

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

YI FANG CHEN, individually and on behalf
of her minor children M.P., Ma.P., and P.P.,

Plaintiff,

v.

ZOHRAN MAMDANI, in his official
capacity as Mayor of the City of New York;
KAMAR H. SAMUELS, in his official
capacity as Chancellor of the New York City
Department of Education; and the NEW
YORK CITY DEPARTMENT OF
EDUCATION,

Defendants.

Case No. 1:26-cv-03355-ER

**REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF PLAINTIFF'S
MOTION FOR PRELIMINARY INJUNCTION**

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INTRODUCTION

In 2019, this Court denied a preliminary injunction challenging the same changes to the SHS admissions procedures at issue in this case. Defendants oppose this Motion, making substantially the same arguments they made in 2019, with one notable exception: they do not even attempt to argue that the racial motivations underlying these policy changes could satisfy strict scrutiny. This drastic concession is a result of recent precedent from both the Supreme Court and the Second Circuit. This includes the Supreme Court’s clear admonition in *SFFA v. Harvard* that government officials may not manipulate admissions systems to produce race-based outcomes. And it includes the Second Circuit’s clarification in the related *CACAGNY* case that a single Asian-American student denied admission—*under this very plan*—because of racial manipulations (in other words, a student in M.P.’s exact position) would have a valid equal protection claim, even without the showing of a disparate impact on the Asian-American community at large.

But the legal landscape has cemented even further in Plaintiff’s favor in the months since the filing of the Opening Brief. For the first time since Justice Harlan’s courageous dissent in *Plessy v. Ferguson*,¹ the Supreme Court has adopted the phrase “colorblind Constitution”—a reference to the equal racial lens through which the government must view its citizens. *Allen v. Milligan*, 146 S. Ct. 1377, 1380 (2026) (per curiam). And the Court clarified that the proper reading of *SFFA* is both simple and broad: “if race played a role in a decision made by a government actor, strict scrutiny applie[s].” *Louisiana v. Callais*, 146 S. Ct. 1131, 1146 (2026). Here, Defendants admit to using race to restructure admissions at the specialized schools, and they are unable to defend that use of race under strict scrutiny. Chen is therefore likely to succeed on the merits, and

¹ “Our constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful. The law regards man as man, and takes no account of his surroundings or of his color when his civil rights as guaranteed by the supreme law of the land are involved.” *Plessy v. Ferguson*, 163 U.S. 537, 559 (1896) (Harlan, J., dissenting).

her son M.P. should be admitted to the school he would have attended but-for the Defendants' illegal race-based policies.

Defendants' core arguments, largely recycled from 2019, are not compelling. They argue that Chen seeks a mandatory injunction and is therefore subject to a heightened pleading standard. Doc. 31, Defs.' Opp'n Br. § 1.A. The distinction is semantic here, and in any event, Chen prevails even under a heightened standard. They next argue that M.P. suffers no irreparable harm because his second choice is also a good school. Defs.' Opp'n Br. at 12. But ongoing violations of the Equal Protection Clause are inherently harmful, and no later ruling can restore the lost freshman year at Stuyvesant. They then argue the ENI criteria are facially neutral, Defs.' Opp'n Br. § 1.B.2.(a), but that is of no moment. The record shows that the "race-neutral" criteria were chosen precisely because they would produce a desired *racial* result. Last, they argue that admitting M.P. to Stuyvesant is somehow the wrong remedy. Defs.' Opp'n Br. § 1.C. But that can't be right. If Plaintiff proves that the City unlawfully used race to deny M.P. a Stuyvesant seat, the Court has ample equitable authority to restore him to the position he would have occupied absent that unconstitutional policy.

Post *SFFA* and *CACAGNY*, this case is not close. The City may prefer to describe its actions as an effort to promote diversity. But that is just a more marketable label for choosing and implementing policies based on the racial outcomes they would produce. The Equal Protection Clause forbids that. Because Chen has shown ongoing irreparable harm, a strong likelihood of success on the merits, and equities that overwhelmingly favor preserving M.P.'s right to attend the school he would have entered absent an unconstitutional policy, the motion for a preliminary injunction should be granted.

ARGUMENT

I. Defendants’ Reliance on the Mandatory/Prohibitory Distinction Is a Red Herring

Defendants’ argument that Chen must satisfy a heightened standard, Defs.’ Opp’n Br. § 1.A, because an order requiring M.P.’s admission to Stuyvesant is “mandatory” rather than “prohibitory” relief is inconsequential. “The Second Circuit has questioned whether the distinction between mandatory and prohibitory injunctions makes sense.” *Meisels v. Meisels*, 630 F. Supp. 3d 400, 406 n.7 (E.D.N.Y. 2022). This case highlights precisely why that skepticism is warranted. Chen seeks to stop the ongoing enforcement of a racially motivated and discriminatory policy against her son. Whether the injunction is characterized as mandating the government to admit M.P. or prohibiting the government from enforcing an unconstitutional policy against him is “more semantic than substantive.” *N. Am. Soccer League, LLC v. U.S. Soccer Fed’n, Inc.*, 883 F.3d 32, 36 n.4 (2d Cir. 2018) (citation modified).

As in this Court’s 2019 decision in *Christa McCauliffe*, the relief could best be understood as prohibitory because it restores, rather than alters, the status quo before the unconstitutional policy was implemented. *Christa McCauliffe Intermediate Sch. PTO, Inc. v. de Blasio*, 364 F. Supp. 3d 253, 276 (S.D.N.Y. 2019). Chen only seeks to place M.P. in the position he would have been absent the challenged unconstitutional policy. The relevant status quo is therefore not the current arrangement produced by the allegedly unconstitutional Discovery changes, but “the last actual, peaceable uncontested status which preceded the pending controversy.” *Mastrio v. Sebelius*, 768 F.3d 116, 120 (2d Cir. 2014) (quotation omitted). Here, the last uncontested status is a world in which the SHSAT determines admission without a racially motivated 20-percent set-aside.

In any event, even under a heightened standard applied to mandatory injunctions, Chen prevails. A mandatory injunction requires a “clear showing” of entitlement to relief. *Cacchillo v. Insmad, Inc.*, 638 F.3d 401, 406 (2d Cir. 2011). The record here is not close. The Supreme Court

has ruled that when race plays a role in a decision made by a government actor, strict scrutiny applies. And the Second Circuit in *CACAGNY* already held—on this same record—that a student with individual harm from such discrimination triggers strict scrutiny. Here, the decisionmakers announced their racial purpose in public statements and press releases. Defendants do not meaningfully dispute that M.P. would have been admitted but for the revised policy, and they do not even try to argue that those motivations could satisfy strict scrutiny. If this record does not establish a “clear showing” of entitlement to relief, it is difficult to imagine what record ever could.

II. Ongoing Racial Discrimination Is Irreparable Harm

Defendants lead with the remarkable assertion that racial discrimination in violation of the Equal Protection Clause—unlike violations of the First, Fourth, or Eighth Amendment—is not entitled to a presumption of “irreparable injury” for purposes of a preliminary injunction. Defs.’ Opp’n Br. at 10. But equal protection is not a second-class right. To the contrary, even this Court has recognized that when “Plaintiffs have established a substantial likelihood of success on the merits with respect to their Equal Protection [rights], a presumption of irreparable harm follows.” *Deide v. Day*, 676 F. Supp. 3d 196, 232 (S.D.N.Y. 2023); *see also Faus v. Indian River Cent. Sch. Dist.*, No. 5:25-CV-453, 2025 WL 2490438, at *12 (N.D.N.Y. Aug. 29, 2025) (“where a ‘plaintiff alleges [and convincingly shows] a deprivation of a constitutional right, the Court presumes the existence of irreparable harm’”) (quoting *Christa McAuliffe*, 364 F. Supp. 3d at 276).² And in *Christa McAuliffe*, this Court already held that the irreparable harm “condition is satisfied” where “Plaintiffs allege a violation of their right to equal protection.” 364 F. Supp. 3d at 276. The prospective harm here is even more concrete than it was eight years ago. M.P. can never get back

² Instead of citing Equal Protection Clause cases, the Defendants cite cases declining to apply a presumption of irreparable harm to due process violations and Second Amendment cases. *See Mercado v. Noem*, 800 F. Supp. 3d 526, 566 (S.D.N.Y. 2025); *Nat’l Ass’n for Gun Rts. v. Lamont*, 153 F.4th 213, 248 (2d Cir. 2025).

his freshman year at Stuyvesant, the school he would have attended but for Defendants' unconstitutional policy changes.

Defendants' suggestion that there is no harm because Brooklyn Tech is a good school is irreconcilable with *Foulke by Foulke v. Foulke*, 896 F. Supp. 158 (S.D.N.Y. 1995). There, the court declined "to judge the comparative merits" of two schools, recognizing instead that the "educational experiences" offered by different schools are inherently "unique," and that the loss of the chance to enroll in one school before the start of the academic year would be irreparable because final resolution of the case could take "years to come." *Id.* at 160–61. The same is obviously true here.

Defendants' effort to distinguish *Foulke* because it arose in a divorce action is a distinction without a difference. The court's reasoning did not turn on family law; it turned on the irreparable nature of losing a unique educational opportunity. What matters is that, as in *Foulke*, the preliminary injunction represents M.P.'s only chance to attend Stuyvesant at the beginning of his high school career.

Defendants' reliance on *SFFA v. United States Military Academy at West Point* fares no better. The court found no irreparable harm because the prospective plaintiffs still had five more years of eligibility to matriculate at West Point. 709 F. Supp. 3d 118, 137 (S.D.N.Y. 2024). M.P. has no comparable opportunity. In less than two months, he will permanently lose the chance to begin his high school education at Stuyvesant. A later merits ruling cannot restore the ninth-grade experience M.P. will lose if relief is denied now. With the school year fast approaching, this is the textbook definition of "injury that is . . . actual and imminent, and one that cannot be remedied if

a court waits until the end of trial to resolve the harm.” *Faiveley Transp. Malmo AB v. Wabtec Corp.*, 559 F.3d 110, 118 (2d Cir. 2009) (quotation omitted).³

III. Chen Is Likely to Succeed on the Merits

Defendants argue that Chen is unlikely to succeed on the merits because the revised Discovery criteria are facially neutral and were adopted without discriminatory intent. That position cannot be squared with current law or the record.

A. There Is No Avoiding Strict Scrutiny

The governing rule is now straightforward. The Supreme Court has confirmed that our Constitution is “colorblind.” *Allen*, 146 S. Ct. at 1380. Accordingly, in “racial-discrimination cases under the Equal Protection Clause . . . if race *played a role* in a decision made by a government actor, strict scrutiny applie[s].” *Callais*, 146 S. Ct. at 1146 (emphasis added) (citing *SFFA* and *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265–66 (1977)). Virtually “any use of race in government decisionmaking generally triggers strict scrutiny.” *Id.* at 1147 (emphasis in the original). Indeed, Judge McMahon recently cited *Callais* in this very context, affirming that “[w]hen the government uses race to create a classification for purposes of official action, the government must satisfy strict scrutiny.” *Am. Council of Learned Societies v. Nat’l Endowment for the Humanities*, No. 25-CV-3657 (CM), 2026 WL 1256545, at *55 (S.D.N.Y. May 7, 2026) (citation omitted) (the termination of grants by DOGE using race-based search terms triggered strict scrutiny). The Court further clarified that even if somehow strict scrutiny did not apply, “the ordinary rational-basis rule gives way when the Government classifies by race, alienage, or

³ Plaintiff does not allege any denial of M.P.’s general right to an education; Defendants’ citation to cases in that context (Defs.’ Opp’n Br. at 14) are irrelevant.

national origin because these factors are *so seldom relevant to the achievement of any legitimate state interest*. . . .” *Id.* at *58 (cleaned up).

Tellingly, Defendants do not attempt to satisfy the “daunting two-step examination” of strict scrutiny. *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181, 206 (2023) (*SFFA*). Nor could they. Instead, as demonstrated below, Defendants try to have it both ways: they admit (as they must) the clear racial motives shown in the record, while nevertheless claiming to lack any discriminatory intent. But while the final changes made to the Discovery Program were racially neutral on their face, Defendants admit (1) that race was extensively considered in the decision-making process, and (2) that those changes were adopted with an *express racial purpose*: to increase the number of certain racial minorities in the SHSs, but not Asian-Americans. Defendants argue that this does not count as “racial discrimination,” because they allegedly lacked any intent to cause harm, and that therefore only rational basis scrutiny should apply. But that is not the law after *SFFA* and *Callais*.

B. Defendants Intentionally Used Race to Shape Admissions

Defendants claim that the documents produced in the *Christa McAuliffe* case do not show intent to discriminate against Asian students, but instead only show that Defendants “were aware that the proposed changes could increase SHS admission offers to Black and Latino students . . . and could result in an overall reduction of offers to Asian-American students[.]” Defs.’ Opp’n Br. at 20. That is not correct—Defendants’ public statements and internal documents show not just a vague awareness of race, but that the changes to the Discovery Program were chosen *because* of their expected racial impact, not in spite of it. *See* Doc. 15, Pl.’s Br. § IV (collecting public statements and internal documents highlighting Defendants’ racial focus). For example, Defendants’ statements about manipulating admissions to make the demographics of the SHSs “look like New York City” are virtually identical to statements that Judge Vyskocil found to

support an inference of unlawful race-based decision making just two years ago. *Herrara v. N.Y.C. Dep't of Educ.*, No. 1:21-cv-7555-MKV, 2024 WL 245960, at *1–2, *7–8 (S.D.N.Y. Jan. 23, 2024).

Deputy Chancellor Wallack's 2019 declaration—submitted in support of Defendants' Opposition—also makes the City's motive plain. He stated that there had long been “concern” about the “low percentages of African-American and Latino students” at the SHSs, and that the Chancellor and decision-making group were trying to increase the schools' “racial” and “ethnic” diversity. Doc. 31-3, Wallack Decl. ¶¶ 4, 10.⁴ He further described increasing “racial” and “ethnic” diversity as the group's purpose in expanding Discovery. *Id.* ¶ 10. Consistent with that goal, the City selected a policy its own model showed would increase Black and Latino enrollment while decreasing Asian-American enrollment. *Id.* ¶¶ 31–32. Defendants' brief effectively concedes the point, acknowledging that “internal documents clearly establish that DOE sought to address the underrepresentation of Black and Latino students at SHSs, and to achieve greater racial . . . diversity.” Defs.' Opp'n Br. at 21–22.

That is discriminatory intent. Whatever label Defendants prefer, the Constitution looks to what they did, not what they call it. For equal protection purposes, it does not matter that Defendants deny any intention “to harm Asian-American students or to limit the enrollment of Asian-American students in the eight Specialized High Schools.” Wallack Decl. ¶ 4. What matters is “us[ing] race to create a classification for purposes of official action.” *Am. Council of Learned Societies*, 2026 WL 1256545, at *55. As the Supreme Court and Second Circuit have recognized, it is not possible to prioritize individuals of a certain race without simultaneously *de*-prioritizing

⁴ The Wallack and Chadha declarations were executed for the 2019 *Christa McAuliffe* litigation, not this case. Because they concern a different proceeding, differently situated plaintiffs, and factual circumstances from seven years ago, the Court should afford them limited weight here, especially insofar as they purport to describe current policies, practices, or facts not specific to Plaintiff.

individuals of another race, thereby inflicting harm: “A benefit provided to some [] but not to others necessarily advantages the former group at the expense of the latter.” *SFFA*, 600 U.S. at 218–19; *see also Chinese American Citizens Alliance of Greater New York v. Adams*, 116 F.4th 161, 167 (2d Cir. 2024) (*CACAGNY*) (“SHS admission is a zero-sum game in that admitting more students from a particular demographic means admitting fewer from other demographics.”). That result was not merely foreseeable here; it was expressly modeled and sought. Defendants chose a policy expected to increase black and Hispanic enrollment while reducing Asian-American enrollment. Of course, if government officials adopted an admissions policy with the express goal of increasing white enrollment, no court would accept a disclaimer that they did not mean to harm minority students as a basis to avoid strict scrutiny.

Nor does it matter that Defendants, on the whole, did not achieve all of their racial-balancing goals following implementation of the new admissions program. Defendants spend a significant portion of their brief arguing about increases in Asian-American participation in the Discovery program. Defs.’ Opp’n Br. at 17–19. But the Second Circuit could not have been more clear that this is irrelevant: “a valid equal protection claim can be based on a showing that any individual has been negatively affected or harmed by that discriminatory law or policy based on race, even if there is no disparate impact to members of that racial class in the aggregate.” *CACAGNY*, 116 F.4th at 173. Likewise, Defendants’ attempt to minimize their attempted racial predictions as a mere “rough estimate” (Defs.’ Opp’n Br. at 22 n.21) is irrelevant. Defendants produced internal documents modeling the outcome of the expanded Discovery program that reserved 20% of seats with a 60% ENI minimum—the plan that they implemented—and they expected the total percent of Asian-American students who received Discovery offers to drop from 64% to 38%. Roper Decl. Ex. 5 at ChMc_E 075252. It is of no consequence that the estimate was

“very rough.” It matters that Defendants chose a plan in an effort to engineer a decrease in Asian student participation in the Discovery program. *See, e.g., SFFA*, 600 U.S. at 223 (UNC’s policy of trying to keep its undergraduate student body in line with the racial makeup of the general population of North Carolina was “patently unconstitutional” racial balancing).

C. Facial Neutrality Does Not Shield Intentional Discrimination

Defendants argue that the ENI criteria are “facially neutral” and therefore cannot constitute racial discrimination. Defs.’ Opp’n Br. § 1.B.2.(a). This argument was squarely rejected by the Second Circuit in *CACAGNY* with respect to the very policy at issue here. Facial neutrality does not insulate a policy from strict scrutiny when it was “motivated by discriminatory animus and its application results in a discriminatory effect.” 116 F.4th at 171 (quotation omitted). As *SFFA* put it: “What cannot be done directly cannot be done indirectly. The Constitution deals with substance, not shadows.” 600 U.S. at 230 (citation modified). Indeed, that is the very point of *Arlington Heights*. That case commands courts to review circumstantial and direct evidence to determine whether “race played a role in a decision made by a government actor.” *Callais*, 146 S. Ct. at 1146 (citing *Arlington Heights*, 429 U.S. at 265–66).

Relatedly, Defendants’ argument that they had other, nonracial motives in addition to their racial ones (such as geographic and socioeconomic diversity) does not excuse the use of race. It is enough that the decisionmaker selected a particular course of action “in part” for a racial purpose: “When there is a proof that a discriminatory purpose has been a motivating factor in the decision, [] judicial deference is no longer justified.” *Arlington Heights*, 429 U.S. at 265–66; *see also Callais*, 146 S. Ct. at 1146 (“[I]f race played a role in a decision made by a government actor, strict scrutiny applie[s].”). That is plainly the case here.

D. Defendants’ Precedent Is Distinguishable or Superseded by Recent Caselaw

Defendants’ pre-*SFFA* and pre-*Callais* and pre-*CACAGNY* caselaw is not compelling and should not prevent the Court from acknowledging the government’s obvious racial intent. For example, in *Coalition for TJ v. Fairfax County School Board*, 68 F.4th 864, 886 (4th Cir. 2023), the Fourth Circuit held that rational basis review applied because Asian-American students as a group had suffered no disparate impact from the changed admissions policies. *Id.* at 881. But courts in this Circuit are bound by *CACAGNY*, which expressly rejected that rule. *CACAGNY*, 116 F.4th at 171. Indeed, race-based harm to a single individual is sufficient for a valid equal protection claim. *Id.*

Similarly, Defendants cite *Boston Parent Coalition for Academic Excellence Corp. v. School Committee of City of Boston*, No. 1:21-CV-10330-WGY, 2021 WL 4489840, at *15 (D. Mass. Oct. 1, 2021), *aff’d* by *Boston Parent Coalition for Academic Excellence Corp. v. School Committee for City of Boston*, 89 F.4th 46 (1st Cir. 2023), for the proposition that “animus towards a group” is required for an equal protection claim to succeed. Defs.’ Opp’n Br. 30. But again, that argument is foreclosed in this Court. *CACAGNY*, 116 F.4th at 171.

Searching for in-circuit precedent, Defendants seize on *Justin v. Tingling*, No. 1:22-CV-10370 (NRB), 2026 WL 407860, at *10 (S.D.N.Y. Feb. 13, 2026), for the proposition that “in order to show discriminatory animus, it is not enough to allege that the statute’s enactors were aware of potentially disproportionate impact.” *Id.* Far from helping Defendants, *Tingling* illustrates why they lose. There, the plaintiffs challenged a law excluding convicted felons from jury service, and the court found no evidence that the law had been adopted with the intent to impose a disparate impact on African Americans. *Id.* Here, by contrast, Defendants openly acknowledge that they adopted the challenged policy to increase the representation of certain racial groups at the specialized high schools.

Finally, Defendants’ continued reliance on *Hayden v. County of Nassau* is not sustainable. 180 F.3d 42 (2d Cir. 1999). *Hayden* embraced a framing that *SFFA* explicitly rejected: the use of racial preferences “even in the absence of specific and identified discrimination.” *Id.* at 51; *compare with SFFA*, 600 U.S. at 207 (limiting any remedial use of race to “specific, identified instances of past discrimination that violated the Constitution or a statute”). And, regardless, it ultimately did not involve any of the racial-proxy manipulations that Defendants engaged in here with respect to the Discovery program.

E. Plaintiff Is Also Likely to Succeed on Her Title VI Claim

Plaintiff’s Title VI claim rises or falls with the same intentional-discrimination analysis. A Title VI plaintiff alleging intentional discrimination must show that discrimination was a “substantial” or “motivating” factor in the challenged decision. *Tolbert v. Queens Coll.*, 242 F.3d 58, 69–70 (2d Cir. 2001). Defendants appear to agree. *See* Defs.’ Opp’n Br. at 26–27. Because Plaintiff is likely to succeed in showing that race was a motivating factor behind the Discovery changes, she is also likely to succeed on her Title VI claim.

IV. The Equities and Public Interest Favor the Preliminary Injunction

When this Court denied the preliminary injunction in *Christa McAuliffe*, it emphasized the substantial administrative burden of unwinding eight months of planning and training on the eve of implementing a new citywide program. 364 F. Supp. 3d at 276. Nothing comparable exists here. Defendants identify no meaningful administrative obstacle to admitting one student to a school that enrolls more than 800 students in each entering class. Nor do they explain how admitting one additional student pending resolution of this litigation would impose any concrete burden on the school or any identifiable injury on any other student.

Instead, Defendants invoke generalized concerns about fairness, process, and compliance with Hecht-Calandra. Defs. Opp’n Br. at 28. As explained in Section VI below, admitting M.P.

would not conflict with Hecht-Calandra. But even if it did, generalized concerns about process cannot override the Court’s obligation to halt an ongoing constitutional violation. *See Deide*, 676 F. Supp. 3d at 232–33 (“The Second Circuit has concluded that, where a plaintiff alleges constitutional violations, the balance of hardships tips decidedly in the plaintiff’s favor despite arguments that granting a preliminary injunction would cause financial or administrative burdens on the Government.”).

Defendants’ suggestion that relief for M.P. would “open the floodgates” to litigation is no reason to deny relief in this case. That is not a cognizable reason to deny constitutional relief. The same argument could be made in virtually every challenge to a generally applicable government policy, yet courts routinely adjudicate such cases on the merits.⁵ The balance of equities therefore decisively favors Plaintiff because the public has no legitimate interest in the continued enforcement of an unconstitutional admissions policy.

V. Plaintiff Seeks a Narrow, Constitutionally Appropriate Remedy

Plaintiff seeks a narrow remedy: admission to Stuyvesant for one student who would have been admitted absent Defendants’ unconstitutional admissions policy. That is precisely the type of relief federal courts are instructed to provide because discrimination remedies should restore victims “to the position they would have occupied in the absence of such conduct.” *Mhany Mgmt. Inc. v. Inc. Vill. of Garden City*, 4 F. Supp. 3d 549, 557 (E.D.N.Y. 2014) (quoting *Milliken v. Bradley*, 418 U.S. 717, 746 (1974)). In other words, “the animating purpose of discrimination remedies must always be to put the victims of constitutional injury where they would have been

⁵ And here the concern is especially hollow. With the school year weeks away, any similarly situated applicant would face significant obstacles in establishing a case for comparable preliminary relief. *See Christa McAuliffe*, 364 F. Supp. 3d at 276 (considering timing of an application in determining whether relief is warranted).

but for the injury.” *Id.* (quoting *United States v. City of Yonkers*, 197 F.3d 41, 56 (2d Cir. 1999)) (cleaned up).

Critically, Defendants do not seriously dispute that M.P. would have been admitted but for the Discovery changes. Pl.’s Br. at 18. Nor could they. M.P. missed the Stuyvesant cutoff by only three points, while DOE’s own modeling, showed that reserving 20 percent of seats for Discovery would raise the Stuyvesant cutoff by ten points. Roper Decl. Ex. 8 at ChMc_E_117121. Instead, Defendants propose that M.P. be forced to “compete in a modified application process,” Defs. Opp’n Br at 29—a proposal that would deny meaningful preliminary relief by forcing M.P. to compete under a process already tainted by the constitutional violation. M.P. already competed through the normal and objective SHSAT process. If that process was distorted by an unconstitutional set-aside, the proper remedy is to eliminate the distortion, not force M.P. to run the race a second time.

VI. The Requested Relief Does Not Conflict with Hecht-Calandra

Nor would admitting M.P. to Stuyvesant violate state law. Hecht-Calandra poses no obstacle to the requested relief. The Act requires admissions offers to be based “solely and exclusively” on a competitive examination such as the SHSAT. N.Y. Educ. Law § 2590-g(12)(b) (1994). M.P. does not seek admission through some separate pathway. Rather, he seeks only to be placed in the position he would have occupied had Defendants not implemented their unconstitutional admissions policy, which artificially inflated the cutoff scores of non-Discovery students like him. Even if the requested relief somehow conflicted with Hecht-Calandra, federal law would control. This Court possesses broad equitable authority to remedy constitutional violations because “no state law is above the Constitution.” *See Milliken*, 418 U.S. at 744 (laws regarding school admission “are not sacrosanct and if they conflict with the Fourteenth Amendment federal courts have a duty to prescribe appropriate remedies.”).

CONCLUSION

The Court should grant the motion for a preliminary injunction and order that M.P. be admitted to Stuyvesant High School for the 2026–2027 school year pending resolution of this case.

Dated June 29, 2026.

Respectfully Submitted,

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