UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

CHRISTA MCAULIFFE INTERMEDIATE SCHOOL PTO, INC., et al.,
Plaintiffs,
v.
DE BLASIO, et al.,
Defendants,
and
TEENS TAKE CHARGE, et al.,
Defendant-Intervenors.

Case No. 1:18-CV-11657 (ER)(OTW)

DEFENDANT-INTERVENORS' REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANT-INTERVENORS' MOTION TO DISMISS FOR LACK OF STANDING

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INTRODUCTION

CACAGNY cannot establish Article III standing. It did not adequately plead associational standing in its complaint and cannot establish standing on that basis now, especially as it relies on evidence produced for the first time in response to this motion. As the Supreme Court has instructed, standing is determined "as of the commencement of suit," and CACAGNY cannot "retroactively create jurisdiction" using declarations it produced for the first time in its opposition briefing. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 569 n.4–5 (1992). CACAGNY likewise cannot establish organizational standing because it fails to identify evidence that the Policy *caused* it to expend resources. CACAGNY cannot rely on either theory, and this case should be dismissed.

ARGUMENT

I. CACAGNY Cannot Establish Associational Standing

A. CACAGNY Failed to Plead Associational Standing

CACAGNY did not plead associational standing at the outset. Plaintiffs "bear[] the burden of establishing standing as of the time [they] brought [a] lawsuit and maintaining it thereafter." *Carney v. Adams*, 592 U.S. 53, 59–60 (2020) (citing *Lujan*, 504 U.S. at 561). To carry this burden, CACAGNY "must clearly allege facts [in its complaint] demonstrating each element" of standing. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016) (citation modified). To plead associational standing, an organization must provide clear and plausible facts beyond mere conclusions and labels, alleging: "(1) its members would otherwise have standing to sue in their own right; (2) the interests it seeks to protect are germane to the organization's purpose; and (3) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Fac., Alumni, & Students Opposed to Racial Preferences v. N.Y. Univ.*, 11 F.4th 68, 75 (2d Cir.

2021) [hereinafter *FASORP*] (quoting *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977)).

Only one paragraph of the complaint touches on this, and it falls short of what is required. In paragraph 8, CACAGNY only alleged that 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." Compl. ¶ 8, Dkt. No. 1. This does not satisfy the first *Hunt* element, that any CACAGNY members at the time of filing would "have standing to sue in their own right," 432 U.S. at 343. "The complaint must 'clearly allege facts demonstrating' that there is a real party in interest who has suffered (or will suffer) an injury that is actual or imminent, traceable to the defendant, and redressable by the court." *Doe v. Hochul*, 139 F.4th 165, 181 (2d Cir. 2025) (citation omitted).

The complaint not only lacked details of who the real parties are but also failed to describe with any particularity an injury-in-fact experienced by those members because of the Policy. The complaint includes only a bare gesture at the existence of members. Even if this were construed to allude to associational interests, it would not suffice. "Self-description[s] of the activities of its members," are insufficient to establish a member's injury-in-fact, *FASORP*, 11 F.4th at 76, and "a plaintiff's few words of general intent without substantial evidence of plans[] do not support a finding of [an] actual or imminent injury," *Nat'l Prods. Ass'n v. James*, No. 23-cv-08912, 2024 WL 2977683, at *17 (E.D.N.Y. June 13, 2024) (citation modified). The complaint does not allege an injury to any members sufficient for individual standing.

CACAGNY attempts to rely on briefs to show that it pleaded associational standing from the outset. Opp'n 6, Dkt. No. 227. But these briefs were filed after the complaint and cannot be used to cure pleading deficiencies. *Lujan*, 504 U.S. at 569 n.4. Further, the briefs did not provide

evidence of associational standing. Both briefs argue that CACAGNY has associational standing "for similar reasons" as another party, the PTO, who is no longer in this case. *See* Dkt. No. 55 at 4 n.3 (asserting CACAGNY "has associational standing for the same reason as the PTO"); Appellants' Reply Br. 8 n.2, *Christa McAuliffe Intermediate Sch. PTO, Inc. v. de Blasio* [hereinafter *Christa McAuliffe*], No. 19-550 (2d Cir. Aug. 22, 2019), Dkt. No. 70 (asserting "standing for similar reasons [as the PTO]"). CACAGNY cannot borrow another party's standing without providing support of its own. These references to the PTO show CACAGNY knew what is required to plead associational standing and could have done so if it intended to assert this theory.

B. Later Proffered Evidence Cannot Cure CACAGNY's Pleading Deficiencies

CACAGNY argues that testimony from a deposition, taken almost eight years after the complaint was filed, is evidence it pleaded associational standing. Opp'n 6–7. But CACAGNY cannot rely on Chin's vague testimony to supplement an inadequate complaint. *See Lujan*, 504 U.S. at 569 n.4. *Hierholzer v. Guzman* is particularly instructive. 125 F.4th 104, 116 (4th Cir. 2025). In *Hierholzer*, plaintiffs failed to plead facts in their complaint establishing that they were eligible to participate in the challenged program and thus failed to demonstrate standing. *Id*. Plaintiffs tried to cure that deficiency with a later-filed declaration attached to its opposition to the motion to dismiss. *Id*. at 115. The Fourth Circuit rejected that attempt, holding "[a] plaintiff cannot cure pleading deficiencies in the complaint with later-filed supporting documentation." *Id.*

Even if CACAGNY could rely on deposition testimony to cure these deficiencies, Chin's testimony does not establish associational standing. Her testimony is replete with vague statements about alleged members and their children that do not meet the *Hunt* elements. *See, e.g.*, Chin Dep. 52:18–22, Dkt. No. 218-1 (testifying that there are "at least five" CACAGNY members with children who plan to apply to the SHSs in the future, without providing any specific details).

C. Declarations Attached to CACAGNY's Response Are Untimely

CACAGNY cannot rely on the new declarations it offered for the first time as part of its opposition to the instant motion either, because those declarations are untimely and should be precluded. A party is "not allowed to use [] information . . . to supply evidence on a motion" if it failed to timely disclose that information—"unless the failure was substantially justified or is harmless." Fed. R. Civ. P. 37(c)(1). To determine whether preclusion is appropriate, courts consider: "(1) the party's explanation for the failure to comply with the discovery [requirement]; (2) the importance of . . . the precluded [new evidence]; (3) the prejudice suffered by the opposing party as a result . . . ; and (4) the possibility of a continuance." *Softel, Inc. v. Dragon Med. & Sci. Commc'ns, Inc.*, 118 F.3d 955, 961 (2d Cir. 1997). Each of these factors weighs against CACAGNY, and the Court should not allow Plaintiff to "sandbag[]" Defendants and Defendant-Intervenors with new evidence they have had no opportunity to test. *Ebewo v. Martinez*, 309 F. Supp. 2d 600, 607 (S.D.N.Y. 2004).

For the *first* time, CACAGNY offers declarations from alleged members as a basis for associational standing. Several declarations are from individuals introduced for the first time. The declarations state that Member A, Member C, and Chu were members of CACAGNY during discovery. But CACAGNY was asked repeatedly during discovery, pursuant to Rule 34, to produce documents in support of standing, and failed at every turn to produce anything identifying these members, or to provide any other information sufficient to establish associational standing. Defendants' third Requests for Production ("RFP") specifically asked for documents identifying CACAGNY members who were or would be affected by the Policy, or who had children who planned to take the SHSAT. Dkt. No. 218-1 ¶¶ 46–48, 51. CACAGNY produced none. In her deposition, Chin was asked about members with children applying to the SHSs or otherwise impacted by the Policy, but she did not name Members A, B, C, or Chu, nor offered to identify the

names under the protective order. She also did not testify about injuries to members because of the Policy. *See also* Def.-Intervenors' Mem. Supp. Mot. Dismiss 5–6, Dkt. No. 218 ("Mem."). CACAGNY could have identified these members in response to Defendants' fourth set of RFPs also, which sought evidence of standing. *See* Dkt. No. 218-1 ¶ 58. Chin's lack of awareness about members throughout her deposition also calls into question whether CACAGNY's relationship to these members is sufficient for associational standing.

Further, CACAGNY had an obligation to supplement its disclosures—including the identity of witnesses likely to have discoverable information— in a "timely manner" upon discovery of an incomplete record. Fed. R. Civ. P. 26(e); *see also Star Direct Telecom, Inc. v. Glob. Crossing Bandwidth, Inc.*, 272 F.R.D. 350, 358 (W.D.N.Y. 2011) (citing *Allen v. Colgate-Palmolive Co.*, No. 79 CIV. 1076-CSH, 1985 WL 191, at *3 (S.D.N.Y. Jan. 14, 1985)) ("[T]he duty to supplement continues even following the close of discovery."). CACAGNY's failure to produce this information deprives Defendants and Defendant-Intervenors of a meaningful opportunity to test CACAGNY's alleged basis for associational standing. *Colon v. N.Y.C. Hous. Auth.*, No. 16-CV-4540 (VSB), 2024 WL 659938, at *4 (S.D.N.Y. Feb. 16, 2024) (finding prejudice from plaintiff's late disclosure because defendant otherwise would have "been able to conduct timely and appropriate [] discovery and assert challenges to . . . [the] proposed testimony"); *Won v. Amazon.com Servs.*, 807 F. Supp. 3d 178, 184 (E.D.N.Y. 2025). To accept CACAGNY's position would seemingly allow for the submission of evidence that fundamentally changes the nature of their complaint at any point in the litigation.

Finally, the new declarations run afoul of Rule 37(c)(1) because CACAGNY's omissions with respect to these newly offered members are not "'substantially justified' such that [they] can be overlooked," *Won*, 807 F. Supp. 3d at 184 (citing Fed. R. Civ. P. 37(c)(1)). CACAGNY's

citation to *Torrico v. International Business Machines Corp.*, 319 F. Supp. 2d 390, 393 n.2 (S.D.N.Y. 2004), Opp'n 14 n.6, does not save it from its failure to comply with Rule 37(c)(1). *Torrico* is inapplicable. There, the court addressed the application of the "sham affidavit" rule, where the declarant offered two arguably contradictory statements, and only considered the declaration "to the extent it augments, without contradicting, his deposition testimony, addresses issues not explored thoroughly in that deposition, or finds support in other evidence in the record." *Torrico*, 319 F. Supp. 2d at 393 n.2. Here, the declarants at issue provided no prior testimony to augment; standing was clearly explored through deposition, *see infra* Section II; and, as the deficiency of the complaint and later briefings show, associational standing is not supported by the record.

D. The New Declarations Do Not Establish Associational Standing

Even if the declarations were considered, CACAGNY still cannot satisfy the *Hunt* requirements.

As an initial matter, Chen and Member B are the only declarants who assert their children have taken the SHSAT recently or plan to take the SHSAT soon. With respect to Chen, CACAGNY cannot rely on her to establish standing because she is the plaintiff in a duplicative, related lawsuit in this court. *See Chen v. Mamdani*, No. 1:26-cv-03355-ER (S.D.N.Y filed Apr. 23, 2026). A "plaintiff has no right to maintain two actions on the same subject in the same court against the same defendants at the same time." *Curtis v. Citibank, N.A.*, 226 F.3d 133, 138–39 (2d Cir. 2000) (citation modified).

CACAGNY argues the lawsuits are not duplicative because this case does not seek the admission of any particular child to any particular school, thus implying that the relief sought in the two cases is not the same. Opp'n 15 n. 7. That is misleading. In the prayer for relief in both cases, CACAGNY and Chen, respectively, seek an entry of a judgment declaring that the Policy

violates the Equal Protection Clause and injunctive relief barring Defendants from implementing the Policy. *Compare McAuliffe* Compl. Prayer for Relief ¶ 1 *with Chen* Compl. Prayer for Relief ¶ 1. Additionally, the complaints frequently use identical language, evidence of duplicative litigation. *Compare, e.g.*, *Chen* Compl. ¶ 21 *with McAuliffe* Compl. ¶ 15 (discussing "some of the most rigorous and prestigious public secondary schools in the United States"); *Marciniak v. Mass. Inst. of Tech.*, No. 23 CIV. 10305 (JPC), 2024 WL 4350872, at *9 (S.D.N.Y. Sep. 29, 2024) (litigation was duplicative where complaints were copied "word-for-word"). It may be that *Chen* seeks additional relief in her lawsuit that is not sought here, but ultimately, both lawsuits seek to invalidate the challenged Policy. This reinforces the need to dismiss this case in favor of the other. Moreover, Chen's filing of a duplicative lawsuit shortly before CACAGNY identified her as a purported basis for associational standing only underscores that her claims are not being meaningfully represented here. If CACAGNY were adequately representing Chen, she would not need to litigate the same claims in a parallel proceeding.

CACAGNY also cannot rely on Member B's declaration, because it does not assert ineligibility for the Discovery Program. Member B was not a member of CACAGNY when their older child would have applied to the SHSs, so for the purposes of associational standing, only the younger child is relevant. That child attends a middle school with an ENI of .68, which meets the ENI requirements for the Policy.[1] Thus, depending on the family's economic status, it is possible that this child would be eligible for the Discovery Program and would lack standing. Because the declaration lacks information to the contrary, it cannot be relied on as a basis for associational standing.

[1] N.Y.C. Pub. Schs., *2024–25 School Quality Reports: Dashboard—The Madeleine Brennan School*, https://tools.nycenet.edu/dashboard/#dbn=20K201&report_type=EMS&view=City [https://perma.cc/RG4Y-A3T5] (last visited Aug. 18, 2026).

The remaining members fare no better. Phillip Wong and Member A assert that they are the parents of students who have already graduated from high school. *See* Wong Decl. ¶ 5, Dkt. No. 227-14; Member A Decl. ¶ 4, Dkt. No. 227-8. They therefore cannot establish the prospective injury necessary to support CACAGNY's request for forward-looking injunctive relief. *See Lugo v. City of Troy*, 114 F.4th 80, 86–87 (2d Cir. 2024) ("to satisfy the concrete-harm requirement and to pursue forward-looking, injunctive relief, [CACAGNY] must establish a material risk of future harm [faced by a member] that is sufficiently imminent and substantial." (citation modified)).

Nor can CACAGNY rely on members that do not allege a concrete and particularized injury traceable to the Policy. Chu and Member C assert that their children attend Stuyvesant. Dkt. No. 227-15 ¶ 4; Dkt. No. 227-10 ¶¶ 4, 7. Member D says one of their children graduated in 2023 and another already went through the admissions process and was not admitted. Dkt. No. 227-11 ¶¶ 4, 7. Their declarations do not connect a concrete injury to the Policy. They do not attest that the Policy caused any child to be denied admission or assert any other particularized injury-in-fact. The declarations of Chu and Members C and D therefore do not provide sufficient information for associational standing.

Finally, Member E's child resides in and attends school in New Jersey, and the declaration does not say the child intends to retake the SHSAT or move to New York City. This declaration is therefore silent on whether the student would currently be eligible for admission. *Christa McAuliffe*, 364 F. Supp. 3d 253, 272 (S.D.N.Y. 2019) (holding that students lacked standing where they would otherwise be ineligible for application and admission to a SHS). Because Member E has not demonstrated individual standing, CACAGNY cannot rely on this declaration for associational standing either. CACAGNY failed to timely offer any evidence to satisfy the *Hunt* requirements, so CACAGNY cannot assert associational standing.

II. CACAGNY Cannot Establish Organizational Standing

CACAGNY cannot establish organizational standing. Organizational standing is not the law of the case. *Cf.* Mem. 20. While this Court discussed organizational standing in a non-dispositive order denying a preliminary injunction, *see Christa McAuliffe*, 364 F. Supp. at 272, the Second Circuit clearly held that CACAGNY had "not demonstrated an injury sufficient to secure injunctive relief, since their purported injury . . . is entirely retrospective." *See Christa McAuliffe*, 788 F. App'x 85, 85 (2d. Cir. 2019). When the case returned to this Court, all plaintiffs filed declarations on standing. Then, Defendants notified the Court that, at that time, they did not intend to challenge plaintiffs' standing. *See* Dkt. No. 133. This Court therefore never addressed whether the declarations were sufficient to overcome the Second Circuit's holding and confer organizational standing. Thus, organizational standing is not the law of the case. If anything, the Second Circuit's decision regarding CACAGNY's lack of standing governs. And, in any event, CACAGNY must establish it has standing at "all stages of litigation." *Hollingsworth v. Perry*, 570 U.S. 693, 705 (2013) (citation omitted). The 2019 order and declarations from 2020 do not suffice to establish that CACAGNY has organizational standing today, especially to seek prospective injunctive relief.

Further, the precedent on standing has shifted. This Court relied on *Ragin v. Harry Macklowe Real Estate Co.* in the 2019 order, which held that a showing of a "perceptible impairment" on an organization's activities was sufficient. 6 F.3d 898, 905 (2d Cir. 1993). Since then, the Second Circuit held that when an organization is not directly regulated by the challenged action, like CACAGNY, *see* Chin Dep. 91:12–14, it can only establish standing by showing it "suffered an involuntary and material burden on established core activities" *because of* the policy. *Conn. Parents Union v. Russell-Tucker*, 8 F.4th 167, 170 (2d Cir. 2021). CACAGNY cannot make that showing.

CACAGNY cannot evade *Connecticut Parents' Union*, *cf.* Mem. 19–20, which remains good law. Even after *FDA v. Alliance for Hippocratic Medicine*, 602 U.S. 367 (2024), the Second Circuit continues to rely on it in opinions on organizational standing. *See, e.g.*, *Conn. Fair Hous. Ctr. v. CoreLogic Rental Prop. Sols.*, *LLC*, 167 F.4th 605, 616 (2d Cir. 2026) (citing *Conn. Parents Union*, 8 F.4th at 172).

Moreover, CACAGNY's argument about its expenditures does not establish that the Policy caused it to divert resources. CACAGNY claims that it "spent valuable time and funding to oppose" the Policy, *see* Opp'n 19, but ignores that none of the identified expenditures were about the Policy. Lobbying in Albany was to preserve the Hecht-Calandra Act, and to oppose the elimination of the SHSAT as a requirement of admission to the SHSs. Those things are not at issue here. *See* Chin. Dep. 82:19–21, 82:25–83:7. The 2021 and 2024 rallies also concerned the preservation of the Hecht-Calendra Act and the SHSAT. *See id.* at 66:5–7. CACAGNY has thus provided no evidence showing that it spent resources to oppose the challenged Policy. *See* Dkt. No. 1 ¶¶ 33–34.

Even if CACAGNY expended resources to oppose the Policy—which it did not—these expenditures were voluntary. CACAGNY cannot establish standing based on resources it voluntarily chose to spend. An organization's "choice [] to focus its resources" on a policy it opposes "'to the detriment of other spending priorities' does not qualify as an injury in fact that confers standing under Article III." *Conn. Fair Hous. Ctr.*, 167 F.4th at 618 (quoting *All. for Hippocratic Med.*, 602 U.S. at 394). CACAGNY cannot establish organizational standing.

CONCLUSION

For these reasons, this case should be dismissed for lack of standing.

Dated: August 18, 2026

Respectfully submitted,

/s/ Donya Khadem

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CERTIFICATE OF COMPLIANCE

Pursuant to Local Civil Rule 7.1, I hereby certify that this memorandum contains 3,172 words, excluding the portions specified in Local Rule 7.1.

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