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 City, et al.,

Defendants,

TEENS TAKE CHARGE, et al.,

Defendant-Intervenors.

Case No. 1:18-cv-11657-ER-OTW

Plaintiff CACAGNY's Memorandum of Law Opposing Defendants' Motions to Dismiss

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PRELIMINARY STATEMENT

This case is nearly eight years old. More than seven years ago, this Court held the Chinese American Citizens Alliance of Greater New York (CACAGNY) had standing to challenge New York City's overhaul of the Discovery program for admission into the eight test-in Specialized High Schools, which CACAGNY maintains was done to discriminate against Asian-American applicants. *Christa McAuliffe Intermediate Sch. PTO, Inc. v. de Blasio*, 364 F. Supp. 3d 253, 272 (S.D.N.Y. 2019). The case proceeded based on that ruling for years, until the City freshly raised the issue of standing just as the second phase of fact discovery was about to close last fall.

Of course, standing is jurisdictional, so the City and Defendant-Intervenors are *allowed* to raise it now. But the reason we're arguing standing eight years into this case is simply because Defendants never followed up. And they had many chances. First, after the Second Circuit questioned whether CACAGNY had alleged future injury, *Christa McAuliffe Intermediate Sch. PTO v. de Blasio*, 788 F. App'x 85 (2d Cir. 2019), CACAGNY submitted a supplemental declaration and the City declined a fresh opportunity to challenge CACAGNY's standing in the spring of 2020. Dkt. No. 133 ("Following review of these supplemental declarations, Defendants have decided not to challenge plaintiffs' standing."). Then, after the first phase of discovery in 2022, Defendants moved for summary judgment on the merits but did not argue CACAGNY lacked standing. Dkt. No. 149. Defendants likewise didn't raise standing on appeal, even after new Second Circuit precedent that they now cite favorably. CACAGNY prevailed in that appeal, sending the case back here, and still Defendants did not raise standing. Dkt. No. 173 (Second Circuit order vacating and remanding to allow for discovery concerning Defendants' discriminatory intent). It was not until the second phase of discovery was nearly complete that the

City—later joined by Defendant-Intervenors—claimed that CACAGNY had not had standing all along, sought late discovery, and then sought permission to file this motion. Dkt. No. 199.

And yet, most importantly, CACAGNY has always had standing. The complaint pleaded that CACAGNY had standing both through its members who had children who would seek admission to the Specialized High Schools under the challenged criteria ("associational standing") and in its own right through expenditure of resources ("organizational standing"). Compl. (Dkt. No. 1) ¶ 8. This Court held in 2019 that CACAGNY had organizational standing but could not allege associational standing because Second Circuit precedent did not permit associations to assert their members' injuries in constitutional cases. *Christa McAuliffe*, 364 F. Supp. 3d at 271. Now, Defendants argue that the precedent on organizational standing has shifted, but even if that is true, CACAGNY has associational standing under unequivocal and binding Supreme Court precedent, particularly *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181 (2023) (*SFFA*).

Defendants cannot have their cake and eat it too. If this Court must follow Supreme Court standing precedent, then it must do so consistently. Otherwise, CACAGNY can simply rely on the vast majority of Second Circuit precedent on organizational standing requiring an organization to demonstrate only a "slight diversion of resources to remedy some harm or to fight some harmful conduct or policy," *Centro de la Comunidad Hispana de Locust Valley v. Town of Oyster Bay*, 868 F.3d 104, 121 (2d Cir. 2017) (Jacobs, J., dissenting), a standard this Court already held CACAGNY satisfied in 2019. But instead of getting into the question of organizational standing, the Court should simply hold that Second Circuit precedent limiting associational standing in civil rights cases cannot survive *SFFA*. Because CACAGNY has at all times during this litigation had members with children in middle school planning to seek admission to the Specialized High

Schools, it has always maintained associational standing to seek prospective injunctive relief. Accordingly, the motions to dismiss should be denied.

STATEMENT OF FACTS

In late 2018, when CACAGNY filed suit against Defendants, it pleaded both associational and organizational standing. Compl. ¶ 8 ("CACAGNY 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," and "CACAGNY has also had to 'devote significant resources' to counteracting the challenged policy . . . ."). And in 2019, this Court held that CACAGNY's expenditure of time and money opposing the Discovery expansion was sufficient to confer standing under the Second Circuit's interpretation of *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982). *See Christa McAuliffe*, 364 F. Supp. 3d at 272. Specifically, the Court reasoned that CACAGNY has "expended resources outside of this litigation organizing public events, speaking to press, and lobbying officials to combat the proposed changes to the Discovery program," which CACAGNY otherwise would have used to further the organization's goals. *Id.* Under the same set of facts presented at this stage in litigation, the Court deemed this "drain on the organization's resources" sufficient for the organization to have standing in its own right. *Id.* (quoting *Havens Realty*, 455 U.S. at 379). And CACAGNY continues to spend resources "organizing public events, speaking to press, and lobbying officials" on the Discovery Program and the specialized schools.

For that matter, it is a top priority for the organization. Nothing has changed in eight years. CACAGNY continues to invest significant resources to counteract Defendants' admissions criteria. CACAGNY lobbied politicians in Albany in 2019 to oppose the elimination of the SHSAT (Chin Dep. 82:7–84:6) and organized rallies to protect the Specialized High Schools and the

admissions process in 2021 and 2024 (Chin Dep. 116:11–24; 65:18–66:4). In doing so, CACAGNY spent valuable time and funding to oppose Defendants' expansion of the Discovery program, all of which could have been spent on other organizational activities that would have benefited CACAGNY and its members. Chin Dep. 92:5–19; 97:6–99:13 (stating that the resources used to oppose Defendants' admission policies would have otherwise been spent on advocating for more Gifted and Talented Programs and expanding access to charter schools). CACAGNY will continue to do so in the future. Chin Dec. ¶ 37.

What is also true, is that at all stages of litigation, CACAGNY has represented members affected by Defendants' unconstitutional admissions policy. In the initial stages of litigation, CACAGNY represented a member, Phillip Wong, whose daughter took the SHSAT around 2018 and was denied admission to the Specialized High Schools around 2019. Chin Dep. 52:1–11.[1] Since then, CACAGNY has consistently represented members who are affected by Defendants' admissions policies. Chin Dep. 127:12–129:8. While CACAGNY does not formally track its members' sensitive personal information in the ordinary course, including whether they have children, whether those children attend the Specialized High Schools, or the members' economic status, CACAGNY leadership is aware that it represents members who have been harmed by Defendants' policies, because those members have spoken to leadership about their experiences. *See* Chin Dep. 39:22–41:17. CACAGNY Charter President Wai Wah Chin testified that because of the Discovery expansion's reduction of otherwise-available seats in the Specialized High Schools, the SHSAT cut-off score increased, creating "an imposition to all of the members who have kids who are planning to take the [SHSAT]." Chin Dep. 62:15–63:8; 63:20–64:4.

[1] Cites to "Chin Dep." refer to the Rule 30(b)(6) deposition of CACAGNY through Charter President Wai Wah Chin on February 26, 2026. The cited excerpts are attached to the Kieser Declaration as Exhibit 1.

Even though this litigation has spanned almost eight years, CACAGNY members who take the SHSAT still must compete under the discriminatory admissions criteria. Chin Dep. 63:20–64:4. Several CACAGNY members have children who have applied to the Specialized High Schools during the course of the case—some now attend Specialized High Schools, while others attend other public schools. *See* Chin Dep. 45:1–46:8; 48:14–49:13 (identifying a current member with a child in a Specialized High School); 50:3–10 (identifying a current member with a child in a non-specialized New York public high school). Ms. Chin also testified that at least five current members of CACAGNY have children who plan on applying to the Specialized High Schools in the future. Chin Dep. 52:18–22. And that is aside from member Yi Fang Chen's unequivocal standing on behalf of her son. *See infra* n.7. In short, CACAGNY has consistently represented members applying to the Specialized High Schools.

STANDARD OF REVIEW

A motion to dismiss under Rule 12(b)(1) for lack of subject matter jurisdiction is appropriate if the Court "lacks the statutory or constitutional power to adjudicate" the case. *Makarova v. United States*, 201 F.3d 110, 113 (2d Cir. 2000) (citing Fed. R. Civ. P. 12(b)(1)). In deciding whether dismissal is appropriate, a district court may refer to evidence outside of the pleadings. *Id.* A Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction can either be "facial" or "fact-based." *See id.* A fact-based motion permits the defendant to proffer evidence beyond the pleadings. *Carter v. HealthPort Techs.*, 882 F.3d 47, 57 (2d Cir. 2016). However, a plaintiff need only come forward with evidence of its own "'if the affidavits submitted on a 12(b)(1) motion . . . reveal the existence of factual problems' in the assertion of jurisdiction." *See id.* (quoting *Exch. Nat'l Bank of Chi. v. Touche Ross & Co.*, 544 F.2d 1126, 1131 (2d Cir. 1976)). Otherwise, a plaintiff may "rely on the allegations in the Pleading if the evidence proffered by the

defendant is immaterial because it does not contradict plausible allegations that are themselves sufficient to show standing." *Id.* Ultimately, it is the plaintiff's burden to establish subject matter jurisdiction by a preponderance of the evidence. *Makarova*, 201 F.3d at 113.

ARGUMENT

I. CACAGNY Did Not Waive Associational Standing

As a threshold matter, Defendant-Intervenors argue that CACAGNY waived reliance on associational standing. But in the Second Circuit, "arguments for or against standing may not be waived." *Won v. Amazon.com Servs., LLC*, 807 F. Supp. 3d 178, 182 (E.D.N.Y. 2025) (quoting *Wight v. BankAmerica Corp.*, 219 F.3d 79, 90 (2d Cir. 2000)). That is because federal courts have an independent obligation to examine standing under Article III. *See Thompson v. Cnty. of Franklin*, 15 F.3d 245, 248–49 (2d Cir. 1994). A party may only waive an argument supporting standing if it is "raised 'nowhere in the complaint or opposition to the instant motion,'" or if it is based on evidence not disclosed to the opposing party. *Won*, 807 F. Supp. 3d at 183 (quoting *Prakash v. Homecomings Fin.*, No. 05-CV-2895, 2006 WL 2570900, at *3–5 (E.D.N.Y. Sept. 5, 2006)).

None of this applies here. CACAGNY pleaded associational standing from the outset. Compl. ¶ 8. It argued associational standing both to this Court and, contrary to Defendant-Intervenors' assertion, in its Second Circuit reply brief in 2019 (the opening brief focused on the merits because this Court had found organizational standing). Dkt. No. 55 at 4 & n.3; Dkt. No. 70 at 8–15 & n.2 in Case 19-550 (2d Cir.). And the matter was raised both in conversations with Defendants about late discovery requests in October 2025 and in a draft letter to the Court that was circulated to Defendants in November 2025 but not ultimately filed. *See* Ex. 5 to Kieser Dec. ("the legal questions include whether CACAGNY can maintain suit on behalf of its members [and]

whether the Second Circuit's traditional rule against such standing is still good law after *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181, 199–201 (2023) ….”). It was also discussed at the discovery conference in this Court on December 9, 2025. At her deposition several months later, Defendants had the opportunity to ask Ms. Chin about CACAGNY's claim of associational standing—and did so extensively. Ms. Chin mentioned individual CACAGNY members that provide a basis for CACAGNY's associational standing. *See* Chin Dep. 38:19–55:25 (asking questions about CACAGNY members and identifying specific members for standing purposes). The City Defendants, for their part, affirmatively declined to seek depositions of individual CACAGNY members. *See* Ex. 2 to Kieser Dec.

Defendant-Intervenors do not explain when or how CACAGNY should have raised associational standing to “preserve” it. The City or Defendant-Intervenors could have sought to challenge this Court's prior standing ruling years earlier—say, after the Second Circuit decision in *Connecticut Parents Union v. Russell-Tucker*, 8 F.4th 167 (2d Cir. 2021). Yet briefing on Defendants' motions for summary judgment in this Court (which took place after *Connecticut Parents Union* was decided) came and went without any mention of standing, as did the Second Circuit briefing. With standing already established and not subsequently challenged, there was no occasion for CACAGNY to raise it. And indeed, CACAGNY prevailed in the Second Circuit. It is *Defendants* who have failed to raise or diligently pursue the issue of standing. They are saved only by the fact that standing is jurisdictional and cannot be waived.

II. CACAGNY Has Associational Standing

SFFA confirms that the same associational standing rules that govern any other case apply to equal-protection cases. The Second Circuit's contrary approach never had any basis in law, but *SFFA* made that explicit. Indeed, the Second Circuit likely developed its permissive approach to

organizational standing as a reaction to its rule barring associations from bringing civil rights claims on behalf of their members. The Second Circuit may eventually have to deal with the "distortion" this has caused. *Centro*, 868 F.3d at 122 (Jacobs, J., dissenting). But for now, this Court need only apply Supreme Court precedent to find that CACAGNY has associational standing.

A. The *Aguayo* Rule and Its Consequences

More than fifty years ago—before any of the Supreme Court's modern associational standing cases—the Second Circuit held that organizations may not assert the rights of their members in suits brought under the federal civil rights statute, 42 U.S.C. § 1983. *Aguayo v. Richardson*, 473 F.2d 1090, 1099–1100 (2d Cir. 1973). The Supreme Court cast doubt on *Aguayo* almost immediately. Two years later, in a federal civil rights case challenging a city's zoning ordinance, the Supreme Court noted that "[e]ven in the absence of injury to itself, an association may have standing solely as the representative of its members." *Warth v. Seldin*, 422 U.S. 490, 511 (1975). In such a case, the Court said, the organization would have to "allege that its members, or any one of them, are suffering immediate or threatened injury as a result of the challenged action of the sort that would make out a justiciable case [or controversy] had the members themselves brought suit." *Id.* The Court soon expanded on this, and the familiar three-part test for associational standing was born. *See Hunt v. Wash. Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977).

Nevertheless, the Second Circuit continued to adhere to *Aguayo*. *See League of Women Voters v. Nassau Cnty. Bd. of Supervisors*, 737 F.2d 155, 160–61 (2d Cir. 1984). Then, when a taxi drivers' association argued that *Warth* and *Hunt* had abrogated *Aguayo*, the Second Circuit said it was "bound by the implicit determination" in *League of Women Voters* that *Aguayo* survived *Warth*. *Nnebe v. Daus*, 644 F.3d 147, 156 n.5 (2d Cir. 2011). Meanwhile, as this Court noted in

2019, other circuits rejected *Aguayo* and applied *Hunt*'s typical three-part test to Section 1983 claims. *See Christa McAuliffe*, 364 F. Supp. 3d at 271 n.17 (citing *Centro*, 868 F.3d at 123 (Jacobs, J., dissenting) (collecting cases)). And the First Circuit explicitly held that a parent group in a nearly identical case challenging selective high school admission in Boston had standing under *Hunt*. *See Bos. Parent Coal. for Acad. Excellence Corp. v. Sch. Comm. for City of Bos.*, 89 F.4th 46, 55–56 (1st Cir. 2023).

In the absence of associational standing, the Second Circuit found another way to allow associations to bring civil rights claims. It read the Supreme Court's decision in *Havens Realty* to allow organizations to assert their own claims based upon any expenditure of resources to counter the challenged policy. So, in *Ragin v. Harry Macklowe Real Estate Co.*, the Second Circuit held that a nonprofit with a "'mission' . . . to reduce the amount of segregation in, and to eliminate all discrimination from, the metropolitan residential housing market" had standing to bring a Fair Housing Act claim based on time spent "investigating and attempting to remedy" allegedly unlawful housing advertisements. 6 F.3d 898, 901–02, 905 (2d Cir. 1993). And while the taxi drivers' group in *Nnebe* couldn't get standing to represent its members, the Second Circuit held it had organizational standing based on the group's expenditure of "resources to assist its members who face summary suspension by providing initial counseling, explaining the suspension rules to drivers, and assisting the drivers in obtaining attorneys." 644 F.3d at 157. Finally, in *Centro*, the Second Circuit held an organization that "work[ed] to advance the interests of day laborers" had standing in its own right to challenge an ordinance prohibiting solicitation for employment on town streets. 868 F.3d at 107, 110–11 (majority opinion).

Centro prompted a dissent from Judge Jacobs, who pointed out that *Aguayo* had led the court to embrace "increasingly tenuous and pretextual claims of injury to organizations

themselves" that "threaten[] to swallow Article III limitations." *Id.* at 123 (Jacobs, J., dissenting). He characterized Second Circuit precedent on organizational standing as permitting an organization to "achieve standing to challenge a law relevant to its mission by 'allocating resources' to learning about the law and attending a protest rally." *Id.* at 123–24.

Judge Jacobs' solution was to end the "distortion" simply by allowing organizations to bring civil rights suits on behalf of their members, as they can in every other circuit. *Id.* at 122–23. That way, organizations could function as they were intended, as representatives of their members, rather than arguing a more contrived organizational injury. But while the Second Circuit has perhaps started to rethink the logic behind cases like *Ragin*, *Nnebe*, and *Centro*, *see Connecticut Parents Union*, 8 F.4th at 173, it has yet to acknowledge the error in *Aguayo*.

The motions to dismiss in this case lay bare the consequences of the *Aguayo* bar. While Defendants assert that *Connecticut Parents Union* nixes CACAGNY's claim to organizational standing, the City fails to acknowledge that this view of Second Circuit precedent leaves an organization *no way* to sue under Section 1983. If organizations cannot sue on behalf of their members *or* based on expenditure of resources, then the Second Circuit simply does not allow them to bring constitutional claims at all. This cannot be the law.

B. Supreme Court Precedent Is Clear That Associations Can Assert Their Members' Injuries in Constitutional Cases

Fortunately, this Court need not try to reconcile *Connecticut Parents Union* with the Second Circuit's older organizational standing cases. It need not even deal with whether *FDA v. Alliance for Hippocratic Medicine*, 602 U.S. 367, 382 (2024), has abrogated those cases. This Court need only apply Supreme Court associational standing precedent.

Before *SFFA*, the Supreme Court at least twice permitted an organization to maintain an equal-protection suit on behalf of its members, even over the defendants' vigorous objections. *See*

Ne. Fla. Chapter of Associated Gen. Contractors of Am. v. City of Jack., 508 U.S. 656, 659, 663–64, 669 & n.6 (1993); *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 718–19 (2007). But if any doubt remained, *SFFA* ended it. *SFFA* involved an equal-protection challenge to the consideration of race in admissions at the University of North Carolina.[2] In response to the university's standing argument, the Supreme Court said that "[i]n cases like these, where the plaintiff is an organization, the standing requirement of Article III can be satisfied in two ways. Either the organization can claim that it suffered an injury in its own right or, alternatively, it can assert 'standing solely as the representative of its members.'" 600 U.S. at 199 (quoting *Warth*, 422 U.S. at 511). If the statement had been dicta in *Warth*, it was a holding in *SFFA*, as the Court went on to apply the *Hunt* test for associational standing and hold that Students for Fair Admissions had standing to sue UNC on behalf of four of its members who were denied admission to the university. *Id.* at 200–01.

C. *SFFA* Has Rendered the *Aguayo* Bar Untenable

That is the law this Court is bound to follow. "Courts in this District are bound to apply Second Circuit precedent 'unless and until its rationale is overruled, implicitly or expressly, by the Supreme Court or [the Second Circuit].'" *United States v. Williams*, 701 F. Supp. 3d 257, 269 (S.D.N.Y. 2023) (quoting *United States v. Polouizzi*, 564 F.3d 142, 160 (2d Cir. 2009)). Although district courts must "proceed 'cautiously in deciding whether an intervening Supreme Court decision overrules Second Circuit precedent,'" *id.* (quoting *Hoeffner v. D'Amato*, 605 F. Supp. 3d 467, 481 (E.D.N.Y. 2022)), their obligation to follow contrary circuit precedent ends once

[2] The concurrent case involving Harvard's admissions practices was brought under Title VI of the Civil Rights Act of 1964 and was not technically an equal-protection claim. *SFFA*, 600 U.S. at 197–98 & n.2. In any event, the standing analysis was specifically done in the context of the UNC equal-protection case. *See id.* at 198 ("UNC argues that SFFA lacks standing . . . .").

"Supreme Court precedent renders it untenable," *id.* (quoting *United States v. Emmenegger*, 329 F. Supp. 2d 416, 436 (S.D.N.Y. 2004)).

Aguayo is now untenable. As Judge Jacobs noted, *Aguayo* was decided before any of the Supreme Court's modern associational standing cases, and the Second Circuit has never fully reexamined it. *Centro*, 868 F.3d at 123 (Jacobs, J., dissenting). Its rule that associations cannot bring civil rights cases on behalf of their members might have been defensible in 1973, but no longer. Even if we assume that *Northeastern Florida* and *Parents Involved* did not change the calculus, *SFFA* clearly did. By holding that the student group had standing to sue UNC for violating the equal-protection rights of its members, *SFFA* permitted exactly what *Aguayo* prohibited. The two cannot coexist. *See United States v. Gill*, 748 F.3d 491, 502 (2d Cir. 2014) (finding the Supreme Court "implicitly overruled" circuit precedent by "explicitly reject[ing]" the analysis circuit precedent rested on and "implicitly reject[ing]" an assumption the panel had made).[3]

This Court need not blindly follow circuit precedent that is expressly contrary to the Supreme Court's instructions and the rule in every other circuit. It should instead conduct a straightforward analysis of whether CACAGNY meets the requirements for associational standing under *Hunt*.

[3] It is beside the point that 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." City Br. at 11 (quoting *Knife Rights, Inc. v. Vance*, 802 F.3d 377, 387–88 n.9 (2d Cir. 2015)). The question is whether the Supreme Court has rendered the Second Circuit's rule against organizations maintaining civil rights claims on behalf of their members untenable. *SFFA*'s conclusion that a student group had standing on behalf of its members to bring an equal-protection challenge to state university admissions criteria directly repudiates the Second Circuit rule. Whether Defendants' arguments are framed as "law of the case" or simply about the continuing vitality of the Second Circuit precedent in general, the result is the same. *See Carroll v. Trump*, 151 F.4th 50, 66 (2d Cir. 2025) (discussing the standard for assessing an "intervening change in law").

D. CACAGNY Has Associational Standing Under *Hunt*

As the Supreme Court has explained, an association has standing to sue on behalf of its members when: "(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. CACAGNY satisfies these requirements, so it has associational standing.

Throughout this litigation, CACAGNY has had members with children in middle school preparing to apply to the Specialized High Schools. One such member, former CACAGNY president Phil Wong,[4] was an individual plaintiff in this case and had standing at the outset through his daughter, who was taking the SHSAT as an eighth grader. *Christa McAuliffe*, 364 F. Supp. 3d at 272. From that point forward, CACAGNY has always had members with children preparing to take the SHSAT, who would have standing on the same basis as Mr. Wong. *See* Chin Dep. 48:15–55:15 (identifying specific members for standing purposes); 127:1–129:8 (discussing harm to members with children who have taken the SHSAT). With at least one member who would have had standing in his or her own right during the pendency of the litigation, CACAGNY satisfies the first *Hunt* prong.

Both sets of Defendants object that CACAGNY has never submitted a declaration from an affected CACAGNY member. City Br. at 16–17; Intervenor Br. at 6. But this is the first time anyone has moved to dismiss for lack of standing.[5] The question had never been contested before

[4] Wong's time as CACAGNY president came to an end when he was elected to the New York City Council last year. *See* Wong Decl. ¶ 3.

[5] And even so, the City is not quite right. CACAGNY provided the City with Phil Wong's declaration in 2020 when the City sought to contest CACAGNY's ongoing organizational standing. That declaration established that Wong was the president of CACAGNY at the time, had been a member since 2016, and that his daughter took the SHSAT in 2018. *See* Ex. 3 to Kieser

because the case always proceeded on the grounds of organizational standing. Such declarations would ordinarily be filed in opposition to a motion to dismiss like the ones filed here. *Cf. Students for Fair Admissions, Inc. v. Univ. of N.C.*, No. 1:14CV954, 2018 WL 4688388, at *2 (M.D.N.C. Sep. 29, 2018) (SFFA "asserts associational standing based on the circumstances of four members . . . each of whom have submitted signed declarations in support of SFFA's Opposition to Defendants' Motion to Dismiss" (footnote omitted)). The Supreme Court once even relied on an affidavit lodged less than a week before argument to find associational standing. *See Parents Involved*, 551 U.S. at 718 (relying on affidavit of Kathleen Brose, which the docket indicates was lodged on November 29, 2006, five days before the case was argued). But here, Ms. Chin identified several CACAGNY members for standing purposes in her deposition. *See* Chin Dep. 46:9–55:25. These included individuals who would have had standing at various phases of the case. *See* Chin Dep. 47:11–52:22 (identifying CACAGNY members with children at Specialized High Schools, non-specialized public high schools—including Yiatin Chu and [redacted]—and one who was denied admission to the Specialized High Schools—Phil Wong). She identified a member, [redacted], with a child in eighth grade who had taken the SHSAT at the time of the deposition. Chin Dep. 50:12–51:18. And she further testified that at least five current members of CACAGNY have children who plan on applying to the Specialized High Schools in the future. Chin Dep. 52:18–22.[6]

Dec. (email to counsel for the City on April 20, 2020). After receiving this declaration, the City declined to lodge a new challenge to CACAGNY's standing. Dkt. No. 133.

[6] Nevertheless, as belt-and-suspenders support, CACAGNY submits declarations from members to supplement Ms. Chin's deposition testimony. CACAGNY is entitled to rely on these declarations to the extent they "augment[], without contradicting" CACAGNY's deposition testimony or "address[] issues not explored thoroughly in that deposition." *Torrico v. Int'l Bus. Machs. Corp.*, 319 F. Supp. 2d 390, 394 n.2 (S.D.N.Y. 2004). The declarations merely augment what Ms. Chin testified: that CACAGNY has always had members whose children were about to take the SHSAT. [redacted] Dec. ¶¶ 2, 4; [redacted] Dec. ¶¶ 2–3, 5; Yi Fang Chen Dec.

The City ignores this evidence and suggests that CACAGNY must "identify a member who: (1) took the SHSAT; (2) would have qualified for admission to a SHS but for the 2018 Reforms to the Discovery Program; and (3) was rejected by a SHS because of the new school-based ENI requirements or 20% expansion." City Br. at 15–16. Defendant-Intervenors make a similar argument that CACAGNY cannot verify its members' children are harmed by the admissions criteria. Intervenor Br. at 10–11. This misunderstands the nature of the relief CACAGNY seeks. Because CACAGNY seeks prospective injunctive relief, it has standing to seek that relief on behalf of its members *before* they take the SHSAT. That is why this Court correctly found that Mr. Wong had standing when his daughter was in eighth grade: her injury was "the denial of equal treatment resulting from the imposition of the barrier, not the ultimate inability to obtain the benefit." *Christa McAuliffe*, 364 F. Supp. 3d at 273 (quoting *Ne. Fla.*, 508 U.S. at 666). Like Mr. Wong, each CACAGNY member with a child in middle school would have had standing in his or her own right regardless of the child's ultimate SHSAT score or whether he or she ultimately gained admission. *See id.* at 272–73 (rejecting the City's argument that Mr. Wong's daughter's SHSAT score was relevant to her standing).[7]

¶¶ 2, 4–5; [redacted] Dec. ¶¶ 2, 4, 7; [redacted] Dec. ¶¶ 2, 4; [redacted] Dec. ¶¶ 2, 4, 7; Wong Dec. ¶¶ 2, 5; Yiatin Chu Dec. ¶¶ 2-4.

[7] CACAGNY does have at least one member whose child experienced a concrete injury like the one the City demands—Yi Fang Chen. Ms. Chen's son missed the cutoff for Stuyvesant by three points and would have been admitted if not for the Discovery expansion. Chen Dec. ¶ 4. Ms. Chen recently filed a separate case on behalf of her son. *Id.* ¶ 6. But Defendant-Intervenors' appeal to the "duplicative litigation rule" should not bar consideration of evidence related to Ms. Chen. This case is not duplicative of the *Chen* case. Most obviously, unlike Ms. Chen, CACAGNY does not seek admission of any particular child to any particular school. *See Sacerdote v. Cammack Larhette Advisors, LLC*, 939 F.3d 498, 505 (2d Cir. 2019) (noting that the rule cannot be invoked unless the two cases are "the same," including "the same relief prayed for . . ." (quoting *The Haytian Republic*, 154 U.S. 118, 124 (1894))). In any event, Ms. Chen is just one of many CACAGNY members who would have had standing to seek prospective injunctive relief in their own right.

Defendant-Intervenors' arguments as to the sufficiency of the evidence fare no better. Defendant-Intervenors acknowledge that Ms. Chin identified members during her deposition (although they do not mention all of them), but argue that she did not say enough to confirm that the members would have had standing. *See* Intervenor Br. at 11–14. Yet the deposition confirms all that is required: membership and application. And in any case, this was outside the scope of the Rule 30(b)(6) deposition notice, which asked only that CACAGNY designate a witness to discuss "how many" members fell into each category. *See* Ex. 4 to Kieser Dec. (topic 5). Defendants could have included a more specific ask in the deposition notice—or sought to depose named members later—but did not. *See, e.g.*, Ex. 2 to Kieser Dec. And CACAGNY has now submitted declarations from members who would have had standing throughout the case.[8]

Defendant-Intervenors' complaints largely amount to complaints that CACAGNY does not formally track which of its members have children who apply to the Specialized High Schools. Intervenor Br. at 5–6, 10–11. They repeatedly refer to the lack of such a formal list of members (something that is consistent with Ms. Chin's deposition testimony). But it is immaterial for standing that CACAGNY does not formally track all its members' status as it pertains to their children, their children's education, or their economic status for Discovery eligibility. *See* Chin Dep. 55:17–21. The same is true for the members' ability to elect leadership and finance

[8] Defendant-Intervenors seem to suggest that CACAGNY cannot rely on members who were not mentioned during the Rule 30(b)(6) deposition. Intervenor Br. at 14 & n.8. But again, Defendants did not notice this as part of the deposition—as CACAGNY's counsel noted at the time, the members Ms. Chin identified were in excess of her obligation at the deposition. *See* Chin Dep. 47:15–48:1; *see also* Ex. 4 to Kieser Dec. And the fact that CACAGNY produced no formal list of members with children in response to Defendants' Requests for Production is consistent with Ms. Chin's testimony that CACAGNY does not formally track such things. CACAGNY may submit declarations that go beyond the scope of the deposition and do not contradict it. *See supra* n.6; *see also Parents Involved*, 551 U.S. at 718 (relying on affidavit lodged in Supreme Court even after summary judgment proceedings).

organizational activities. *Contra* Intervenor Br. at 15–16. The Supreme Court does not require a deep dive into organizational governance to establish associational standing. Instead, where "an organization has identified members and represents them in good faith, [Supreme Court precedent does] not require further scrutiny into how the organization operates." *SFFA*, 600 U.S. at 201.[9]

Ms. Chin's unrebutted testimony establishes that CACAGNY has affected members and represents them in good faith. And in any event, Defendant-Intervenors' complaints about CACAGNY's governing structure are meritless. CACAGNY members vote for leadership (Chin Dep. 29:11–30:7), members apply for formal membership and pay dues (Chin Dep. 32:1–11), and members support CACAGNY activities (Chin Dep. 58:5–59:4) (discussing meetings where members expressed approval for CACAGNY's activities). CACAGNY heavily relies on its members to volunteer and support the organization, and members often discuss their interests with leadership, either in meetings or informally. *See* Chin Dep. 14:9–24; 30:12–31:3; 73:6–75:10. And even though CACAGNY did not conduct a formal vote to begin litigation, CACAGNY has member support for its litigation. *See* Chin Dep. 62:3–14. So even if CACAGNY's structure were relevant, it would not help Defendant-Intervenors. CACAGNY satisfies the first *Hunt* prong.

CACAGNY also satisfies the second prong. This lawsuit directly furthers the organization's purpose to advocate for the civil rights of Chinese Americans in New York City. *See* Chin Dep. 24:22–25:10 (discussing CACAGNY's mission statement).[10] Defendant-Intervenors suggest that there is no evidence CACAGNY's suit is in its members' interests.

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[9] Because CACAGNY has members, Defendant-Intervenors' appeal to "indicia of membership" fails. *See SFFA*, 600 U.S. at 201 ("The indicia of membership analysis employed in *Hunt* has no applicability in these cases" where "SFFA *is* indisputably a voluntary membership organization with identifiable members—it is not, as in *Hunt*, a state agency that concededly has no members.").

[10] The parent-member declarations also establish that each member supports CACAGNY's mission and the case. [redacted] Dec. ¶ 2; [redacted] Dec. ¶ 2; Chen Dec. ¶ 2; [redacted] Dec. ¶ 2; [redacted] Dec. ¶ 2; [redacted] Dec. ¶ 2; Wong Dec. ¶¶ 2, 7; Yiatin Chu Dec. ¶ 2.

Intervenor Br. at 15–16. In the end, though, their complaints circle back to the same arguments about CACAGNY's internal governance—effectively an assertion that CACAGNY is not a genuine membership organization. This does not help them any more here than it did under the first prong. Nothing about CACAGNY's internal governance justifies Defendant-Intervenors' speculation that this lawsuit does not further members' interests.

Finally, CACAGNY satisfies *Hunt*'s third prong because individual participation is not necessary. CACAGNY seeks only prospective injunctive and declaratory relief and the association's claims require no individualized proof. *See All. for Open Soc'y Int'l, Inc. v. U.S. Agency for Int'l Dev.*, 651 F.3d 218, 229–30 (2d. Cir. 2011), *aff'd on other grounds*, 570 U.S. 205 (2013); *see also Access 4 All, Inc. v. Trump Int'l Hotel & Tower Condo.*, 458 F. Supp. 2d 160, 172 (S.D.N.Y. 2006) ("Plaintiffs seek only a declaratory judgment and injunctive relief. Thus, an individual member of the association is not required . . . ." (footnote omitted)). Put simply, the merits of CACAGNY's equal protection claim do not depend on the particular characteristics of any individual member. Each member would have standing before his or her child applied, and the nature of the relief sought means "that the remedy, if granted, will inure to the benefit of those members of the association actually injured." *Warth*, 422 U.S. at 515.[11]

[11] Even if the Court believes that some small amount of individualized evidence from a particular member is necessary, this does not preclude associational standing. *See Nat'l Ass'n of Coll. Bookstores v. Cambridge Univ. Press*, 990 F. Supp. 245, 250 (S.D.N.Y. 1997) ("The fact that a limited amount of individualized proof may be necessary does not in itself preclude associational standing."); *see also Bos. Parent*, 89 F.4th at 55 (parent group satisfied third *Hunt* prong seeking admission for specific students even where that "would certainly require some factual showing that some or all of the five students would have been admitted to an Exam School but for the adoption of the Plan"). And in any event, the third *Hunt* prong is merely prudential. *United Food & Com. Workers Union Local 751 v. Brown Grp., Inc.*, 517 U.S. 544, 555–56 (1996).

III. Alternatively, CACAGNY Has Organizational Standing

Should the Court continue to adhere to *Aguayo* despite the Supreme Court's repudiation, it should also refuse to accept Defendants' arguments that *Alliance for Hippocratic Medicine* has abrogated the Second Circuit's permissive organizational standing doctrine. As noted above, the Second Circuit has a long history of permitting organizations to overcome the *Aguayo* bar by pleading institutional injury. *See Ragin*, 6 F.3d at 901–02; *Nnebe*, 644 F.3d at 157; *Centro*, 868 F.3d at 110–11 (majority opinion); *see also Centro*, 868 F.3d at 123 (Jacobs, J., dissenting).

And this Court has already held that CACAGNY has organizational standing in its own right for good reason—CACAGNY has spent (and continues to spend) significant resources to oppose the City's unconstitutional policies. CACAGNY lobbied politicians in Albany in 2019 to oppose the elimination of the SHSAT (Chin Dep. 82:7–84:6) and organized rallies to protect the Specialized High Schools and the admissions process in 2021 and 2024 (Chin Dep. 116:11–24; 65:18–66:4). In doing so, CACAGNY spent valuable time and funding to oppose Defendants' expansion of the Discovery program, all of which could have been spent on other organizational activities that would have benefited CACAGNY and its members, including advocating for Gifted and Talented Programs and expanding access to charter schools. *See* Chin Dep. 92:5–19; 97:6–99:13. That is why this Court held CACAGNY had organizational standing in 2019. *Christa McAuliffe*, 364 F. Supp. 3d at 272. Applying this longstanding doctrine, CACAGNY still has organizational standing, as it has shown more than a "scant" expenditure of resources to oppose the City's admissions overhaul. *Cf. Nnebe*, 644 F.3d at 157.[12]

Connecticut Parents Union represents a turn in the other direction. But, as the City itself says in resisting Supreme Court precedent on associational standing, circuit precedent can typically

[12] *See also* Chin Dec. ¶ 37 (discussing CACAGNY's past and future expenditures).

be overruled only by the Supreme Court or the Second Circuit sitting en banc. *Lotes Co., Ltd. v. Hon Hai Precision Indus. Co.*, 753 F.3d 395, 405 (2d Cir. 2014). So, under the City's theory, *Connecticut Parents Union* could not have overruled previous Second Circuit precedent, as *Alliance for Hippocratic Medicine* was not decided until three years later. And of course, even relying on that theory would be problematic for the City, because it's the same theory the City *rejects* for associational standing.

Then there's the fact that CACAGNY's organizational standing is still the law of the case. Of course, this would ordinarily not matter if there were intervening Supreme Court case law that changed the law, but again, the City urges the Court to ignore Supreme Court precedent on associational standing. The City ultimately wants to have it both ways. It wants to keep the restrictive Second Circuit precedent on associational standing even though it conflicts with Supreme Court precedent, but also wants to rely on new cases apparently narrowing circuit precedent on organizational standing. This Court should not permit such gamesmanship. One way or the other, CACAGNY has standing. Accordingly, this Court should deny Defendants' motions to dismiss.

CONCLUSION

The motions to dismiss should be denied.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of August, 2026, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which shall send notification of such filing to all counsel of record registered with the CM/ECF system.

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