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' REPLY MEMORANDUM OF LAW IN FURTHER 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) 356-2082
Matter No.: 2018-094646

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

ARGUMENT

POINT I

DECLARATIONS FROM MEMBERS A–D, CHU, AND CHEN SHOULD BE STRUCK AS THEIR DISCLOSURE WAS UNTIMELY 1

A. Plaintiff's Disclosures Were Untimely and the Declarations Should be Struck 1

POINT II

PLAINTIFF STILL FAILS TO ESTABLISH ASSOCIATIONAL STANDING 6

A. The Supreme Court Has Not Overruled the Second Circuit's Longstanding Prohibition Against 1983 Associational Standing 6

B. CACAGNY Does Not Have Associational Standing Under the Law of the Case as There Has Been No Intervening Change in the Law 7

C. Assuming CACAGNY Could Have Associational Standing to Assert Section 1983 Claims, It Still Cannot Satisfy *Hunt*. 9

(a) Member B does not have standing. 10

(b) Moot Claims 11

(c) Declarants Fail to Show any Injury Traceable to the 2018 Discovery Reforms and Thus Do Not Have Standing in their Own Right 12

POINT III

PLAINTIFF CANNOT ESTABLISH ORGANIZATIONAL STANDING 15

CONCLUSION 16

TABLE OF AUTHORITIES

Cases **Pages**

A.H. by E.H. v. N.Y. State Dep't of Health,
147 F.4th 270 (2d Cir. 2025),
cert. denied sub nom.
Disability Rts. N.Y. v. N.Y. Dep't of Health, 146 S. Ct. 1788 (2026).....6, 7

Aguayo v. Richardson,
473 F.2d 1190 (2d Cir. 1973).....6

Altman v. Bedford Cent. Sch. Dist.,
245 F.3d 49 (2d Cir. 2001).....11

Baez v. N.Y. Off. of Temp. & Disability Assistance,
No. 25-1092-CV, 2026 WL 1412962 (2d Cir. May 20, 2026).....16

Bd. of Sch. Comm'rs of Indianapolis v. Jacobs,
420 U.S. 128 (1975).....11

CACAGNY v. Adams,
116 F.4th 161 (2d Cir. 2024).....4, 10, 14

Carroll v. Trump,
151 F.4th 50 (2d Cir. 2025).....7, 8

Chen v. Mamdani,
26 Civ. 03355 (ER).....2

Christa McAuliffe Intermediate Sch. PTO, Inc. v. de Blasio,
364 F. Supp. 3d 253 (S.D.N.Y.),
aff'd, 788 F. App'x 85 (2d Cir. 2019).....2, 11, 13

Christa McAuliffe Intermediate Sch. PTO, Inc. v. de Blasio,
788 F. App'x 85 (2d Cir. 2019).....4

Conn. Citizens Def. League, Inc. v. Lamont,
6 F.4th 439 (2d Cir. 2021).....7, 12

Conn. Citizens Def. League, Inc. v. Thody,
No. 23-724-CV, 2024 WL 177707 (2d Cir. Jan. 17, 2024).....7

Conn. Fair Hous. Ctr. v. CoreLogic Rental Prop. Sols., LLC,
167 F.4th 605 (2d Cir. 2026).....16

Conn. Parents Union v. Russell-Tucker,
8 F.4th 167 (2d. Cir. 2021).....15

Cases **Pages**

Council on Am.-Islamic Rels. N.Y. v. City of N.Y.,
No. 25 Civ. 1936 (NRB),
2026 WL 2085648 (S.D.N.Y. July 20, 2026) 15

DeFunis v. Odegaard,
416 U.S. 312 (1974).....11

Design Strategy, Inc. v. Davis,
469 F.3d 284 (2d Cir. 2006).....2

F.D.A. v. All. for Hippocratic Med.,
602 U.S. 367 (2024).....15

Farm Sanctuary v. U.S. Dep't of Agric.,
No. 24-382-CV, 2026 WL 1030616 (2d Cir. Apr. 16, 2026) 16

Farrakhan v. Anti-Defamation League,
No. 23 Civ. 9110 (DLC), 2024 WL 1484449 (S.D.N.Y. Apr. 5, 2024),
aff'd, No. 24-1237-CV, 2025 WL 24066 (2d Cir. Jan. 3, 2025),
cert. denied, 146 S. Ct. 113 (2025).....7

FASORP v. N.Y. Univ.,
11 F.4th 68 (2d Cir. 2021) 12

Fox v. Bd. Trs. of State Univ. of N.Y.,
42 F.3d 135 (2d Cir. 1994).....11

Hunt v. Wash. Apple Advert. Comm'n,
432 U.S. 333 (1977).....9

Janakievski v. Exec. Dir., Rochester Psychiatric Ctr.,
955 F.3d 314 (2d Cir. 2020).....12

Kelly v. Beliv LLC,
No. 21 Civ. 8134 (LJL),
2024 WL 1076217 (S.D.N.Y. Mar. 12, 2024) 1, 5

Kullman v. N.Y.,
No. 07 Civ, 716, 2009 WL 1562840 (N.D.N.Y. May 20, 2009) 1

League of Women Voters of Nassau Cnty. v. Nassau Cnty. Bd. of Sup'rs,
737 F.2d 155 (2d Cir. 1984).....6

Lujan v. Cabana Mgmt., Inc.,
284 F.R.D. 50 (E.D.N.Y. 2012).....1, 4, 5, 11

Cases **Pages**

Lujan v. Defs. of Wildlife,
504 U.S. 555 (1992).....2, 10, 11, 13

Makarova v. United States,
201 F.3d 110 (2d Cir. 2000).....4

Massapequa Union Free Sch. Dist. v. New York State Bd. of Regents,
809 F. Supp. 3d 33 (E.D.N.Y. 2025),
motion for relief from judgment denied,
No. 23 Civ. 7052 (SJB) (LGD),
2026 WL 961337 (E.D.N.Y. Feb. 23, 2026).....7

Morritt v. Stryker Corp.,
2011 WL 3876960 (E.D.N.Y. Sept. 1, 2011) 1

Murthy v. Missouri,
603 U.S. 43 (2024).....10

N.Y. Cmtys. for Change v. Zayas,
No. 22 Civ. 4298 (RA), 2024 WL 3759449 (S.D.N.Y. Aug. 12, 2024),
aff'd sub nom. Bergnes v. Zayas, No. 24-2434,
2025 WL 1466198 (2d Cir. May 22, 2025) 7, 8

Ne. Fla. Chapter of Associated Gen. Contractors of Am. v. City of Jack.,
508 U.S. 656 (1993).....6

Nnebe v. Daus,
644 F.3d 147 (2d Cir. 2011).....6, 8

Pal v. N.Y. Univ.,
No. 06 Civ. 5892 (PAC) (FM),
2008 WL 2627614 (S.D.N.Y. June 30, 2008) 3

Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1,
551 U.S. 701 (2007).....6

Raymond v. Mid-Bronx Haulage Corp.,
No. 15 Civ. 5803 (RJS),
2017 WL 1251137 (S.D.N.Y. Mar. 31, 2017) 3, 4

Rienzi & Sons, Inc. v. I Buonatavola Sini S.R.L.,
746 F. Supp. 3d 69 (E.D.N.Y. 2024) 3

Rienzi & Sons, Inc. v. N. Puglisi & F. Industria Paste Alientari S.P.A.,
No. 08 Civ. 2540 (DLI)(JMA),
2011 WL 1239867 (E.D.N.Y. Mar. 30, 2011).....5

Cases **Pages**

Russman v. Bd. of Educ. of Enlarged City Sch. Dist. of City of Watervliet,
260 F.3d 114 (2d Cir. 2001).....11, 12

Schneidermesser v. NYU Grossman Sch. of Med.,
No. 21 Civ. 7179 (DEH),
2024 WL 4054372 (S.D.N.Y. Sept. 5, 2024).....2

Small v. Gen. Nutrition Companies, Inc.,
388 F. Supp. 2d 83 (E.D.N.Y. 2005) 3

Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.,
600 U.S. 181, 143 S. Ct. 2141,
216 L. Ed. 2d 857 (2023) 6, 8

Succow v. Bondi,
No. 3:25-CV-250 (SVN),
2025 WL 3677799 (D. Conn. Dec. 18, 2025).....9

United States v. Aquart,
92 F.4th 77 (2d Cir. 2024) 8

United States v. Gill,
748 F.3d 491 (2d Cir. 2014).....9

United States v. Tenzer,
213 F.3d 34 (2d Cir. 2000).....7

Wang v. Ren, No. 20-4216,
2023 WL 1977233 (2d Cir. Feb. 14, 2023).....13

We the Patriots Inc. v. Doyle,
3:24-CV-1054, 2026 WL 592093 (D Conn Mar. 2, 2026) 7

Wortham v. Wantagh Union Free Sch. Dist.,
No. 24 Civ. 3553 (JMA) (SIL),
2026 WL 861169 (E.D.N.Y. Mar. 30, 2026).....7

Statutes

42 U.S.C. § 1983.....5, 6, 7, 8, 9

Fed. R. Civ. P. 12(b)(1).....17

Fed. R. Civ. P. 26.....1, 4

Fed. R. Civ. P. 26(a) 1

Statutes **Pages**

Fed. R. Civ. P. 26(a)(1)(A) 3

Fed. R. Civ. P. 26(a)(1)(A)(i) 1, 4

Fed. R. Civ. P. 30(b)(6).....2

Fed. R. Civ. P. 37.....2

Fed. R. Civ. P. 37(c)(1).....1

ARGUMENT

POINT I

DECLARATIONS FROM MEMBERS A–D, CHU, AND CHEN SHOULD BE STRUCK AS THEIR DISCLOSURE WAS UNTIMELY

Plaintiff submits eight (8) member declarations to oppose Defendants' motion to dismiss for lack of standing. (*See* Dkt. No. 228 Exs. 8–15). Of these eight purported CACAGNY members, Members A–C and Yi Fang Chen have never been identified as members of CACAGNY, and Member D and Yiatin Chu were not identified as individuals that Plaintiff would rely on to support its claims. (*See* Dkt. No. 228 Exs. 8 ("Chen Decl."), 10 ("Chu Decl."), 11 ("Mem. A Decl."), 12 ("Mem. B Decl."), 13 ("Mem. C Decl."), 14 ("Mem. D Decl."). For the reasons set forth below, Defendants object to each as untimely and move to strike Exs. 8, 10–14 from the record and preclude testimony by these declarants.

A. Plaintiff's Disclosures Were Untimely and the Declarations Should be Struck

Fed. R. Civ. P. 26(a)(1)(A)(i) imposes on Plaintiff a continuing obligation to timely identify each person likely to have discoverable information that it might use to support its claims. "[T]o satisfy Rule 26, parties must make an unequivocal statement that they may rely upon an individual on a motion or at trial." *Lujan v. Cabana Mgmt., Inc.*, 284 F.R.D. 50, 73 (E.D.N.Y. 2012) (citing *Kullman v. N.Y.,* No. 07 Civ, 716 (GLS/DRH), 2009 WL 1562840, at *6–8 (N.D.N.Y. May 20, 2009)). "Under Rule 37(c)(1), a party that fails to 'identify a witness as required by Rule 26(a),' is prohibited from using that 'witness to supply evidence on a motion . . . , unless the failure was substantially justified or is harmless.'" *Kelly v. Beliv LLC*, No. 21 Civ. 8134 (LJL), 2024 WL 1076217, at *5 (S.D.N.Y. Mar. 12, 2024) (quoting Fed. R. Civ. P. 37(c)(1)). "The purpose of Rule 26 is 'to prevent the practice of 'sandbagging' an opposing party with new evidence.'" *Id.* (quoting *Morritt v. Stryker Corp.*, 2011 WL 3876960, at *5 (E.D.N.Y. Sept. 1, 2011)). "To

determine whether preclusion is warranted under Rule 37, a court must consider '(1) the party's explanation for the failure to comply with the disclosure requirement; (2) the importance of the testimony of the precluded witnesses; (3) the prejudice suffered by the opposing party as a result of having to prepare to meet the new [evidence]; and (4) the possibility of a continuance.'" *Schneidermesser v. NYU Grossman Sch. of Med.*, No. 21 Civ. 7179 (DEH), 2024 WL 4054372, at *2 (S.D.N.Y. Sept. 5, 2024) (quoting *Design Strategy, Inc. v. Davis*, 469 F.3d 284, 296 (2d Cir. 2006)).

One such surprise declarant is Ms. Chen, who was previously individually named in this litigation and dismissed for lack of standing in 2019. *See Christa McAuliffe Intermediate Sch. PTO, Inc. v. de Blasio*, 364 F. Supp. 3d 253, 272 (S.D.N.Y.), *aff'd,* 788 F. App'x 85 (2d Cir. 2019). Ms. Chen recently commenced a separate individual action before this Court, *see Chen v. Mamdani*, 26 Civ. 03355 (ER), and, until now, has never been identified as a member of CACAGNY in either suit—not in the complaints, the Rule 30(b)(6) deposition, nor in her affidavit filed in her individual action. Ms. Chen now retroactively asserts that she has been a member since 2018 (*see* Chen Decl. ¶ 2), but Plaintiff provides no explanation for the late disclosure of her CACAGNY membership. Ms. Chen cannot now give CACAGNY standing. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 569 n.4 (1992) ("[A] plaintiff cannot retroactively create jurisdiction based on postcomplaint litigation conduct.").

Also prejudicial is CACAGNY's attempt to now rely on declarations by Members A–C to establish associational standing when these witnesses were never identified during discovery. Member A claims to have been a CACAGNY member since 2016 (Mem. A Decl. ¶ 2), Member B since 2026 (Mem. B Decl. ¶ 2), and Member C since 2019 (Mem. C Decl. ¶ 2). Like Ms. Chen, CACAGNY offers no explanation as to why these purported members were not identified in

response to Defendants' discovery requests. In addition, CACAGNY's reliance on the claims of two purported members who had not joined the organization until after the commencement of the lawsuit cannot retroactively support standing now. (*See Small v. Gen. Nutrition Companies, Inc.*, 388 F. Supp. 2d 83, 96–97 (E.D.N.Y. 2005) (finding that purported member could not be considered "for purposes of [the court's] 'associational standing' analysis" where, *inter alia*, plaintiffs "submitted a [] membership list, which includes [the individual]," but where the list was dated "well after the suit was filed"). CACAGNY's failure to provide any of these names during the Chin Deposition, as part of initial disclosures, or in response to requests for production[1] is prejudicial to Defendants who were blind-sided by submission of these declarations and not given the opportunity to cross-examine these witnesses or investigate their claims.

In addition, while Member D and Yiatin Chu were named in the Chin Deposition (*see* Chin Dep. 48:15–50:7), they were never identified as potential witnesses that Plaintiff would use to support its claims. *See Raymond v. Mid-Bronx Haulage Corp.*, No. 15 Civ. 5803 (RJS), 2017 WL 1251137, at *9 (S.D.N.Y. Mar. 31, 2017) ("The law is clear that a party's mere 'knowledge of the existence of a witness does not satisfy the Rule 26(a)(1)(A) disclosure obligation; that obligation is fulfilled only if [the disclosing party] informed [the opposing party] that it might call the witness.'" (quoting *Pal v. N.Y. Univ.,* No. 06 Civ. 5892 (PAC) (FM), 2008 WL 2627614, at *4 (S.D.N.Y. June 30, 2008); *Rienzi & Sons, Inc. v. I Buonatavola Sini S.R.L.*, 746 F. Supp. 3d 69, 79

[1] *See* Dkt. No. 215 ("Jenerette Decl.") Ex. 1 ¶ 46 (Defendants' Third Request for Production seeking "[a]ll documents sufficient to identify Members of CACAGNY and/or the children of members, who have been, are or may be directly impacted by DOIE's 2018 changes to eligibility criteria for the Discovery Program . . . .); *id.* (Plaintiff's "Response to No. 46," stating 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 . . . ."); *id.* ¶ 47 (seeking "[a]ll documents sufficient to identify Members of CACAGNY and/or children of members who plan to take the SHSAT, apply to a specialized high school, and/or plan to attend a specialized high school . . . .").

(E.D.N.Y. 2024) ("'Many courts in this Circuit (including this one) have held that the mere mention of a name in a deposition of interrogatory response is insufficient to satisfy Rule 26(a)(1)(A)(i). Rather, to satisfy Rule 26, parties must make an unequivocal statement that they may rely upon an individual on a motion or at trial.'" (quoting *Lujan*, 284 F.R.D. at 72–73)). Thus, their surprise declarations are likewise prejudicial and should be struck.

Plaintiff offers no explanation for its failure to timely disclose six easily identifiable purported CACAGNY members, other than arguing that "this is the first time anyone has moved to dismiss for lack of standing." [2] (P. Opp. at 13). However, standing is an Article III constitutional requirement and has been at issue throughout this litigation. *See, e.g.*, *CACAGNY v. Adams*, 116 F.4th 161, 168 n.5 (2d Cir. 2024) (citing *Christa McAuliffe Intermediate Sch. PTO, Inc. v. de Blasio*, 788 F. App'x 85 (2d Cir. 2019)). Moreover, Plaintiff itself points out that it has the "burden to establish subject matter jurisdiction by a preponderance of the evidence." (P. Opp. at 6 (quoting *Makarova v. United States*, 201 F.3d 110, 113 (2d Cir. 2000))). Knowing that it must carry this burden, Plaintiff was obligated to not only provide continued disclosure of witnesses that it may rely on to maintain its claims, but also witnesses it would rely on to allege continued standing.

The second factor, which considers the importance of these declarations to the litigation, also weighs in favor of granting Defendants' motion to strike and preclusion. While CACAGNY

[2] On December 5, 2025, Defendants sought an extension of time to seek discovery pertinent to whether CACAGNY "can establish Article III standing." (Dkt. No. 199). In its letter, Defendants noted that "CACAGNY asserts that it has standing because members with children would like to apply to New York City's Specialized High Schools but for the admissions policy allegedly devised to discriminate against Asian-American students. The complaint does not identify any individual members in support of this assertion." (*Id.* at 1). Following completion of that fact discovery, Defendants requested a pre-motion conference in preparation for their motion to dismiss for lack of standing, which was held on May 20, 2026. (*See* Dkt. No. 211–14). CACAGNY failed to identify the eight declarants in their complaint or in response to discovery demands and cannot now rely on these late disclosures.

cannot assert associational standing on behalf of its members for claims brought under 42 U.S.C. § 1983, *see infra* Point II.A–B, were the Court to disagree, these declarations and the Chin Deposition are Plaintiff's sole evidence to support its claim for associational standing. Thus, these declarations are important for Plaintiff's opposition to Defendants' motion to dismiss. Although none of the declarations provide sufficient facts to establish standing, *see infra* Point II.C, the second factor weighs in favor of striking the declarations and preclusion of the witnesses.

Finally, Plaintiff's untimely disclosure of these declarants has prejudiced Defendants and deprived Defendants of the opportunity to test the declarant claims, given the low possibility of reopening fact discovery in this case. *Lujan*, 284 F.R.D. at 71 (finding that the "[p]ossibility of [c]ontinuance" factor "weighs slightly in favor of preclusion, as a continuance would require reopening discovery") (citing *Rienzi & Sons, Inc. v. N. Puglisi & F. Industria Paste Alientari S.P.A.*, No. 08 Civ. 2540 (DLI)(JMA), 2011 WL 1239867, at *4 (E.D.N.Y. Mar. 30, 2011)). Defendants have spent a great deal of time and effort seeking discovery on specific members who were impacted by the 2018 Discovery Reforms and may have standing. (*See* Jenerette Decl. Ex 1; *see generally*, Chin Dep.; Dkt. Nos. 199, 209). While expert discovery has not yet taken place, this case has been ongoing since 2018, and fact discovery has mostly been completed. (Dkt. Nos. 203, 209). Plaintiff's late disclosure has deprived Defendants of the opportunity to depose potential witnesses and to investigate those claims.

Plaintiff provides no explanation for its failure to timely disclose these declarants, and therefore, its failure to do so is neither substantially justified nor harmless. Accordingly, the declarations from Members A–D, Chen, and Chu should not be considered in opposition to Defendants' motion to dismiss. *See, e.g.*, *Kelly*, 2024 WL 1076217, at *8.

POINT II

PLAINTIFF STILL FAILS TO ESTABLISH ASSOCIATIONAL STANDING

A. The Supreme Court Has Not Overruled the Second Circuit's Longstanding Prohibition Against 1983 Associational Standing

Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll., 600 U.S. 181, 143 S. Ct. 2141, 216 L. Ed. 2d 857 (2023) ("*SFFA*") did not abrogate the Second Circuit's longstanding § 1983 associational standing precedent. First, Plaintiff's recitation of the history of *Aguayo v. Richardson*, 473 F.2d 1190 (2d Cir. 1973) and its progeny does nothing more than emphasize the circuit's continued embrace of its prohibition against organizations asserting 42 U.S.C. § 1983 claims on behalf of its members. As Plaintiff itself explains, this precedent has endured since *Aguayo* was decided in 1973, even after the Supreme Court "at least twice permit[ed] an organization to maintain an equal-protection suit on behalf of its members . . . ." (P. Opp. at 10–11 (citing *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))). And yet, the Second Circuit upheld this rule. *See, e.g.*, *League of Women Voters of Nassau Cnty. v. Nassau Cnty. Bd. of Sup'rs*, 737 F.2d 155, 161 (2d Cir. 1984); *Nnebe v. Daus*, 644 F.3d 147, 156 (2d Cir. 2011). The Court reaffirmed this precedent as the law of this circuit in 2025, two years after *SFFA*. *See A.H. by E.H. v. N.Y. State Dep't of Health*, 147 F.4th 270, 278 n.2 (2d Cir. 2025) ("'It 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.'" (quoting *Nnebe*, 644 F.3d at 156)), *cert. denied sub nom. Disability Rts. N.Y. v. N.Y. Dep't of Health*, 146 S. Ct. 1788 (2026).

Notably, CACAGNY does not cite a single case from this circuit that supports its argument that *SFFA* has implicitly or explicitly overruled the Second Circuit's precedent, despite the high

Court rendering its *SFFA* decision more than three years ago. In contrast, the Second Circuit itself has reaffirmed the rule twice since the decision, in both *A.H. by E.H.*, 147 F.4th at 278 n.2 and *Conn. Citizens Def. League, Inc. v. Thody*, No. 23-724-CV, 2024 WL 177707, at *3 (2d Cir. Jan. 17, 2024). In *Conn. Citizens Def. League*, the Court explicitly declined to address any potential conflict raised by *SFFA*. 2024 WL 177707, at *3 ("[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.").

Moreover, numerous district courts in this circuit have continued to follow the prohibition and declined to find that *SFFA* struck down the circuit's rule, as Plaintiff now asks this Court to do.[3]

B. CACAGNY Does Not Have Associational Standing Under the Law of the Case as There Has Been No Intervening Change in the Law

CACAGNY does not have associational standing under the law of this case, and despite CACAGNY's assertions, *SFFA* has not created an intervening change in the law that has altered that determination. "'[G]rounds justifying reconsideration are an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice.'" *Carroll v. Trump*, 151 F.4th 50, 66 (2d Cir. 2025) (quoting *United States v. Tenzer*,

[3] *See N.Y. Cmtys. for Change v. Zayas*, No. 22 Civ. 4298 (RA), 2024 WL 3759449, at *8 (S.D.N.Y. Aug. 12, 2024), *aff'd sub nom. Bergnes v. Zayas*, No. 24-2434, 2025 WL 1466198 (2d Cir. May 22, 2025) (citations omitted); *Farrakhan v. Anti-Defamation League*, No. 23 Civ. 9110 (DLC), 2024 WL 1484449, at *6 (S.D.N.Y. Apr. 5, 2024), *aff'd,* No. 24-1237-CV, 2025 WL 24066 (2d Cir. Jan. 3, 2025), *cert. denied,* 146 S. Ct. 113 (2025); *Massapequa Union Free Sch. Dist. v. New York State Bd. of Regents*, 809 F. Supp. 3d 33, 79 (E.D.N.Y. 2025), *motion for relief from judgment denied,* No. 23 Civ. 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); *We the Patriots Inc. v. Doyle*, 3:24-CV-1054 (JCH), 2026 WL 592093, at *5 (D Conn Mar. 2, 2026) ("The Second Circuit unquestionably has held that, any group lacks associational standing to sue under section 1983 for violations of the rights of its members.").

213 F.3d 34, 39 (2d Cir. 2000)). "With respect to an intervening change in law, this Court has made clear that '[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.'" *Id.* (quoting *United States v. Aquart*, 92 F.4th 77, 93 (2d Cir. 2024)).

Plaintiff's argument that *SFFA* "explicit[ly]," (P. Opp. at 7), and "clearly," (P. Opp. at 12), abrogated the Second Circuit's longstanding precedent that "'an organization does not have standing to assert the rights of its members in a case brought under 42 U.S.C. § 1983'" is unfounded. *N.Y. Cmtys. for Change*, 2024 WL 3759449, at *8 (quoting *Nnebe*, 644 F.3d at 156). In fact, CACAGNY admits that the Second Circuit has not overruled this precedent, stating that "[t]he Second Circuit may eventually have to deal with" *SFFA*, but asks this Court to, "for now," ignore the law of this circuit, and "apply Supreme Court precedent to find that CACAGNY has associational standing." (P. Opp. at 8, 23 (noting that the Second Circuit has yet to overturn the precedent set by *Aguayo* and its progeny)). However, the Supreme Court did not overrule, or even address, the Second Circuit's prohibition on associational standing to assert § 1983 claims on behalf of its members in *SFFA* or in any case before or after.

Tellingly, despite CACAGNY's assertions that "*SFFA* clearly" overruled the Second Circuit's *Aguayo* rule, (P. Opp. at 12), Plaintiff includes in its brief neither the actual standing issue before the high Court nor the true holding of the decision. The standing issue before the Supreme Court in *SFFA* was not whether § 1983 allowed organizations to assert their members' claims on their behalf, but 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). Thus, the Court analyzed only the question of what qualifies as a genuine membership organization. The Court found that "SFFA is indisputably a voluntary membership organization with identifiable members," and

"[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. The holding in *SFFA* did not "implicitly overrule[]" the Second Circuit's precedent nor "explicitly reject[]" its analysis as the Supreme Court did not have occasion to consider either.[4] (*See* P. Opp. at 12 (quoting *United States v. Gill*, 748 F.3d 491, 502 (2d Cir. 2014))).

C. Assuming CACAGNY Could Have Associational Standing to Assert Section 1983 Claims, It Still Cannot Satisfy *Hunt*.

Assuming arguendo that the Court were to consider the merits of CACAGNY's associational standing claim and deny Defendants' motion to preclude the undisclosed declarants, CACAGNY cannot satisfy even prong 1 of the *Hunt* standard as it has not identified a single member with standing in their own right. *Hunt v. Wash. Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977).

CACAGNY submits eight declarations in its attempt to satisfy prong 1 of *Hunt*. *See* Dkt. No. 228 Exs. 8 ("Chen Decl."), 9 ("Wong Decl."), 10 ("Chu Decl."), 11 ("Mem. A Decl."), 12 ("Mem. B Decl."), 13 ("Mem. C Decl."), 14 ("Mem. D Decl."), and 15 ("Mem. E Decl."). Even if the Court were to consider all of the declarations, five of the declarants' claims are moot due to graduation or the student moving out of the City, one is not ripe, and none has established an injury traceable to the 2018 Discovery Reforms challenged by CACAGNY.

[4] Plaintiff argues that "[i]t 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.'" (P. Opp. at 12 n.3 (citations omitted)). But that is exactly the point. Despite arguing that the Supreme Court rejected the Second Circuit's analysis in *Aguayo*, thus rendering it untenable, (*id.* at 11–12), the Supreme Court simply did not consider its analysis, as further evidenced by the fact that *SFFA* addressed only the question of standing and not what statutory rights of action were created under § 1983. That this question was simply not before the Supreme Court is exactly the point. *See Succow v. Bondi*, No. 3:25-CV-250 (SVN), 2025 WL 3677799, at *5 n.5 (D. Conn. Dec. 18, 2025) ("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.").

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). The claims in this case hinge on the allegations "that economically disadvantaged Asian-American students from certain middle schools, who would have been eligible for admission to the SHSs under the prior admissions policy for the Discovery Program, were rendered ineligible for admission under the new policy because the ENI scores of their middle schools were too low." *CACAGNY*, 116 F.4th at 165. But not a single one of the declarants states that their child was rendered ineligible for admission to a SHS because of the 2018 ENI policy or expansion of the Discovery Program. Because none of the declarants has standing in their own right to bring these claims, they cannot form the basis for CACAGNY's standing.

(a) Member B does not have standing.

First, Member B does not have standing as she does not assert that her children, A.F. and I.F., were not or are not eligible for the Discovery Program, nor that they suffered any injury due to the 2018 Reforms. (*See generally*, Mem. B Decl.). Therefore, there is no connection between the challenged policy and the alleged harms. Member B asserts only that A.F. "took the SHSAT in 2024," two years before she joined CACAGNY, and "attends Brooklyn Tech and will graduate in 2029." (*Id.* ¶¶ 2–3). She does not assert that A.F. did not get into a SHS or that her children were at all impacted by the Reforms. Thus, Member B fails to show any injury on behalf of A.F, let alone an injury traceable to the 2018 Reforms.

As for Member B's child, I.F., the declaration states that I.F. will not take the SHSAT until the fall of 2027, presumably for the 2028–29 school year. (*Id.* ¶ 5). During the next year and a half, I.F. "may decide that they do not wish to attend a specialized school. Their current 'some day'

intentions to attend a specialized school are, like those professed by the plaintiffs in *Lujan*, insufficient to show the existence of an imminent injury." *Christa McAuliffe Intermediate Sch. PTO, Inc.*, 364 F. Supp. 3d at 272 (citing *Lujan*, 504 U.S. at 564). Thus, I.F.'s claims are not ripe. CACAGNY cannot establish associational standing through Member B's claims on behalf of either child.

(b) Moot Claims

Next, five of the declarants assert claims that are moot. The claims asserted by Member A, Mr. Wong, Member C on behalf of E.K., and Member D on behalf of D.L. have all been mooted by the student's graduation. *See DeFunis v. Odegaard*, 416 U.S. 312, 319–20 (1974); *Russman v. Bd. of Educ. of Enlarged City Sch. Dist. of City of Watervliet*, 260 F.3d 114, 119 (2d Cir. 2001) ("Mootness is a recurring phenomenon in students' suits to vindicate constitutional rights associated with the conditions of their education: a student's graduation ends his individual interest in the conditions of education at his former school." (citing *Bd. of Sch. Comm'rs of Indianapolis v. Jacobs,* 420 U.S. 128, 129–30 (1975) (per curiam)); *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[.]"). Member A's child, Y.L., graduated from Stuyvesant in 2025 (Mem. A Decl. ¶ 4); Member C's child, E.K., graduated from Stuyvesant in 2026 (Mem. C Decl. ¶ 4); Member D's child, D.L., graduated from Brooklyn Tech in 2023 (Mem. D Decl. ¶ 4); and Mr. Wong's child, A.W., graduated in 2023 (Wong Decl. ¶ 5). Accordingly, the graduation of these students renders the claims moot, and their declarations cannot support CACAGNY's associational standing claim.

Member E likewise does not have standing as his relocation to New Jersey rendered his claim moot. (*see* Mem. E Decl. ¶ 5). *See Altman v. Bedford Cent. Sch. Dist.*, 245 F.3d 49, 73–74 (2d Cir. 2001) (concluding that moving out of the school district rendered plaintiffs' claims against

the school district moot). Member E's injury can no longer be redressed by a favorable decision in this action as he is no longer a resident of New York State or New York City, and therefore not subject to New York City's public school system nor eligible for its SHSs. (*See Russman*, 260 F.3d at 119 (holding that because the student "is no longer attending school, . . . and her parents have expressed no intention to re-enroll her in the future. . . . a favorable decision from this court would not immediately inure to her benefit, rendering the case moot"); *Conn. Citizens Def. League, Inc. v. Lamont*, 6 F.4th 439, 444 (2d Cir. 2021) ("'If, as a result of changed circumstances, a case that presented an actual redressable injury at the time it was filed ceases to involve such an injury, it ceases to fall within a federal court's Article III subject matter jurisdiction and must be dismissed for mootness.'" (quoting *Janakievski v. Exec. Dir., Rochester Psychiatric Ctr.*, 955 F.3d 314, 319 (2d Cir. 2020))). Therefore, Member E's claims are moot, and the Court lacks subject matter jurisdiction to adjudicate the alleged injuries.

(c) Declarants Fail to Show any Injury Traceable to the 2018 Discovery Reforms and Thus Do Not Have Standing in their Own Right

CACAGNY's argument that all that is required to establish standing is "membership and application" is incorrect. (P. Opp. at 16). Under Article III, the declarants must show that they suffered an injury that is traceable to the alleged harm that can be redressed by the Court. Those are core tenants of standing. At this stage in this litigation, merely stating that unknown members have children that have or will apply for the SHSAT without facts establishing an injury traceable to the 2018 Discovery Reforms is insufficient. *See FASORP v. N.Y. Univ.*, 11 F.4th 68, 77–78 (2d Cir. 2021) (holding that plaintiff failed to "to show that its members have suffered an injury-in-fact" and "has thus not demonstrated it has standing based on injuries to its members"); *id.* at 76 ("FASORP effectively asks us to accept a 'self-description of the activities of its members' and to conclude that 'there is a statistical probability that some of those members are threatened with

concrete injury.' Such allegations are plainly insufficient to show that FASORP's members have suffered the requisite harm here.").

The remaining declarations that CACAGNY offers as evidence of its associational standing are those of Member C on behalf of N.K., Member D on behalf of M.L., Yiatin Chu on behalf of N.C., and Yi Fang Chen on behalf of M.P. Two of those children, N.K. and N.C., are attending Stuyvesant, and anticipate graduating in 2030 and 2029, respectively. (*See* Mem. C Decl. ¶ 7; Chu Decl. ¶ 4). But the students who were admitted to Stuyvesant through the SHSAT scored high enough to be admitted to any SHS and would not have been eligible for the Discovery Program before or after the 2018 Reforms. Thus, N.K. and N.C. cannot show an injury traceable to the 2018 Discovery Reforms.

Ms. Chen asserts that M.P., whose anticipated graduation year is 2030, was admitted to Brooklyn Tech, and that he missed the cutoff for his top choice, Stuyvesant. (Chen Decl. ¶ 4). But Ms. Chen was dismissed from this action for lack of standing eight years ago. *See Christa McAuliffe*, 364 F. Supp. 3d at 272; *see Lujan*, 504 U.S. at 569 n.4 (noting that federal jurisdiction relies entirely "'on the facts as they exist when the complaint is filed'") (citation omitted). Moreover, she has filed a separate action challenging the 2018 Discovery Reforms and cannot support standing here as both cases challenge the same government program. *See, e.g.*, *Wang v. Ren*, No. 20-4216, 2023 WL 1977233, at *1 (2d Cir. Feb. 14, 2023) ("'[P]laintiffs have no right to maintain two actions on the same subject in the same court, against the same defendant at the same time.'") (citation omitted)). Moreover, until now, Ms. Chen has never alleged she is a member of CACAGNY.

Member D asserts that M.L., whose anticipated graduation year is 2028, missed the cutoff score for Brooklyn Tech and currently attends Townsend Harris High School. (Mem. D Decl. ¶

4). Member D does not state that M.L.'s score did not qualify M.L. for admission to any SHS, only that M.L. missed the cutoff for Brooklyn Tech. And neither Ms. Chen or Member D explains in their declaration how the Discovery Program impacted either child in the admissions process. Thus, the declarations fail to establish an injury traceable to the 2018 Discovery Reforms.

The Second Circuit previously explained the alleged harm in this action as "the exclusion of Asian-American students in numerous middle schools from the Discovery Program . . . ." *CACAGNY*, 116 F.4th at 176 n.8. But because none of the declarants connect an injury to changes to the Discovery Program or its reforms, they have failed to show standing in their own right.

Members A, C–E, and Wong, Chu, and Chen assert that their children "w[ere] not eligible for the Discovery Program," but not one provides facts to support this allegation. (*See* Mem. A Decl. ¶ 5; Mem. C Decl. ¶¶ 5, 8; Mem. D Decl. ¶ 5, 8; Mem. E Decl. ¶ 6; Wong Decl. ¶ 6; Chen Decl. ¶ 7; Chu Decl. ¶ 5). A student may be ineligible for the Discovery Program because they scored too high or too low on the SHSAT, the child's middle school did not meet the 60% ENI threshold, or because the family did not satisfy the individual economic requirements; indeed, meeting individual economic criteria and scoring within the appropriate SHSAT score range were Discovery Program eligibility requirements since before the 2018 Reforms. None of the declarations explain why the child was ineligible. Most importantly for standing, the declarants do not allege that their children were rendered ineligible due to the challenged 2018 Discovery Reforms. CACAGNY has failed to show that these members have an injury traceable to the 2018 Discovery Reforms.

Accordingly, these purported members do not have standing in their own right, and thus, CACAGNY cannot satisfy the first prong to establish associational standing under *Hunt*.[5]

POINT III

PLAINTIFF CANNOT ESTABLISH ORGANIZATIONAL STANDING

Plaintiff asserts that "[i]f 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." (P. Opp. at 10). But this is not so. "'An organization establishes injury in fact where a defendant's conduct "directly affect[s] and interfere[s] with [its] core business activities[.]"' *Council on Am.-Islamic Rels. N.Y. v. City of N.Y.*, No. 25 Civ. 1936 (NRB), 2026 WL 2085648, at *2 (S.D.N.Y. July 20, 2026) (quoting *F.D.A. v. All. for Hippocratic Med.*, 602 U.S. 367, 395 (2024)). Because CACAGNY admits that it is not directly regulated by the challenged reforms, it must show that 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 failed to make this showing.

CACAGNY also argues that if the Court continues to adhere the Second Circuit's rule against 1983 associational standing, "it should also refuse to accept Defendants' argument that *Alliance for Hippocratic Medicine* has abrogated the Second Circuit's permissive organizational standing doctrine." (P. Opp. at 19). But *Alliance for Hippocratic Medicine* not only explicitly

[5] Notably, the only named members in the Chin Deposition are Member E, whose claims are moot; Yiatin Chu, who cannot show an injury as N.C. attends Stuyvesant nor an injury traceable to the 2018 Reforms; and Member D, who failed to show that M.L. did not qualify for admission to any SHS, that M.L.'s purported injury was traceable to the 2018 Reforms, and whose child D.L. graduated in 2023. Thus, neither the Chin Deposition nor the new declarations provide sufficient facts to establish that any member would have standing in their own right to support CACAGNY's claim of associational standing.

rejected CACAGNY's asserted basis for standing—that it has organizational standing because it "has spent (and continues to spend) significant resources to oppose the City's unconstitutional policies," (P. Opp. at 19)—but the Second Circuit adopted and applied this more restrictive view of organizational standing after the Supreme Court's ruling. *See, e.g., Baez v. N.Y. Off. of Temp. & Disability Assistance*, No. 25-1092-CV, 2026 WL 1412962, at *3 (2d Cir. May 20, 2026) ("RPPH argues that it has organizational standing to sue Defendants for damages because it diverted resources from the pursuit of its mission . . . . But we have recently rejected organizational standing premised only on the kind of diversion of resources that RPPH alleges here.") *Conn. Fair Hous. Ctr. v. CoreLogic Rental Prop. Sols., LLC*, 167 F.4th 605, 617 (2d Cir. 2026); *Farm Sanctuary v. U.S. Dep't of Agric.*, No. 24-382-CV, 2026 WL 1030616, at *2 (2d Cir. Apr. 16, 2026) (summary order). Instead of acknowledging the recent Second Circuit cases that directly apply *Alliance for Hippocratic Medicine*, which Defendants previously cited, CACAGNY ignores them and provides no further basis for organizational standing other than voluntary expenditure of resources.[6]

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.

[6] In addition, although CACAGNY argues that it has standing based on its previous and continued expenditure of resources, the Chin Declaration (Dkt. No. 227 Ex. 7) does not support this claim, as the declaration not only shows voluntary expenditure of monetary and volunteer resources, but also that such expenditures ended in 2024. (*See id.* ¶ 36).

Dated: New York, New York
August 19, 2026

STEVEN BANKS
Corporation Counsel of the
City of New York
Attorney for Defendants
100 Church Street, Room 2-169
New York, New York 10007
(212) 356-2082

By: /s/ Abigail Strange
ABIGAIL STRANGE
TONYA JENERETTE
Assistants Corporation Counsel