an individual, an organization may not establish standing simply based on the 'intensity of the litigant's interest' or because of strong opposition to the government's conduct, 'no matter how longstanding the interest and no matter how qualified the organization.'" *Id.* at 394 (first quoting *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc.*, 454 U.S. 464, 486 (1982); and then quoting *Sierra Club v. Morton*, 405 U.S. 727, 739 (1972)). To establish an injury in fact, the Court held that associations must show that the government's actions directly impeded or interfered with their core business activities. *Id.* at 395; *see also Conn. Parents Union v. Russell-Tucker*, 8 F.4th 167, 175 (2d Cir. 2021) (holding that an organization that is not

directly regulated by a challenged policy must show that it "suffered an involuntary and material burden on its established core activities" because of the policy).

STATEMENT OF FACTS CONCERNING CACAGNY'S STANDING

Following the Second Circuit's remand for discovery on discriminatory intent, the City sought discovery to determine if CACAGNY could establish standing under *All. for Hippocratic Med.* and *Conn. Parents Union.*[13] The City served requests for "all documents sufficient to identify members of CACAGNY and/or the children of members, who have been, are or may be directly impacted by" the 2018 Reforms.[14] In written responses, CACAGNY admitted "that it does not maintain documents sufficient to identify individual members of CACAGNY or their children who have been, are, or may be directly impacted by DOE's 2018 changes to eligibility criteria for the Discovery Program."[15] CACAGNY also admitted that it "does not maintain documents sufficient to identify individual members of CACAGNY or their children who plan to take the SHSAT, apply to a specialized high school, or attend a specialized high school in the 2025, 2026, or 2027 school year."[16] In response to the City's request for documents demonstrating how DOE's expansion of the Discovery Program directly affects or interferes with CACAGNY's core business activities, Plaintiff produced documents showing its lobbying activities in opposition to the 2018 Reforms.

On February 26, 2026, Defendants deposed the CACAGNY organization pursuant to Federal Rule of Civil Procedure 30(b)(6). During the deposition, CACAGNY's President, Wai Wah Chin, testified that the organization is not regulated by the DOE, and that the 2018 Reforms did not impact its core activities.[17] President Chin also testified that CACAGNY cannot identify

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[13] (*See* Dkt. No. 199).
[14] (Jenerette Decl. Ex. 1. ("P. Resp. 3d RFP") at 4)
[15] (*Id.*).
[16] (*Id.* at 5).
[17] (Jenerette Decl. Ex. 2 ("Chin Dep.") 91:12–19).

any individual member who was impacted by the 2018 changes to the ENI;[18] that it does not "ask anything about our members' economic status;"[19] and that it "can't say exactly what the ENI change will do to an individual member[.]"[20]

When asked if "CACAGNY keep[s] track of whether members have children who are in New York public schools," President Chin testified that "[w]e do not track them . . . . It's nothing formal that we track."[21] When asked whether CACAGNY knew "how many members of CACAGNY have children who are no longer eligible for the Discovery Program because of the changes to the middle school requirements . . . ," President Chin testified that "I don't know the answer to that."[22] She also admitted that CACAGNY does not maintain records "that could verify whether or not the middle schools their members' children attended would actually be impacted by the changes to the Discovery Program."[23] These admissions unequivocally establish that CACAGNY does not have standing to continue this challenge.

During her deposition, flatly contradicting CACAGNY's admissions in written discovery responses, President Chin was only able to provide the name of one CACAGNY member, who has the initials R.G., who might have a child in middle school.[24] However, Chin admitted that she did not know: (1) the name of the middle school; (2) whether the student had taken the SHSAT;

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[18] (*Id.* at 113:1–16 ("Q: Was CACAGNY impacted by the changes to the Economic Need Index as an organization? . . . . A: I don't think we have any information on the ENI specifically. When that changed, I cannot say that any individual member was impacted."); *id.* at 127:1–8 ("Q: Do you know if current members are going to be impacted by changes to the Discovery Program? A: Quite possibly. I would say I can't identify exactly, but inasmuch as we have students who are taking the SHSAT, everyone is impacted by the change to the Discovery Program.")).
[19] (*Id.* at 127:19–128:9).
[20] (*Id.* at 136:5–19).
[21] (*Id.* at 39:22–40:3).
[22] (*Id.* at 54:21–55:5).
[23] (*Id.* at 63:14–19).
[24] (*Id.* at 51:11–20).

(3) whether the child was individually eligible for the Discovery Program; or (4) whether the middle school met the ENI criteria.[25] Nor has CACAGNY provided an affidavit from the alleged parent. Such rank speculation is insufficient to support standing at this stage of the litigation.[26]

STANDARD OF REVIEW

"Pursuant to Rule 12(b)(1), the Court must dismiss a case for lack of subject matter jurisdiction if the Court 'lacks the statutory or constitutional power to adjudicate it.'" *Summerville v. Gotham Comedy Found.*, Inc., 765 F. Supp. 3d 293, 298 (S.D.N.Y. 2025) (Ramos, J.) (quoting *Makarova v. United States*, 201 F.3d 110, 113 (2d Cir. 2000) (citing Fed. R. Civ. P. 12(b)(1))). "Because it is 'a jurisdictional requirement, standing to litigate cannot be waived or forfeited.'" *Conn. Fair Hous. Ctr. v. CoreLogic Rental Prop. Sols., LLC*, 167 F.4th 605, 616 (2d Cir. 2026) (quoting *Va. House of Delegates v. Bethune-Hill*, 587 U.S. 658, 662–63 (2019)). A plaintiff asserting standing must "allege facts that affirmatively and plausibly suggest that it has standing

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[25] (*Id.* at 42:12–14; 51:19-20; 54:21–55:21; 113:1–16).

[26] When asked whether she "kn[ew] of any CACAGNY members whose children applied to Specialized High Schools and were denied admission," President Chin named "Phil Wong," who was initially an individual plaintiff to this action but chose not to appeal this Court's summary judgment ruling. (*Id.* at 51:21–52:5). But Mr. Wong cannot be CACAGNY's identified member as he filed a lawsuit in his own right. In addition, Mr. Wong's daughter was in eighth grade during the 2018-2019 school year, *Christa McAuliffe*, 364 F. Supp. 3d at 270, and she has likely graduated high school by now; his daughter's graduation has mooted his claim. *See DeFunis v. Odegaard*, 416 U.S. 312, 319–20 (1974); *Fox v. Bd. Trs. of State Univ. of N.Y.*, 42 F.3d 135, 140 (2d Cir. 1994) ("This court has consistently held that students' declaratory and injunctive claims against the universities that they attend are mooted by the graduation of the students[.]") Nor can Yi Feng Chen, whom CACAGNY identified as a member in their pre-motion letter to the Court, be an identified member. (Dkt. No. 214 at 2–3). Not only has she filed her own suit with this Court, *see Chen v. Mamdani*, 26 Civ. 03355 (ER) (OTW), but she was dismissed from this action for lack of standing eight years ago. *See Christa McAuliffe*, 364 F. Supp. 3d at 272. Article III standing is a snapshot taken at the exact moment a lawsuit is initiated. Under *Lujan v. Defs. of Wildlife*, federal jurisdiction relies entirely on the facts as they existed "'at the time the complaint was filed.'" 504 U.S. 555, 571 n.4 (1992) (citation omitted). If a plaintiff lacked standing at the inception of the case, a rejection letter arriving years later cannot retroactively cure that initial, fatal jurisdictional defect. (*See also,* Dkt. No. 120 (Plaintiff arguing that Ms. Chen has standing based on harm to her child but not as a CACAGNY member)).

to sue and courts need not credit a complaint's conclusory statements without reference to its factual context." *Conn. Parents Union*, 8 F.4th at 172. "The party asserting subject matter jurisdiction bears the burden of establishing that jurisdiction exists by a preponderance of the evidence." *Summerville*, 765 F. Supp. 3d at 298 (citing *Morrison v. Nat'l Austl. Bank Ltd.*, 547 F.3d 167, 170 (2d Cir. 2008)).

"It is well settled that '[a] plaintiff's burden to demonstrate standing increases over the course of litigation.'" *Do No Harm v. Pfizer Inc.*, 126 F.4th 109, 119 (2d Cir. 2025) (quoting *Cacchillo v. Insmed, Inc.*, 638 F.3d 401, 404 (2d Cir. 2011)). While "at the pleading stage, 'general factual allegations of injury resulting from the defendant's conduct may suffice,'" at later stages of litigation, "the plaintiff can no longer rest on such mere allegations, but must set forth by affidavit or other evidence specific facts[.]" *Id.* (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992)). And "where a challenge to standing comes late in litigation, resulting in absence of documents specifically aimed at establishing elements of standing, court[s] may look to all materials in the record[.]" *In re Holocaust Victim Assets Litig.*, 225 F.3d 191, 195 (2d Cir. 2000) (citing *Schulz v. Williams,* 44 F.3d 48, 53 n.4 (2d Cir. 1994)).

ARGUMENT

"Article III of the Constitution limits '[t]he judicial power of the United States' to 'cases' or 'controversies,' ensuring that federal courts act only 'as a necessity in the determination of real, earnest and vital' disputes." *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 199 (2023) ("*SFFA*") (quoting *Muskrat v. United States*, 219 U.S. 346, 351 (1911)). "For there to be a case or controversy under Article III, the plaintiff must have a personal stake in the case—in other words, standing." *A.H. by E.H. v. N.Y. State Dep't of Health*, 147 F.4th 270, 276 (2d Cir. 2025) (quoting *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021)), *cert. denied sub nom. Disability Rts. N.Y. v. N.Y. State Dep't of Health*, 224 L. Ed. 2d 176 (Mar. 9,

2026). To establish standing, an individual or organizational plaintiff "must demonstrate (i) that she has suffered or likely will suffer an injury in fact, (ii) that the injury likely was caused or will be caused by the defendant, and (iii) that the injury likely would be redressed by the requested judicial relief." *All. for Hippocratic Med.*, 602 U.S. at 380 (citing *Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009)).

An organization may have standing in one of two ways: by establishing so-called "associational" or "representational" standing to sue on behalf of its members, or by establishing that it was directly injured as an organization[,]'" so-called organizational standing.[27] *A.H. by E.H.*, 147 F.4th at 276 (quoting *Conn. Parents Union*, 8 F.4th at 172). Plaintiff cannot establish standing under either theory.

POINT I

PLAINTIFF CANNOT ESTABLISH ASSOCIATIONAL STANDING.

"To invoke [associational standing], an 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." *SFFA*, 600 U.S. at 199 (quoting *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977)). This theory of

[27] Defendants note that what the Second Circuit refers to as "'associational' or 'representational' standing," the Supreme Court occasionally uses the terms "representational or organizational standing." *SFFA*, 600 U.S. at 199. This differs from the Second Circuit's use of organizational standing, which refers to an organization's standing based on its own injuries and not as a representative. However, some Justices use "associational standing," the same way as the Second Circuit. *See All. for Hippocratic Med.*, 602 U.S. at 398 (Thomas, J, concurring) ("By 'associational standing,' I do not refer to standing premised upon an associations own alleged injuries. Instead, I refer to the doctrine that permits a plaintiff association to assert the rights of its members." (citing *Warth v. Seldin*, 422 U.S. 490, 511 (1975)).

standing is unavailable here. The law of this Circuit is that "'an organization does not have standing to assert the rights of its members in a case brought under 42 U.S.C. § 1983' because the rights that § 1983 secures are 'personal to those purportedly injured.'"[28] The Second Circuit has affirmed this rule repeatedly in recent years, including in the context of this very case. *See Christa McAuliffe,* 788 F. App'x at 85 (quoting *Nnebe*, 644 F.3d at 156). Despite CACAGNY's assertions, this rule remains the law of this Circuit and the law of the case. Even if associational standing were available, however, Plaintiff could not satisfy its elements.

A. CACAGNY Does Not Have Associational Standing Under The Law Of The Case.

In response to Defendants' pre-motion letter, CACAGNY argues that "it has always had associational standing" because the Second Circuit's precedent that organizations do not have standing to sue under § 1983 on behalf of its members "cannot survive *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S 181, 198–201 (2023)."[29] But the Second Circuit's prohibition on associational standing to sue under § 1983 was not before the Court in *SFFA*. The parties did not raise or brief that issue and the Court did not decide it.

Second Circuit "precedent appears to have framed 'standing' in the context of organizational claims under § 1983 more as a statutory than as a constitutional question." *Knife Rts., Inc. v. Vance*, 802 F.3d 377, 387–88 n.9 (2d Cir. 2015); *see Succow v. Bondi*, No. 3:25-CV-250 (SVN), 2025 WL 3677799, at *4–5 (D. Conn. Dec. 18, 2025) ("The Second Circuit has recognized that its cases addressing whether an organization has 'standing' to bring a claim under § 1983 are in the vein of a statutory inquiry under § 1983, rather than a jurisdictional inquiry under

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[28] *N.Y. Cmtys. for Change v. Zayas*, No. 22 Civ. 4298 (RA), 2024 WL 3759449, at *8 (S.D.N.Y. Aug. 12, 2024) (quoting *Nnebe v. Daus*, 644 F.3d 147, 156 (2d Cir. 2011)), *aff'd sub nom. Bergnes v. Zayas*, No. 24-2434, 2025 WL 1466198 (2d Cir. May 22, 2025), *order corrected and superseded,* No. 24-2434, 2025 WL 1498177 (2d Cir. May 23, 2025), and *aff'd sub nom. Bergnes v. Zayas*, No. 24-2434, 2025 WL 1498177 (2d Cir. May 23, 2025).

[29] (Dkt. No. 214 at 2).

Article III." (citing *Knife Rights*, 802 F.3d at 388 n.9)). This particular issue was simply not before the Supreme Court. *See Succow*, 2025 WL 3677799, at *5 n.5 ("Because *SFFA* discussed Article III standing, not a statutory cause of action under § 1983, Plaintiffs' arguments that the Supreme Court silently abrogated the *Aguayo* line of cases when it 'assured itself' of jurisdiction is not applicable here."). Moreover, after *SFFA* was decided, the Second Circuit reiterated that "'[i]t is the law of this Circuit that an organization does not have standing to assert the rights of its members in a case brought under 42 U.S.C. § 1983.'" *A.H. by E.H.*, 147 F.4th at 278 n.2 (quoting *Nnebe*, 644 F.3d at 156). And lower courts in this Circuit continue to follow it.[30]

The Second Circuit has cautioned against revisiting prior decisions based on mere doubt about controlling law. "[M]ere doubt . . . is not enough to open the point for full reconsideration." *Fogel v. Chestnutt*, 668 F.2d 100, 109 (2d Cir. 1981) (citation omitted). Rather, courts in this circuit have consistently held that the law of the case may be "'disregarded only when the court has a

[30] *See N.Y. Cmtys. for Change*, No. 22-CV-4298 (RA), 2024 WL 3759449, at *8 ("In this Circuit, 'an organization does not have standing to assert the rights of its members in a case brought under 42 U.S.C. § 1983' because the rights that § 1983 secures are 'personal to those purportedly injured.' Plaintiff NYCC thus lacks standing to bring this § 1983 action as the representative of its members." (citation omitted)); *Farrakhan v. Anti-Defamation League*, No. 23 Civ. 9110 (DLC), 2024 WL 1484449, at *6 (S.D.N.Y. Apr. 5, 2024) ("But 'an organization does not have standing to assert the rights of its members in a case brought under 42 U.S.C. § 1983,' because the rights secured by § 1983 are 'personal to those purportedly injured.'" (quoting *Nnebe*, 644 F.3d at 156)), *aff'd,* No. 24-1237-CV, 2025 WL 24066 (2d Cir. Jan. 3, 2025), *cert. denied,* 146 S. Ct. 113, 223 L. Ed. 2d 17 (2025); *Massapequa Union Free Sch. Dist. v. New York State Bd. of Regents*, 809 F. Supp. 3d 33, 79 (E.D.N.Y. 2025) ("NAGA tries to bring a First Amendment claim under Section 1983 on behalf of its members . . . . But it cannot, even if its members or Finkenbinder are injured. '[I]t is the law of this Circuit that an organization does not have standing to assert the rights of its members in a case brought under 42 U.S.C. § 1983.'" (citations omitted)), *motion for relief from judgment denied,* No. 23-CV-7052-SJB-LGD, 2026 WL 961337 (E.D.N.Y. Feb. 23, 2026); *Wortham v. Wantagh Union Free Sch. Dist.*, No. 24 Civ. 3553 (JMA) (SIL), 2026 WL 861169, at *5 (E.D.N.Y. Mar. 30, 2026) ("The Second Circuit does not permit associational standing for claims brought pursuant to § 1983. Accordingly, an organization may only bring a § 1983 claim if the organization 'can independently satisfy the requirements of Article III standing.'" (quoting *Conn. Citizens Def. League, Inc. v. Lamont*, 6 F.4th 439, 447 (2d Cir. 2021));

clear conviction of error'" concerning "'a point of law on which its previous decision was predicated.'" *Stegemann v. United States*, 132 F.4th 206, 212 (2d Cir. 2025) (cleaned up) ("'[T]he standard for showing a change in law sufficient to avoid the mandate rule or law-of-the-case doctrine demands 'that more than 'mere doubt' is necessary to reconsider prior decisions.' Instead, '[t]he law of the case will be disregarded only when the court has "a clear conviction of error" with respect to a point of law on which its previous decision was predicated.'" (first quoting *United States v. Aquart*, 92 F.4th 77, 92–93 (2d Cir. 2024)); and then quoting *Fogel*, 668 F.2d at 109)); *see also Official Committee of Unsecured Creditors of Color Tile, Inc. v. Coopers & Lybrand LLP*, 322 F.3d 147, 167 (2d Cir. 2003); *Rite Aid Corp. v Am. Home Prods. Corp.*, No. 02 Civ. 4431 (ILG), 2003 WL 21250547, at *5 (E.D.N.Y. Apr. 16, 2003). Plaintiff cannot establish a clear conviction of error here because the parties in *SFFA* did not raise this issue and the Supreme Court did not consider or explicitly overrule the Second Circuit's prohibition on associational standing in § 1983 cases. In the absence of a clear and unequivocal ruling from the Supreme Court, the Second Circuit's ruling on CACAGNY's associational standing is law of the case and binding on this court.

Finally, even if the Court accepts that there is tension between the Circuit Court's rule and *SFFA*, the Second Circuit has declined to revisit the issue. *See Conn. Citizens Def. League, Inc. v. Thody*, No. 23-724-CV, 2024 WL 177707, at *3 (2d Cir. Jan. 17, 2024) ("[The plaintiff] argues that the Supreme Court's recent decision in [*SFFA*], overrules the Second Circuit's prohibition on associational standing in Section 1983 actions. Because we conclude that [the plaintiff]'s claims for injunctive relief are moot, we need not address this argument."). "For a district court to ignore binding Second Circuit precedent, it is not enough for a Supreme Court decision to be in tension with that precedent." *King v. Habib Bank Ltd.*, No. 20 Civ. 4322 (LGS), 2023 WL 8355359, at *1

(S.D.N.Y. Dec. 1, 2023) (citing *Monsanto v. United States*, 348 F.3d 345, 351 (2d Cir. 2003)). "[T]he district court must follow Second Circuit precedent 'unless and until it is overruled in a precedential opinion by the Second Circuit itself or unless a subsequent decision of the Supreme Court so undermines it that it will almost inevitably be overruled by the Second Circuit.'"[31] *Id.* (quoting *United States v. Diaz*, 122 F. Supp. 3d 165, 179 (S.D.N.Y. 2015)). Thus, until the Second Circuit revisits this doctrine or it is explicitly overruled by the Supreme Court, its ruling that CACAGNY does not have associational standing to assert claims under §1983 on behalf of its members remains the law of the case.

B. ***Assuming CACANY Could Have Associational Standing To Assert Section 1983 Claims, It Has Failed to Adduce Facts Establishing That A Member Has Suffered Harm.***

Assuming, arguendo, that CACAGNY could have associational standing to assert Section 1983 claims on behalf of its members, its failure to establish that a "'particular member of the organization would have had standing to bring the suit individually'" is fatal to its standing. *Farm Sanctuary v. U.S. Dep't of Agric.*, No. 24-382-CV, 2026 WL 1030616, at *2 (2d Cir. Apr. 16, 2026) (quoting *NYCLU v. N.Y.C. Transit Auth.*, 684 F.3d 286, 294 (2d Cir. 2012)). Associational

[31] *See United States v. Walden*, No. 24-CR-521 (GRB), 2025 WL 3154359, at *8 (E.D.N.Y. Nov. 12, 2025) ("[E]ven assuming defendant's exegesis of the Supreme Court's determination . . . held sway—this Court is not empowered to substitute its reading of the law for binding precedent of the Second Circuit."), *appeal withdrawn,* No. 25-2893, 2026 WL 1329197 (2d Cir. Mar. 4, 2026); *United States v. Karony*, No. 23-CR-433, 2025 WL 2689592, at *3 (E.D.N.Y. Sept. 19, 2025) ("[D]istrict courts must follow Second Circuit precedent, even if it 'cannot be reconciled with an earlier, authoritative decision of the Supreme Court,' until such precedent is reconsidered *en banc* or rejected by later Supreme Court decision (quoting *Monsanto*, F.3d at 351)); *see also United States v. Sterkaj*, 138 F.4th 95, 99–100 (2d Cir. 2025) (noting that while the Second Circuit is "not bound to follow a prior ruling in our Circuit when 'an intervening Supreme Court decision casts doubt on the prior ruling—that is, where the Supreme Court's conclusion in a particular case . . . broke the link on which we premised our prior decision, or undermined an assumption of that decision[,]' . . . this exception is not to be construed liberally" and "mere 'tension' between a Second Circuit opinion and a subsequent Supreme Court opinion does not suffice to trigger this exception").

standing requires that "at least one of its members have 'standing to sue in their own right.'"[32] *Id.* at *3 (quoting *Fac., Alumni, & Students Opposed to Racial Preferences v. N.Y. Univ.*, 11 F.4th 68, 75 (2d Cir. 2021) ("*FASORP*")); *see id.* at 78 (Menashi, J. concurring) ("FASORP has not identified a member who has, or will, submit articles to the Law Review or seek teaching positions at the law school. Accordingly, FASORP has failed to establish that it has standing as an association to bring suit on behalf of its unidentified members.").

"To make this showing, [CACAGNY] must demonstrate that a member has suffered an injury-in-fact that is 'concrete, particularized, and actual or imminent; fairly traceable to the challenged action; and redressable by a favorable ruling.'" *Id.* (quoting *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013)). CACAGNY "must support each element of standing 'with the manner and degree of evidence required at the successive stages of the litigation.'" *Murthy v. Missouri*, 603 U.S. 43, 58 (2024) (quoting *Lujan*, 504 U.S. at 561). "Where, as here, the parties have taken discovery, the plaintiff cannot rest on 'mere allegations,' but must instead point to factual evidence." *Id.* (quoting *Lujan*, 504 U.S. at 561). Not only has CACAGNY failed to identify a member who was harmed by the 2018 Reforms but, in written discovery responses and sworn deposition testimony, Plaintiff admitted that the organization does not maintain records from which it could identify such a member.[33] In the Complaint, supplemental declarations, discovery responses, and 30(b)(6) deposition testimony, Plaintiff failed to identify a member who: (1) took the SHSAT; (2) would have qualified for admission to a SHS but for the 2018 Reforms to the

[32] *Accord SFFA*, 600 U.S. at 200 ("*SFFA* represented four members in particular—high school graduates who were denied admission to UNC who filed declarations with the district court."); *Students for Fair Admissions Inv. v. President & Fellows of Harvard College*, 980 F.3d 157, 164 (1st Cir. 2020) (*SFFA* identified "forty-seven affiliate members when it sued Harvard, including Asian-American members who had applied to and been rejected by Harvard.").

[33] (P. Resp. 3d RFP at 4–5).

Discovery Program; and (3) was rejected by a SHS because of the new school-based ENI requirements or 20% expansion.

Instead, CACAGNY speculates that some of its members may have children in New York City's public middle schools and high schools, that some of its member's children might or may have taken the SHSAT and applied to SHSs, and may be affected by the 2018 Reforms.[34] This mirrors the fatal defect in *FASORP*, where the Second Circuit rejected standing because the plaintiff organization relied on "highly speculative" claims that its members "intended to apply" in the future. 11 F.4th at 96. Speculation that children of members of CACAGNY intend to take the SHSAT at some point is not enough to establish a concrete harm traceable to the City's policy. The Supreme Court has long held that "[s]uch 'someday' intentions—without any description of concrete plans, or indeed even any specification of *when* the someday will be—do not support a finding of the 'actual or imminent' injury that our cases require." *Lujan*, 504 U.S. at 564. CACAGNY's failure to identify a single member with a particularized injury traceable to the 2018 Reforms after six months of discovery is dispositive to their claim of associational standing.

Furthermore, in *SFFA*, the Supreme Court considered whether "SFFA lack[ed] standing to bring its claims because it is not a 'genuine' membership organization." *SFFA*, 600 U.S. at 198–99 (citation omitted). The Court found that "[w]here . . . an organization has identified members and represents them in good faith, our cases do not require further scrutiny into how the organization operates." *Id.* at 201. More importantly, the Court held that SFFA had standing because it filed declarations from "four members in particular—high school graduates who were denied admission to UNC." *Id.* It thus concluded that SFFA had "complie[d] with the standing requirements demanded of organizational plaintiffs in *Hunt*[.]" *Id.* Here, the City does not dispute

[34] (*Id.*; Chin Dep. 39:22–40:12; 42:12 – 14; 113:1 – 16; 127:19 – 128:9).

that CACAGNY is a genuine membership organization. However, CACAGNY's failure to submit declarations from any member that was harmed by the 2018 Reforms is fatal to its standing even under *SFFA* and *Hunt v. Washington.*

POINT II

PLAINTIFF HAS NOT ADDUCED FACTS ESTABLISHING ORGANIZATIONAL STANDING

A. Voluntary Diversion of Resources Is No Longer A Valid Basis for Standing.

In the Complaint, CACAGNY alleges that it has organizational standing to challenge the 2018 Discovery Reforms under *Havens Realty Corp.* because it "has also had to devote 'significant resources' to counteracting the challenged policy and Defendants' other efforts to reduce the percentage of Asian-American students at New York City's Specialized High Schools."[35] CACAGNY supported their standing with the affidavit of President Wai Wah Chin detailing the organization's expenditure of $2,800 on advocacy efforts opposing changes to the Discovery Program.[36] But the Supreme Court rejected the expenditure of resources theory of standing in *All. for Hippocratic Med.*, holding that "an organization that has not suffered a concrete injury caused by a defendant's actions cannot spend its way into standing simply by expending money to gather information and advocate against the defendant's actions. An organization cannot manufacture its own standing in that way." 602 U.S. at 394. CACAGNY's sworn testimony that DOE's 2018 Reforms did not impair its core activities and that it voluntarily spent $2,800 to oppose the reforms is a textbook illustration of manufactured standing under *All. for Hippocratic Med.* And Plaintiff acknowledges that such voluntary expenditures are no longer a valid basis for standing.[37]

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[35] (Compl. ¶ 8).
[36] (*See* 2d Chin Decl. ¶ 6); *see also* Dkt. No. 120 at 2)
[37] (Dkt. No. 214 at 2).

"Under the theory of organizational standing, organizations may 'sue on their own behalf for injuries they have sustained,' so long as they demonstrate that they were 'directly injured as an organization.'" *Farm Sanctuary*, 2026 WL 1030616, at *2 (first quoting *Conn. Parents Union*, 8 F.4th at 172; and then quoting *All. for Hippocratic Med.*, 602 U.S. at 393). In its 2019 decision, this Court held that CACAGNY satisfied organizational standing requirements because it "ha[d] dedicated resources to counteracting Defendants' allegedly discriminatory actions." *Christa McAuliffe*, 364 F. Supp. 3d at 272. However, as Plaintiff acknowledges, in the time since that decision, "the Supreme Court has endorsed [a] more restrictive view" of organizational standing that now prohibits frustration of mission and diversion of resources as a theory of standing. (Dkt. No. 214 at 2 (citing *All. For Hippocratic Med.*, 602 U.S. at 382 (2024))).

And, unlike with respect to associational standing, the Second Circuit has acknowledged and applied this more restrictive view of organizational standing in response. *See Conn. Fair Hous. Ctr. v. CoreLogic Rental Prop. Sols., LLC*, 167 F.4th 605, 618 (2d Cir. 2026) ("The theory on which the CFHC relied in this litigation is precisely the theory that the Supreme Court rejected in *Alliance for Hippocratic Medicine*: that 'standing exists when an organization diverts its resources in response to a defendant's actions.'" (citing *All. for Hippocratic Med.*, 602 U.S. at 395)); *Farm Sanctuary*, 2026 WL 1030616, at *2 ("Both the Supreme Court and this Court have held that these types of injuries—the diversion of an organization's resources or frustration of its mission—are inadequate to establish standing.").

B. The 2018 Discovery Reforms Have Not Caused CACAGNY to Suffer An Involuntary and Material Burden on its Core Activities.

Because CACAGNY is not directly regulated by the DOE or the 2018 Reforms, to establish an injury in fact for standing, it must show that it "suffered an involuntary and material burden on established core activities" because of the policy. *Conn. Parents Union*, 8 F.4th at 175.

To establish an involuntary and material burden, the challenged policy "must impose a cost (*e.g.*, in time, money, or danger) that adversely affects one of the activities [CACAGNY] regularly conducted (prior to the challenged act) in pursuit of its organizational mission." *Id.* at 173–74. Here, the record does not support an argument that the 2018 Reforms caused CACAGNY to suffer an involuntary and material burden on its established core activities.

First, the Second Circuit has held that an organization cannot establish standing when, as here, its core activities have continued unabated despite the challenged policy. *Id.* at 173. In *Conn. Parents Union*, the Second Circuit held that a plaintiff failed to establish injury when it failed to identify "any restrictions on its ability to perform the core activities . . . ." *Id.* at 175. CACAGNY here failed to adduce evidence of any restrictions on its core activities caused by the 2018 Reforms. Instead, the record establishes that after the Reforms were adopted, CACAGNY's core activities continued unabated.

Second, the 2018 Reforms did not cause CACAGNY to divert resources from its established core activities of lobbying elected officials on behalf of its members, holding meetings, and sponsoring an annual essay contest.[38] The Second Circuit has recognized that an organization may be injured when it involuntarily diverts resources away from its core activities, meaning that the expenditures must be "reasonably necessary" for the organization to continue its "established core activity." *Id.* at 173–74. And an organization cannot rely on voluntary expenditures it chose to spend to counteract the policy it is challenging. *Id.* There is no evidence in the record that CACAGNY involuntarily diverted any money or resources away from core activities because of

[38] (*See, e.g.*, Chin Dep. at 84:11–85:2 (describing CACAGNY's pre-2018 interest in school admissions and its choice to continue to divert resources to that issue); 121:21–122:24; 124:25–124:24 (generally describing CACAGNY's continued and uninterrupted core activities)).

the policy challenged here. In fact, in arguments before this Court, CACAGNY has repeatedly asserted standing based on its voluntary expenditure of resources challenging the 2018 Reforms.[39]

Third, Ms. Chin did not testify that the 2018 Reforms caused an increased demand for CACAGNY's services.[40] The Second Circuit has recognized that "a cognizable injury may arise via a burden that is imposed on an organization when there is an increased demand for an organization's services." *Id.* at 174. But this injury is only recognized when the defendant's actions caused the increased demand for the organization's services. Here, CACAGNY has not adduced any facts establishing that it routinely provided services directly to members or the community before the 2018 Reforms were adopted that it was forced to discontinue afterwards. Nor have they produced facts showing that the 2018 Reforms caused an increased demand for their services that would confer Article III standing.

In sum, the evidence in this record shows that CACAGNY's core activities were not involuntarily and materially burdened by the 2018 Reforms. Its core activities were not impaired, it diverted resources from other activities only when it chose to do so, and there was not an increase in demand for its services traceable to the City's policy. Because the 2018 Reforms did not cause CACAGNY to suffer an involuntary and material burden on its core activities, it cannot demonstrate injury in fact to ground Article III standing.

[39] (Dkt Nos. 63 & 120).
[40] (*See* Chin Dep. at 85:22–86:3).

CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court grant its motion to dismiss the Complaint with prejudice pursuant to Fed. R. Civ. P. 12(b)(1) and grant such other and further relief as to the Court may seem just and proper.

Dated: New York, New York
July 1, 2026

STEVEN BANKS
Corporation Counsel of the
City of New York
Attorney for Defendants
100 Church Street, Room 2-192
New York, New York 10007
(212) 356-1983

By: _____
TONYA JENERETTE
ABIGAIL STRANGE
Assistants Corporation Counsel