

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICAN ALLIANCE FOR
EQUAL RIGHTS,

Plaintiff,

v.

HISPANIC SCHOLARSHIP FUND,

Defendant.

Case No.: 1:25-cv-4207-LLA

ORAL ARGUMENT REQUESTED

**DEFENDANT HISPANIC SCHOLARSHIP FUND'S
MOTION TO DISMISS PLAINTIFF'S AMENDED
COMPLAINT**

Defendant Hispanic Scholarship Fund, by undersigned counsel and pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6), hereby respectfully moves to dismiss the Amended Complaint filed by Plaintiff American Alliance for Equal Rights because (1) Plaintiff lacks standing to bring its claims; (2) Plaintiff's Amended Complaint fails to state a claim under 42 U.S.C. § 1981, 42 U.S.C. § 2000d, or either District of Columbia or California law; and (3) this Court lacks supplemental jurisdiction or should nonetheless decline to exercise jurisdiction over Plaintiff's state law claims.

WHEREFORE, Defendant Hispanic Scholarship Fund respectfully requests that the Court grant its Motion to Dismiss the Amended Complaint, dismiss the Amended Complaint with prejudice, and grant all other just and equitable relief.

January 20, 2026

Respectfully submitted,

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DEFENDANT HISPANIC SCHOLARSHIP FUND'S
MEMORANDUM OF POINTS AND AUTHORITIES IN
SUPPORT OF ITS MOTION TO DISMISS PLAINTIFF'S
AMENDED COMPLAINT

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INTRODUCTION

This case seeks to end decades of scholarships and opportunities that support the educational advancement of Hispanic students. The Court should reject the Alliance’s invitation to dismantle a longstanding and important fixture in American higher education.

The Alliance brings this suit to stop the Hispanic Scholarship Fund (“HSF”) from giving scholarships and support services to students of Hispanic Heritage—a philanthropic effort that HSF has engaged in since 1975. According to the Alliance, HSF is forbidden from directing its charitable giving for the HSF Scholar Program exclusively to Hispanic students because it violates Section 1981, Title VI, the D.C. Human Rights Act (“DCHRA”), and the California Unruh Civil Rights Act (“CUCRA”). The Alliance is wrong.

As an initial matter, the Alliance lacks standing because its student members are not able and ready to apply. (§ I.A.) However, even if at least one of the Alliance’s student members is able and ready to apply, the Alliance nonetheless lacks standing to challenge any part of the HSF application process beyond the Phase I application and eligibility criteria. (§I.B.) This is so because it is highly speculative that the students the Alliance discusses in its Amended Complaint will be selected from among the approximately 70,000 potential applicants to advance to latter stages. And even more speculative that either student will be among the subset select group of Scholars who may elect to opt in to the Fund A Scholar Program due to remaining unmet financial need. Those jurisdictional guardrails limit this case to its proper scope: Phase I of the application for the HSF Scholar Program, which contains the allegedly unlawful eligibility criteria.

As for the merits, the Alliance’s § 1981 claim fails as a matter of law because it fails to allege an essential element for liability—a contract. (§ II.) Scholarships and their attendant benefits are gifts, not contracts. (§ II.A.) HSF is aware of no case, and the Alliance does not identify one, where an educational scholarship awarded by a charitable nonprofit consistent with its charitable

purposes has been deemed a contract. That is no surprise. Scholarships and programs like the HSF Scholar Program fail to meet multiple requirements for contracts. Even more, the First Amendment's protection of charitable expressive conduct places a heavy thumb on the scale against interpreting such scholarships as anything other than gifts.

Nothing the Alliance proffers changes that reality. The Alliance does not even purport to allege a contract for the HSF Scholar Program itself. That was the kind of contract alleged in *Fearless Fund* and numerous other cases brought by the Alliance but is nowhere alleged or found here. Lacking that direct approach, the Alliance fashions multiple novel theories out of whole cloth.

First, the Alliance claims that the Terms of Use and Privacy Policy found on nearly every website on the internet is a contract for the HSF Scholar Program. (§ II.B.1.) That theory is baseless. HSF does not interfere with any website user's ability to make or enforce the Terms of Use or Privacy Policy agreements—they are available to everyone. But even more importantly, the theory violates a key tenet of the rules of contract—namely, that the terms of a contract are set by the written words manifesting the bargained-for exchange between the parties, nothing more. The Terms of Use and Privacy Policy may be contracts, but their limited scope is clear from their written terms. Specifically, in exchange for the rights HSF asks of its website users, the website users get a license to use the website consistent with the terms. That's it. The Alliance asks this Court to read terms, including the HSF Scholar Program, into the Terms of Use and Privacy Policy that are simply not there. That is an invitation that this Court must decline.

Second, the Alliance improperly relies on the Fund A Scholar platform and program as a basis for § 1981 liability. (§ II.B.2.) The "Terms of Use Agreement" at issue there is for a separate

and distinct platform and program that is available only to a select subset of HSF Scholars who elect to opt in and have unmet financial need—it is not an agreement for the HSF Scholar Program.

Third, contrary to the Alliance’s claim, the essays that finalists are asked to complete in Phase II of the application and the periodic surveys that Scholars are asked to complete do not convert the Scholar Program from a gift into a contract. (§ II.B.3.)

Lacking a contract from which to attach § 1981 liability, the Alliance claims that the Free Application for Federal Student Aid (FAFSA) data that HSF allegedly receives is “federal financial assistance” subjecting HSF to liability under Title VI. (§ III.) That is wrong. Even assuming that HSF actually receives the FAFSA data as alleged, the data is not “federal *financial* assistance” as is required for Title VI liability. Indeed, the U.S. Department of Education expressly forbids HSF from monetizing the FAFSA data in any way. Without any economic benefit from the FAFSA data, the data cannot create Title VI liability as “federal financial assistance.”

Neither of the Alliance’s federal claims have any merit. Nor do the state law claims, which should likewise be dismissed. (§ IV.) Before approaching the merits, this Court either may not or should not exercise supplemental jurisdiction over the state law claims. (§ IV.A.) Because the state law claims do not arise from a common nucleus of operative facts with the federal claims, namely because those claims raise numerous distinct questions not at issue for the federal claims, this Court may not exercise supplemental jurisdiction. (§ IV.A.1.) But even if this Court concludes otherwise, it should not exercise supplemental jurisdiction because the federal claims warrant dismissal and this Court should not retain jurisdiction over the state law claims in that circumstance, and the case raises “novel and complex questions of state law” for both state law claims. (§ IV.A.2.) On the merits, the Alliance asks this Court to stretch the DCHRA further than any court before by concluding that a nonprofit scholarship-granting organization is an

employment agency, educational institution, or place of public accommodation. (§ IV.B.1.) This Court should decline that invitation. The Alliance’s CUCRA claim fares no better, likewise, asking this Court to expand that statute beyond any previously interpreted bounds. (§ IV.B.2.)

For these reasons and as further detailed below, the Alliance’s Amended Complaint should be dismissed with prejudice.

BACKGROUND

HSF is the “nation’s largest nonprofit organization supporting Hispanic American higher education.” Am. Compl. ¶ 9, Dkt. 15 (“FAC”).¹ It empowers students and parents with the knowledge and resources to successfully complete a higher education and provides support services and scholarships to as many exceptional students, scholars, and alumni as possible. *See id.* ¶ 49. HSF engages in a range of charitable activities in support of this mission. As the Alliance admits, some of HSF’s programs are available to students without Hispanic heritage. *Id.* Through its scholarships, HSF has gifted over \$750 million to more than 65,000 students, *id.* ¶ 24.

One of HSF’s charitable programs, which directly furthers HSF’s goal of supporting exceptional students, is the HSF Scholar Program. The Scholar Program honors the contributions of exceptional Hispanic American students, *see id.* ¶ 18 (observing program is an “honor”); *id.* ¶ 40 (aim of choosing “best” students), gives the selected students access to support services such as mentoring and conferences, and provides the opportunity to receive scholarship funds, depending on the funds’ availability and relative need, *id.* ¶ 13. Another HSF program is the Fund A Scholar Program, which relies on “[a] public-facing online platform made available by the

¹ HSF’s references to the allegations in the Amended Complaint are not admissions as to the accuracy of the facts alleged. Rather, this motion relies on allegations the Alliance has made in its Amended Complaint because they “are generally taken as true for purposes of a motion to dismiss.” *Wash. All. of Tech. Workers v. U. S. Dep’t of Homeland Sec.*, 892 F.3d 332, 338-39 (D.C. Cir. 2018) (quoting *Hughes v. Rowe*, 449 U.S. 5, 10 (1980) (per curiam)).

Hispanic Scholarship Fund ... that enables individuals to Fund an HSF Scholar.” *Fund a Scholar Terms of Use Agreement*, HSF, perma.cc/D3BV-2D2Z (incorporated by reference at FAC ¶ 45). Participation in the HSF Fund A Scholar Program is based on a person’s status as an HSF Scholar, their election to opt into the program, and their specific unmet financial need as determined by HSF. *Id.*

The 2026 HSF Scholar Program application opened on January 5, 2026. *See* FAC ¶ 14. The Alliance alleges 69,000 applicants are anticipated. *Id.* ¶ 40. The deadline to complete Phase I of the application is February 15, 2026. *Id.* ¶ 15. The application “closes” after this date. *Id.*

The Alliance alleges that once the application closes, HSF will evaluate the submitted applications and then invite only the finalists to participate in Phase II. *Id.* ¶ 16. As of the filing of the Amended Complaint, Phase I is open, thus it is not known nor alleged which applicants will make the cut and be invited to participate in Phase II. Nevertheless, the Alliance alleges that in Phase II, the invited finalists will “submit essays,” which will be reviewed by HSF volunteer readers and staff as part of the process of selecting the “best” students to become Scholars. *Id.* ¶ 40. “After Phase II,” the Alliance alleges HSF will “select[] a total of 10,000 applicants to be HSF Scholars.” *Id.* ¶ 41. As the Alliance admits, only the students who are selected to become HSF Scholars will, in the “after Phase II” period, be invited to fill out “periodic surveys.” *Id.* (referencing “online Scholar surveys”). As the Alliance agrees, after this, “not all HSF Scholars [will] receive a scholarship.” *Id.* ¶ 44. Rather, HSF will select Scholars who demonstrate financial need, an even narrower group whose membership is still more indeterminate at this stage, to receive scholarships in an amount between \$500 and \$5,000, depending on HSF’s assessment of financial need. *See id.* ¶ 13; *id.* ¶ 33 (noting that only Scholars who submit financial documentation to HSF are eligible to be considered for scholarships). Scholarship recipients receive these funds

directly, *id.* ¶ 13, and may “us[e]” the money as they see fit, e.g., ““for tuition, fees, books, and other academic related supplies, as well as for room/board and transportation expenses related to school,”” *see id.* ¶ 44.

In any event, it is only “[a]fter creating an account, [that] students can fill out Phase I of the application.” *Id.* ¶ 35. Prospective “[a]pplicants cannot apply to the program unless they use HSF’s online application portal. To access the portal, students must create an account with HSF.” *Id.* Those who create an account on HSF.net, indeed, all visitors who “access[] or us[e]” the website, agree to the Terms of Use and Privacy Policy. *See Terms of Use Agreement*, HSF, perma.cc/UE33-KQ2T (incorporated by reference at FAC ¶ 38.a). To submit an application to the HSF Scholar Program in Phase I, applicants must “agree” to “Accept terms and conditions,” one of which is that the applicant has read the Terms of Use and Privacy Policy. FAC ¶¶ 36, 38.

The Terms of Use begin by providing that “[t]his page explains the terms by which you may use our online and/or mobile services, web site, and software provided on, or in connection with, the service (collectively the “Service”).” *Terms of Use Agreement*, HSF, perma.cc/UE33-KQ2T. They then provide that “[b]y accessing or using the Service, you signify that you have read, understood, and agree to be bound by this Terms of Use Agreement ... and to the collection and use of your information, as set forth in the HSF Privacy Policy, whether or not you are a registered user of our Service.” *Id.* The Terms of Use also provide that they apply to “all visitors, users, and others who access the Service.” *Id.* And they provide that users’ content remains the users’ but “by providing or sharing User Content through the Service, you agree to allow others to view, edit, and/or share your User Content in accordance with your settings and this Agreement.” *Id.* “For example,” they continue, “by submitting a scholarship application through the Service, you agree

to allow donors to view certain information provided by you and to allow readers of scholarship essays to read and review your essays.” *Id.*

The Privacy Policy explains how “[HSF] collect[s], use[s], disclose[s], and protect[s] information that [it] collect[s] through the process of providing [its] Service, and your choices about the collection and use of your information.” *Privacy Policy*, HSF, perma.cc/Z8Z8-G3D4 (incorporated by reference at FAC ¶ 38.b).

In exchange for agreeing to the Terms of Use and Privacy Policy, users are “granted a non-exclusive, limited, non-transferable, freely revocable license to use the Service for [their] personal, noncommercial use only and as permitted by the features of the Service.” *Terms of Use Agreement*, HSF, perma.cc/UE33-KQ2T. Beyond the Terms of Use, the Privacy Policy, and the Terms and Conditions, the Alliance does not allege any other written contractual agreement that applies to Phase I of the Scholar Program—the only phase open—from which § 1981 liability might arise.

The Alliance filed its Complaint on December 3, 2025, and simultaneously filed a Motion for Preliminary Injunction and a Temporary Restraining Order. Dkt. 1; Dkt. 4. On December 24, 2025, HSF moved to dismiss the Complaint with prejudice and filed a motion opposing the Alliance’s request for interim relief. *See* Dkt. 12; Dkt. 11. In light of HSF’s filings, the Alliance voluntarily withdrew its motion for a temporary restraining order and preliminary injunction, and it has not subsequently filed another motion requesting interim relief. *See* Dkt. 14. On January 9, 2026, it filed its Amended Complaint. HSF now moves the Court to dismiss the Amended Complaint with prejudice.

LEGAL STANDARDS

A claim must be dismissed if the Court lacks subject-matter jurisdiction to entertain the claim. Fed. R. Civ. P. 12(b)(1). If a court dismisses an action’s federal claims for lack of subject-matter jurisdiction, it must also dismiss any state claims a plaintiff has brought. Dismissal is

similarly required when the complaint fails to state a claim “upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). When a court dismisses federal claims under Rule 12(b)(6), factors such as judicial economy, convenience, fairness, and comity will generally point toward declining to exercise jurisdiction over the remaining state-law claims.

Standard for Rule 12(b)(1) Dismissal for Lack of Standing

A motion to dismiss for lack of standing is evaluated under Rule 12(b)(1). *Food & Water Watch, Inc. v. Vilsack*, 808 F.3d 905, 913 (D.C. Cir. 2015). To establish standing, a plaintiff “must state a plausible claim that [they have] suffered an injury in fact fairly traceable to the actions of the defendant that is likely to be redressed by a favorable decision on the merits.” *Id.* (quoting *Humane Soc’y of the U.S. v. Vilsack*, 797 F.3d 4, 8 (D.C. Cir. 2015)). An “injury in fact” is “a harm ... that is concrete and actual or imminent, not conjectural or hypothetical.” *Byrd v. EPA*, 174 F.3d 239, 243 (D.C. Cir. 1999) (quoting *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 103 (1998)). Article III standing requires an injury in fact in order to “screen[] out plaintiffs who might have only a general legal, moral, ideological, or policy objection to a particular ... action.” *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 381 (2024).

In reviewing a Rule 12(b)(1) motion, a court will “presum[e] that general allegations embrace those specific facts that are necessary to support the claim”; it should not “assume the truth of legal conclusions, nor ... accept inferences that are unsupported by the facts set out in the complaint.” *Food & Water Watch*, 808 F.3d at 913 (citations omitted). Finally, a court “may consider materials outside of the complaint” in determining standing. *Id.* (citing *Coal. for Underground Expansion v. Mineta*, 333 F.3d 193, 198 (D.C. Cir. 2003)).

Standard for Rule 12(b)(6) Dismissal for Failure to State a Claim

To survive a Rule 12(b)(6) motion for failure to state a claim, “[a] complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim is facially plausible when ‘the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.’” *Crowley v. Vilsack*, 236 F. Supp. 3d 326, 329 (D.D.C. 2017) (quoting *Iqbal*, 556 U.S. at 678). “The factual allegations in the complaint need not be ‘detailed’; however, the Federal Rules demand more than ‘an unadorned, the-defendant-unlawfully-harmed-me accusation.’” *Id.* (quoting *Iqbal*, 556 U.S. at 678). “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at 678. A motion to dismiss for failure to meet these requirements to state a claim is assessed under Rule 12(b)(6). In assessing a Rule 12(b)(6) motion for failure to state a claim, a court will accept a plaintiff’s factual allegations as true and construe the complaint in plaintiff’s favor, giving it benefit of inferences that can be derived from the facts alleged, but “[t]he court need not accept as true ... either ‘a legal conclusion couched as a factual allegation,’ or ‘inferences ... unsupported by the facts set out in the complaint,’” *Crowley*, 236 F. Supp. 3d at 329-30 (first quoting *Papasan v. Allain*, 478 U.S. 265, 286 (1986); and then quoting *Kowal v. MCI Commc’ns Corp.*, 16 F.3d 1271, 1276 (D.C. Cir. 1994)).

In deciding a Rule 12(b)(6) motion, a court may only consider “the facts alleged in the complaint, documents attached as exhibits or incorporated by reference in the complaint and matters about which the Court may take judicial notice.” *Gustave-Schmidt v. Chao*, 226 F. Supp. 2d 191, 196 (D.D.C. 2002). “A court can consider materials outside the complaint without

converting the motion to one for summary judgment when the documents are incorporated into the complaint and are central to the plaintiff's claim.” *Cole v. Powell*, 605 F. Supp. 2d 20, 23 n.1 (D.D.C. 2009). “If the facts as alleged fail to establish that a plaintiff has stated a claim upon which relief can be granted, then the court must grant the defendant’s Rule 12(b)(6) motion and dismiss the complaint.” *Crowley*, 236 F. Supp. 3d at 330.

ARGUMENT

I. The Alliance Lacks Standing.

The Alliance lacks standing to pursue its claims, and thus this Court lacks subject matter jurisdiction. Organizations may establish standing in only two ways: (1) in the organization’s own right and (2) on behalf of its members. *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 199 (2023). As with its original Complaint, the Alliance makes no attempt to establish that *it* has suffered any injury or is otherwise harmed by the allegedly unlawful acts at issue here. FAC ¶¶ 50-70; *see also* Compl. ¶¶ 9-10, 31-45. Accordingly, the Alliance’s standing depends wholly on whether it has shown ““(1) at least one of [its student] members would have standing to sue in his or her own right; (2) the interests [they] seek[] to protect are germane to the [Alliance]’s purpose; and (3) neither the claim asserted nor the relief requested requires the participation of individual members”” in the litigation. *N.J. Conservation Found. v. FERC*, 111 F.4th 42, 53 (D.C. Cir. 2024) (quoting *Sierra Club v. FERC*, 827 F.3d 59, 65 (D.C. Cir. 2016)), *reh’g denied*, 2025 WL 252910 (D.C. Cir. Jan. 21, 2025). As to all of its claims, the Alliance fails on the first prong because the student members referenced in its Amended Complaint—Student A and Student B—would not have standing to sue on their own right; therefore, the Alliance lacks standing, and the Amended Complaint must be dismissed.

A. Neither Student has demonstrated they are able and ready to apply.

A plaintiff seeking to challenge an allegedly discriminatory selection process must have either applied or been “able and ready” to apply when the complaint was filed to have Article III standing. *See Carney v. Adams*, 592 U.S. 53, 60 (2020) (quoting *Gratz v. Bollinger*, 539 U.S. 244, 262 (2003)). An applicant fails to demonstrate that he is “able and ready” to apply for standing purposes when he states “[he] would apply,” but that statement is not backed up by “supporting evidence” such as “any actual past injury”; when the context “suggests an abstract, generalized grievance, not an actual desire to [be selected],” as at least partially evidenced by a “failure to apply previously when he was eligible”; and when the applicant fails to “sufficiently differentiate[] himself from a general population of individuals affected in the abstract by the [alleged legal wrong] he attacks.” *Id.* at 63-64. The crux of the inquiry here is thus whether Students A and B have taken sufficient steps to differentiate themselves from the millions of theoretical student applicants. *See id.* at 64 (requiring “sufficient[] differentiat[ion]” for standing to be established). They have not. Multiple indicia confirm this truth.

Beginning with Student A, he does not allege a single affirmative step that he has taken to demonstrate that he is “able and ready” to apply other than what he, and millions of other soon-to-be high school graduates have done as general college preparation, i.e., he has failed to show that he has “more than an abstract generalized grievance.” *See id.* at 60, 65. As of the filing of the Amended Complaint, the 2026 application is open and Student A could apply, but he has not. Indeed, he has not even accessed the HSF portal. *See* FAC ¶ 55 (“Student A *would* create an HSF account. He has not yet done so.” (emphasis added)); *id.* ¶ 35. Instead, he has merely reviewed a copy of the application, presumptively from his lawyers, which bolsters the likelihood that he has more interest in this lawsuit than actually being designated an HSF Scholar. *See id.* ¶ 54 (explaining that he has only “reviewed” the “website, benefits, and eligibility requirements” and a

“copy of the ... application”); *see also Carney*, 592 U.S. at 62-64. Accordingly, the Alliance cannot rely on Student A to invoke this Court’s jurisdiction.

Meanwhile, Student B, now in the second half of his second year of law school, has been presumptively eligible to apply for the HSF Scholar Program for at least the last several years since he was a high school senior and throughout his college years, but he has never once applied despite having the ability to do so. *See* FAC ¶¶ 60, 66 (Student B “wants to apply” to the program). The Alliance attempts to manufacture jurisdiction by explaining that “Student B’s application is complete and accurate,” *id.* ¶ 65, but he has not checked the box to agree “to the final terms and conditions” nor submitted it, *id.*, and without submitting the application, he is no differently positioned than the millions of potential applicants. Moreover, despite claiming that he is interested in HSF’s program because it “could help him pay down his law-school debt” he does not claim to have applied for even one scholarship since he “applied for law school” years ago. *See id.* ¶¶ 66, 67.² Accordingly, the Alliance cannot rely on Student B to invoke this Court’s jurisdiction.

The Supreme Court’s recent decision in *Carney* is instructive. There, the plaintiff had not actually *applied* to become a judge, but asserted he ““would apply for any judicial position that [he] thought [he] was qualified for”” and moreover, that he was ““qualified for any position that would come up,”” if it were not for the state constitutional provision at issue which would make doing so futile. *Carney*, 592 U.S. at 61. The Court held that he was not able and ready. *Id.* at 63.

² That Student B allegedly expended an hour to do everything to complete the application apart from clicking two boxes, *see* FAC ¶ 64, and presumably spent even more time in gathering the information with which to fill out the application, yet now refuses to take a step that would cost him mere seconds demonstrates that the Alliance is trying to manufacture standing and further “show[s] a desire to vindicate his view of the law” “not an actual desire to become a [Scholar].” *Carney*, 592 U.S. at 63-64.

So too here. The Alliance relies heavily on the same bare “I would apply ...” language that was insufficient in *Carney*. *Id.* at 63; *see* FAC ¶¶ 52d, 54, 55, 61c (alleging what Students A and B “would” do, but have not done). Also, as was the case in *Carney*, the Alliance then backs up these “few words of general intent” with insufficient “supporting evidence.” *Carney*, 592 U.S. at 63, 64. Notably, in both cases there are no allegations of “any actual past injury.” *Id.* at 63; FAC ¶¶ 51, 60. The students have failed to “differentiate[themselves] from a general population of individuals affected in the abstract by the [program] [they] attack[],” namely the millions of high school seniors, and college and graduate students in America, *see Carney*, 592 U.S. at 64.

Accordingly, the Alliance has failed to allege that Students A or B are “able and ready” to apply, and, therefore, the Complaint must be dismissed.

B. The Alliance lacks standing to challenge any parts of Phases II and III, and the Fund A Scholar program because its claims of injury are too speculative.

As explained above, the Alliance has no standing to challenge the HSF Scholar Program at all because none of its members are able and ready to apply. But even if at least one of its members is ready and able, the Alliance’s standing does not extend beyond Phase I of the HSF Scholar Program application. This is so because it is highly speculative that either Student A or B will advance to latter phases out of the pool of nearly 70,000 applicants if they did apply. “[A]llegations of *possible* future injury are not sufficient” to establish standing, *Ctr. for Democracy & Tech. v. Trump*, 507 F. Supp. 3d 213, 222 (D.D.C. 2020) (quoting *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 409 (2013)), and a court “may reject as overly speculative those links which are predictions of future events (especially future actions to be taken by third parties)” “[w]hen considering any chain of allegations for standing purposes.” *Food & Water Watch*, 808 F.3d at 913 (citations omitted). The upshot of this limitation is that the Alliance may not rest its claims on the Fund A Scholar platform or program, the essay component of the application, or the

surveys Scholars are asked to complete. *In re Gee*, 941 F.3d 153, 160 (5th Cir. 2019) (“[P]laintiffs must establish standing for each and every provision they challenge.”); *cf. DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 353, n.5 (2006) (“[A plaintiff cannot] by virtue of his standing to challenge one government action, challenge other governmental actions that did not injure him.”).

The Alliance alleges that Students A and B satisfy the “eligibility criteria” for the 2026 Scholar Program other than not being of Hispanic heritage, FAC ¶¶ 52, 61, and claims that Student A’s “background ... aligns with HSF’s values,” *id.* ¶ 59, while Student B would be a “good fit” for the Program, *id.* ¶ 68. But merely crossing the “eligibility” threshold does not support a plausible inference that these students are among the “best” students out of what the Alliance alleges will be nearly 70,000 applicants this year. *Id.* ¶¶ 13, 40. It is thus not a reasonable inference from the facts alleged that either student will even be asked to be a finalist and participate in Phase II. These mere allegations of future engagement with the program do not even allege injury, and they fall far short of what is required to establish standing to challenge Phase II. *See Ctr. for Democracy & Tech.*, 507 F. Supp. 3d at 222 (citing *Clapper*, 568 U.S. at 409).

The Alliance also seeks to base its claims on parts of the program that are available to Scholars, namely the completion of surveys and the Fund A Scholar program. The Alliance alleges that students who become HSF Scholars must “fill out ‘periodic surveys,’” and “fill out and submit numerous ‘online Scholar surveys.’” FAC ¶ 41. But it is again highly speculative that the Alliance’s student members will be among the one out of seven students selected as Scholars thus that they will ever be asked to fill out these surveys.

Similarly, the Alliance lacks any standing to drag the Fund A Scholar Program into this case because there are no facts alleged that would support a plausible inference that either Student A or B will be a participant in this program. Not only would Students A and B need to become

HSF Scholars, they would also have to be among the subset of Scholars who opt in to the Fund A Scholar Program and have unmet financial need after HSF issues financial awards.

Through the Fund A Scholar Program, individuals can donate to assist HSF Scholars in meeting their “unmet financial need.” *See Fund a Scholar Terms of Use Agreement*, HSF, perma.cc/D3BV-2D2Z. To be sure, Students A and B allege that they have “unmet financial need.” FAC ¶¶ 58, 67. But a Scholar’s assessment of his own finances is irrelevant to participation in the Fund A Scholar Program. What governs participation is “a [student’s] unmet financial need, *as determined by HSF.*” *Fund a Scholar Terms of Use Agreement*, HSF, perma.cc/D3BV-2D2Z (emphasis added). There are no facts alleged that would plausibly support an inference that either Student’s bare claim of “unmet need” would be considered “unmet need” according to HSF, which determines unmet need via FAFSA Submission Summary and Financial Aid Award Letters, not Scholars’ personal assessment of their financial needs. *Id.*

Moreover, it is pure speculation that either student will have *any* unmet needs for this upcoming year. Student A, for example, alleges that he has applied for a variety of scholarships from both educational institutions and private funders. FAC ¶ 58; *see also id.* ¶¶ 66-67 (discussing Student B). Whether they will or will not receive funding via those applications, and whether any funding awards (including Student B’s scholarship) will be sufficient to fill any “unmet needs” will be resolved via future actions taken by third party financial aid decisionmakers at schools and other scholarship organizations. These are precisely the “overly speculative ... links which are predictions of future events (especially future actions to be taken by third parties)” that courts reject “[w]hen considering any chain of allegations for standing purposes.” *See Food & Water Watch*, 808 F.3d at 913 (citations omitted). In any event, even if either Student were to be selected as an HSF Scholar, and there is no basis to assume they would be, whether either Student will have

unmet financial needs such that they would be eligible for Fund A Scholar Program was indeterminable as of the time the Amended Complaint was filed. *Nat'l Council of Nonprofits v. OMB*, 763 F. Supp. 3d 36, 45 (D.D.C. 2025) (“Standing is ‘assessed as of the time a suit commences.’” (quoting *Chamber of Com. of the U.S. v. EPA*, 642 F.3d 192, 200 (D.C. Cir. 2011))). To the extent the Alliance’s claims rely on the Fund A Scholar program, they must be dismissed.

Accordingly, in adjudicating this case, this Court may not rely on the Alliance’s allegations regarding the essays in Phase II of the application; the surveys requested only of HSF Scholars; or the Fund A Scholar Program, which is only available to a subset of Scholars, because the Alliance lacks standing to challenge those parts of the program. Instead, this case is properly limited to Phase I of the application and eligibility criteria. *See* FAC ¶ 21 (alleging that the “Hispanics-only requirement” is in “the program’s Phase I application”); *see also id.* ¶¶ 77a, 92, 99, 114.

II. The Alliance’s § 1981 Claim Must Be Dismissed.

Section 1981 states that “[a]ll persons ... shall have the same right in every State and Territory to make and enforce contracts ... as is enjoyed by white citizens.” 42 U.S.C. § 1981(a). To state a claim under § 1981, a plaintiff must first sufficiently allege the existence of a contract between the plaintiff and defendant. *Domino’s Pizza, Inc. v. McDonald*, 546 U.S. 470, 475-76 (2006). “It is clear that Section 1981 creates no new body of contract jurisprudence and that the existence of a contract is to be determined through the application of traditional contract principles.” *Player v. State of Ala. Dep’t of Pensions & Sec.*, 400 F. Supp. 249, 264 (M.D. Ala. 1975), *aff’d*, 536 F.2d 1385 (5th Cir. 1976); *see Domino’s Pizza, Inc.*, 546 U.S. at 476-77. “[A] plaintiff cannot state a claim under § 1981 unless he has (or would have) rights under the existing (or proposed) contract that he wishes ‘to make and enforce.’” *Domino’s Pizza, Inc.*, 546 U.S. at 479-80 (quoting 42 U.S.C. § 1981). The HSF Scholar Program is a gift, not a contract. The

Alliance has not sufficiently alleged a contract for the Scholar Program under traditional contract principles and therefore fails to state a claim.

For starters, the Alliance does not even purport to allege a contract for the Scholar Program itself. *See* FAC ¶¶ 34-49 (failing to allege a direct contract for the Scholar Program); *cf. Am. All. for Equal Rts. v. Fearless Fund*, 103 F.4th 765, 775 (11th Cir. 2024) (Section 1981 lawsuit where original contest rules explicitly stated that they constituted “A CONTRACT”); *Am. All. for Equal Rts. v. Founders First Cmty. Dev. Corp.*, No. 24-cv-00327, 2024 WL 3625684, at *3 (N.D. Tex. July 31, 2024); *Patterson v. McLean Credit Union*, 491 U.S. 164, 177-78 (1989); *CBOCS W., Inc. v. Humphries*, 553 U.S. 442, 445-46 (2008). Instead, the Alliance alleges that four items convert the Scholar Program from a gift to a contract. *First*, it claims the “contract” for § 1981 purposes is HSF’s “terms and conditions” and “Terms of Use and Privacy Policy” for HSF.net, HSF’s web portal. FAC ¶¶ 37-38; *see id.* ¶¶ 34-38. Those are the only alleged contracts that have anything to do with Phase I of the application, but that argument fails because those agreements are for access to HSF.net not for the benefit of the Scholar Program or not contracts at all. *Second*, the Alliance alleges that the HSF Fund A Scholar Program, a separate and distinct program only available to a subset of Scholars is a contract for the Scholar Program. *Id.* ¶ 45. That argument fails both because the Alliance does not have standing to challenge it as discussed *supra* at § I.B and because that agreement is not for the HSF Scholar Program. *Third*, the Alliance alleges that the essays that finalists submit in Phase II of the application process and the surveys that only designated Scholars receive convert the Scholar Program from a gift to a contract. *Id.* ¶¶ 40-41. Again, this argument fails both because the Alliance does not have standing to challenge Phase II or beyond and because those latter stage items do not create contractual relationships for the Scholar Program.

Accordingly, lacking a “contract” for § 1981 purposes, the Alliance’s § 1981 claim must be dismissed for failing to state a claim.

A. The HSF Scholar Program is a gift, not a contract.

The HSF Scholar Program, including the scholarship, is a gift, not a contract and thus not subject to § 1981. “[T]he ordinary understanding of ‘scholarships’ and ‘fellowships’ [is] as relatively disinterested, ‘no-strings’ educational grants, with no requirement of any substantial *quid pro quo* from the recipients.” *Bingler v. Johnson*, 394 U.S. 741, 751 (1969). Indeed, as illustrated in the Restatement (Second) of Contracts, when one person promises another money to go to college, but it is clear that the funder is providing a gift rather than paying a salary for college attendance, the money is a mere gratuity. Restatement (Second) of Contracts § 71 cmt. c (citing § 24 ill. 2); *see also Doe v. Kamehameha Schs./Bernice Pauahi Bishop Est.*, 470 F.3d 827, 888-89 (9th Cir. 2006) (Kozinski, J., dissenting) (“I don’t believe section 1981 would apply at all if the schools were run entirely as a philanthropic enterprise and allowed students to attend for free. ... I have found no case where section 1981 has been applied to a charity. Were the schools to forego charging tuition, their relationship to their students would probably not be deemed ‘contractual’ as that term is used in section 1981 and *Runyon* [*v. McCrary*, 427 U.S. 160, 172-73 (1976)].”).

If a grant is structured as a gift, even where the gift is given with a specific purpose, it will not constitute a legally enforceable contract where it lacks the essential elements of a mutual intent to be bound and a *quid pro quo*. *See, e.g., Spirit Lake Tribe of Indians ex rel. Comm. of Understanding & Respect v. Nat’l Collegiate Athletic Ass’n*, 715 F.3d 1089, 1093 (8th Cir. 2013) (“However meaningful the ... grant may have been[] there was no contract because there was no indication of mutual intent to create a legal obligation.”); *Stone v. Comm’r*, 23 T.C. 254, 261-63 (1954) (holding that fellowship did not constitute a contract; although Foundation placed conditions on grants consistent with its tax-exempt status, it did not, *inter alia*, “direct and

control ... the details and means by which the project is carried out, to require conformity with a schedule of working hours, to supervise the work to see that it is satisfactorily done, or ... require reports on the progress of or the completion of the task”), *acq.*, C.B. 1957-1, 5; *United States v. Amirikian*, 197 F.2d 442, 443 (4th Cir. 1952) (expressing in dicta that a gift would not constitute a contract if “made in recognition of past achievements or present abilities, or if payment was given not for services, but out of affection, respect, admiration, charity or like impulses”) (citation omitted).

Here, for those students who are selected as HSF Scholars and also receive scholarship funding, the HSF Scholar Program is the quintessential “disinterested, ‘no-strings’ educational grant[], with no requirement of any substantial *quid pro quo* from the recipients” aimed at helping students of Hispanic Heritage complete a higher education. *Bingler*, 394 U.S. at 751. *First*, the Alliance fails to allege any material terms imposing any kind of promise or performance by HSF Scholars. Instead, the Alliance alleges simple eligibility requirements to apply for the scholarship, including, “be[] of Hispanic Heritage,” FAC ¶ 2, be a “U.S. Citizen, permanent legal resident, or DACA recipient,” *id.* ¶ 31, have a specified minimum GPA, *id.* ¶ 30, “[p]lan to be a full-time student at an accredited” school in the United States in 2026-27, *id.* ¶ 29, and, if students want to be considered for a scholarship award, submit their FAFSA information to HSF by October, *id.* ¶ 33; *see also id.* ¶ 89 (“[S]tudents will send HSF their 2026-27 FAFSA”). That is it. The Alliance does not allege that scholarship recipients are constrained in using their scholarship funds for itemized purposes, instead recognizing that students can use them as they see fit to further their education and to pay for things like tuition, fees, books, and open-ended categories like “other academic related supplies” as well as for room/board and transportation expenses related to school.” *See id.* ¶ 44. There are no requirements as to when the funds are used, or limited items

upon which the funds can be used, and there is no allegation that recipients must provide anything in exchange for the funds or access to the Scholar Program benefits. *Second*, HSF provides Scholars with “invaluable Scholar Support Services and [the opportunity to] be eligible to receive a scholarship, *depending on available funds*.”³ There is no promise to provide funds, even to HSF Scholars; they are only gifted if *available*. Therefore, providing the gift is optional for HSF—that is not a contract.

Similarly, the existence of these conditions does not convert the awarding of the gift into a contest for contract purposes. A gift does not become a contract merely because it is being conferred based on the recipient’s good character and grades. *See Dougherty v. Salt*, 227 N.Y. 200, 201-03 (1919) (promissory note awarded on account of recipient’s good character and grades was a gift). This is so even if the awarded item is something that usually is contractual in nature, like a written promissory note, so long as the gift “was neither offered nor accepted with any other purpose.” *Id.* at 202-03. HSF certainly has no other purpose besides its charitable mission for

³ 2026 HSF Scholar Program Application, HSF (archived Jan. 20, 2026), <https://perma.cc/P44Z-HZM8> (emphasis added); *see also* FAC ¶ 13 (similar). In deciding a Rule 12(b)(6) motion, a court may consider *inter alia* “documents upon which the [] complaint necessarily relies even if the document is produced not by the plaintiff in the complaint but by the defendant in a motion to dismiss[.]” *Dist. No. 1, Pac. Coast Dist., Marine Eng’rs’ Beneficial Ass’n, AFL-CIO v. Am. Mar. Officers*, 75 F. Supp. 3d 294, 306 (D.D.C. 2014) (citation omitted); *Strumsky v. Washington Post Co.*, 842 F. Supp. 2d 215, 218 (D.D.C. 2012). “[A] complaint ‘necessarily relies’ on a document when the complaint ‘quote[s] from and discuss[es a document] extensively.’” *Am. Mar. Officers*, 75 F. Supp. 3d at 306 (quoting *W. Wood Preservers Inst. v. McHugh*, 292 F.R.D. 145, 149 (D.D.C. 2013)). Such is the case here with the 2026 HSF Scholar Program Application, which is where HSF lays out the “Eligibility Requirements” for the 2026 Program. In its Amended Complaint, Plaintiff repeatedly refers to, and relies on, these Eligibility Requirements—indeed, this is where the alleged discrimination at the heart of Plaintiff’s case purportedly occurs. FAC ¶ 2 (discussing HSF Scholar Program’s “first ‘Eligibility Requirement’”); *see also id.* ¶¶ 13, 28-31 (eligibility requirements); *id.* ¶ 77.a (alleging basis of § 1981 claim is discrimination in the form of “explicit eligibility requirement” that applicant be of Hispanic heritage). Accordingly, the Court can rely on the contents of the 2026 HSF Scholar Program Application in deciding this motion. *See, e.g., Slate v. Pub. Def. Serv. for the D.C.*, 31 F. Supp. 3d 277, 287 (D.D.C. 2014).

conferring the monetary and nonmonetary benefits of the Scholar Program, and the Alliance has not alleged one. California, HSF's principal place of business, expressly exempts charitable trusts and 501(c)(3) organizations, like HSF, from the rules governing contests. *See* Cal. Bus. & Prof. Code § 17539.3(b). And HSF is aware of no case where a scholarship from a charitable organization has given rise to a contract.

To put a finer point on it, the Alliance fails to identify any case where an educational scholarship program from a private philanthropic organization has been determined to be a contest creating a contract, and HSF is aware of none. Each of the cases on which the Alliance relies is inapposite. *First*, this case is not *Fearless Fund*. *Fearless Fund* referred to its grant selection process explicitly as a “contest.” *Fearless Fund*, 103 F.4th at 775-76. And in *Fearless Fund*, “the contest end[ed] in the formation of a contractual relationship between Fearless and the winner.” *Id.* at 776. Neither circumstance applies here. The Alliance does not allege that HSF anywhere refers to the Scholar Program selection process as a contest, and the Alliance does not allege that any contract is formed at the conclusion of the selection process between the recipients and HSF. Instead, the Alliance relies on the Terms and Conditions, incorporating the Terms of Use and Privacy Policy, required to use the website and submit a document. *Second*, all of the other cases on which the Alliance relies for this point are cases that employ contests as marketing tools to draw people in and promote a business.⁴ *See Brooklyn Daily Eagle v. Voorhies*, 181 F. 579, 581-83 (C.C.E.D.N.Y. 1910) (considering a statute prohibiting the postmaster from carrying

⁴ The Alliance relies on *Hampton v. Dillard Dep't Stores, Inc.*, 247 F.3d 1091, 1104 (10th Cir. 2001) for the proposition that “[n]early all jurisdictions have adopted the rule that contract law governs the sponsor-contestant relationship.” FAC ¶ 76.b (internal quotation marks in original omitted by Complaint). But that quoted language is taken from a parenthetical in *Hampton* characterizing *Brown v. State*, 230 Wis. 2d 355, 373-81 (Ct. App. 1999), which concerns the contract created by a lottery ticket, which no one disputes gives rise to a contractual relationship.

“advertisement of a lottery” and concluding that the consideration necessary for the existence of a lottery was satisfied where “[a]dvertising and the sales resulting thereby” amounted to a benefit); *Haskell v. Time, Inc.*, 857 F. Supp. 1392, 1395 (E.D. Cal. 1994) (addressing consideration under California’s statutory definition of a contest and finding that “[t]o enlist subscribers, defendants include ‘sweepstakes’ entries with their subscription advertisements”); *Personavera, LLC v. Coll. of Healthcare Info. Mgmt. Execs.*, No. 18-633, 2021 WL 1313108, *1-4, *11 (E.D. Pa. Apr. 8, 2021) (concerning a “contest” to build a scalable product with “Guidelines and the Competitor Agreement” and a “promise[]” to “win a prize”).

Lest there be any doubt that the HSF Scholar Program should be understood as charitable gift-giving, the First Amendment places a heavy thumb on the scale. Awarding scholarships and conferring program benefits *is* expressive conduct. Like other forms of charitable financial activities, e.g., soliciting donations, awarding scholarships implicates a broad variety of speech interests and generally garners First Amendment protection. The Supreme Court has “squarely held, on the basis of considerable precedent, that charitable solicitations ‘involve a variety of speech interests ... that are within the protection of the First Amendment,’ and therefore have not been dealt with as ‘purely commercial speech.’” *Riley v. Nat’l Fed’n of the Blind of N.C., Inc.*, 487 U.S. 781, 787-88 (1988) (discussing holding of, and quoting, *Schaumburg v. Citizens for a Better Env’t*, 444 U.S. 620, 632 (1980)).

Underlining how philanthropic transactions and activities are distinct from business transactions, the Supreme Court has observed that charitable donating aligns the donor with a cause and this “functions as a general expression of support for the recipient and its views.” *See Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 799 (1985) (citing *Buckley v. Valeo*, 424 U.S. 1, 21 (1976) (per curiam)); *cf. Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595,

606-15 (2021) (equating donating money to an organization with joining that organization, treating contributors and members interchangeably in context of compelled disclosure analysis). Put simply, because it conveys a message about which causes it wants to support, an organization's choice about where to spend money is expressive conduct. *See Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288, 294 (1984); *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Boston*, 515 U.S. 557, 573 (1995) (similar).

Under these precedents, the conduct at issue in this case, awarding scholarships and other programmatic benefits, is expressive conduct.⁵ It is both “intend[ed] to convey a particular message,” and the likelihood that the message is understood by others is great, as the Amended Complaint, which references HSF's ideological mission, makes clear. *See Hutchins v. District of Columbia*, 188 F.3d 531, 548 (D.C. Cir. 1999) (citing *Spence v. Washington* for the proposition that “to be expressive, conduct must intend to convey a particular message, and the likelihood of that message being understood by others must be great” (418 U.S. 405, 410-11 (1974))); FAC ¶ 9.

HSF's charitable intent in operating the HSF Scholar Program is clear, and the First Amendment and the ordinary principles of contract law are aligned in considering the relevance of this intent. *See Runyon*, 427 U.S. at 168 (emphasizing that the schools in question were “commercially operated”). The Alliance's allegations are only the most tenuous and minimal alleged indicia of contract. *Supra*, at 16-22. This clearly cannot transform HSF's expressive intent in granting recognition through the Scholar Program into a contract. The Scholar Program conveys a gift. It does not create a contract.

⁵ HSF's non-monetary activities, such as providing mentorships or online programming, are also expressive conduct protected by the First Amendment. *See, e.g., Boy Scouts of Am. v. Dale*, 530 U.S. 640, 649-50 (2000).

In short, scholarships are canonical gifts, and the selection process for determining how to award those gifts does not convert them into contracts. No court has held otherwise, and this Court should not be the first. Indeed, dismissal with prejudice is warranted here because any amendment to the Alliance’s § 1981 claim would be futile. *See Wheeler v. Panini Am., Inc.*, No. CV 22-00763, 2022 WL 17039208, at *8 (D.D.C. Nov. 17, 2022) (explaining that dismissal with prejudice is “warranted” where amendment would be futile because an amended claim would not survive a motion to dismiss (citations omitted)). There is no version of the Alliance’s claim that can change the fundamentals of contract law in a manner that transforms the HSF Scholar Program from a gift into a contract. Accordingly, any iteration of the Alliance’s § 1981 claim will necessarily fail to state a claim.

B. None of the Alliance’s purported contracts are a contract for the Scholar Program.

A contract is “an agreement to do, or refrain from doing, a particular thing, upon a sufficient consideration.” 17A Am. Jur. 2d Contracts § 1; *Ascom Hasler Mailing Sys., Inc. v. U.S. Postal Serv.*, 885 F. Supp. 2d 156, 181-82 (D.D.C. 2012). To show that a contract exists, the Alliance is required to show that the parties have “‘a mutual intent to contract including offer, acceptance, and consideration.’” *Ascom Hasler Mailing Sys.*, 885 F. Supp. 2d at 182 (citation omitted). A “contract must ‘be sufficiently definite as to its material terms, (which include, for example, subject matter, price, payment terms, quantity, quality, and duration).’” *Mero v. City Segway Tours of Wash. DC, LLC*, 826 F. Supp. 2d 100, 105 (D.D.C. 2011) (citation omitted); *see also Malone v. Saxony Coop. Apartments, Inc.*, 763 A.2d 725, 729 (D.C. 2000); *Sully-Miller Contracting Co. v. Gledson/Cashman Constr., Inc.*, 103 Cal. App. 4th 30, 36 (Cal. Ct. App. 2002). The terms of a contract are defined by the parties and must be enforced by the courts. *Cf. United States v. Bank of Am.*, 78 F. Supp. 3d 520, 526 (D.D.C. 2015).

1. The Terms of Use, Privacy Policy, and Terms and Conditions are not contracts for the Scholar Program

To begin, HSF does not rely on race or ethnicity to interfere with any person's right to "make" or "enforce" the Terms of Use and Privacy Policy agreements. 42 U.S.C. § 1981. Those agreements can and are made and enforced by anyone who wishes to access HSF.net. The Alliance does not allege otherwise. The Court can stop there.

To the extent the Terms of Use and Privacy Policy are contracts, they are contracts to use HSF's website, HSF.net, not contracts for access to the benefits of the HSF Scholar Program or guaranteed scholarship funds.⁶ The Terms of Use begins by providing that "[t]his page explains the terms by which you may use our online and/or mobile services, web site, and software provided on, or in connection with, the service (collectively the "Service")." *Terms of Use Agreement*, HSF, perma.cc/UE33-KQ2T. It then provides that "[b]y accessing or using the Service, you signify that you have read, understood, and agree to be bound by this Terms of Use Agreement ... and to the collection and use of your information, as set forth in the HSF Privacy Policy, whether or not you are a registered user of our Service." *Id.* The Terms of Use also provides that it applies to "all visitors, users, and others who access the Service." *Id.* In exchange for agreeing to the Terms of Use and Privacy Policy, users are "granted a non-exclusive, limited, non-transferable, freely revocable license to use the Service for [their] personal, noncommercial use only and as permitted by the features of the Service." *Id.* Notably, users are not granted the right to apply for the Scholar Program or an opportunity to apply for the associated scholarship. *See id.*

Indeed, the Terms of Use makes only a single reference to the scholarship at all. In a section titled "User Content," the Terms of Use provides that:

⁶ HSF's Terms of Use and Privacy Policy are wholly ethnicity neutral. *See Terms of Use Agreement*, HSF; *Privacy Policy*, HSF; FAC ¶ 38.a-b (incorporating Terms of Use and Privacy Policy).

The User Content you create remains yours; however, by providing or sharing User Content through the Service, you agree to allow others to view, edit, and/or share your User Content in accordance with your settings and this Agreement. For example, by submitting a scholarship application through the Service, you agree to allow donors to view certain information provided by you and to allow readers of scholarship essays to read and review your essays.

Id. This singular statement in the Terms of Use, which does no more than authorize third parties to review user content, does not create a contract for the Scholar Program.

The Privacy Policy likewise is not a contract for the Scholar Program or an opportunity to be considered for the program. Indeed, privacy policies are found on nearly every website and in some states are legally *required* for most websites that collect users' data. *See, e.g.,* Cal. Consumer Privacy Act, Cal. Civ. Code § 1798.100 *et seq.* Thus, the “privacy policy explains how [HSF] collect[s], use[s], disclose[s], and protect[s] information that [it] collect[s] through the process of providing [its] Service, and your choices about the collection and use of your information.” *Privacy Policy*, HSF, perma.cc/Z8Z8-G3D4. The Service that the Privacy Policy contemplates providing is the same Service referenced in the Terms of Use, i.e., the HSF.net website and portal. *Id.* (“Capitalized terms that are not defined in this Privacy Policy have the meaning given to them in our Terms of Use.”). Accordingly, the Agreements are intended to be read together granting certain rights to HSF in exchange for the user's license to use HSF.net. *See Terms of Use Agreement*, HSF, perma.cc/UE33-KQ2T (providing license).

Similarly, the Alliance's allegation that HSF's “terms and conditions” is a contract for § 1981 purposes fails. *See* FAC ¶¶ 37-38. Even if it is a contract, it does not concern the benefits of the Scholar Program. Its limited purpose is to incorporate the Terms of Use and Privacy Policy and confirm that an applicant's information is true and accurate. It also informs the applicants that their application materials cannot be returned to them once they submit—that is, once a document is submitted online, HSF's electronic database cannot spit it back out and pretend that it was never

submitted. Submitting an application online is not the same as handing a physical copy of the application to an individual—the individual can hand back the physical copy to the applicant. So HSF is simply informing applicants that their applications “will not be returned” and thus practically become HSF’s property. That is not a contract, that is just a fact.

The Alliance tries to characterize the Terms and Conditions more broadly than it actually is, alleging that it “requires students to give HSF their intellectual-property, privacy, and other rights to the information in their applications and other materials in exchange for a chance to apply, be considered, and win.” FAC ¶ 37. But nothing in the plain terms of the Terms and Conditions even remotely suggests that it is a contract for access to the benefits of the HSF Scholar Program or guaranteed scholarship funds. The proper interpretation of the Terms and Conditions is for this Court to determine based on their plain language. *See Bank of Am.*, 78 F. Supp. 3d at 526. Based on that plain language, not the Alliance’s broad claim, the Terms and Conditions are not a contract or a contract for the Scholar Program.

This is all a far cry from cases like *Fearless Fund*, where the “original contest rules warned applicants, in no uncertain terms, that ‘BY ENTERING THIS CONTEST, YOU AGREE TO THESE OFFICIAL RULES, WHICH ARE A CONTRACT.’” 103 F.4th at 775 (quoting the contest’s Official Rules). There, the contract was expressly related to entering the contest. Similarly, in *Founders First Community*, the defendant did not dispute that the program it offered constituted a contract where there were particular requirements and consideration, including that the recipient business “must be able to add at least one job that pays an average of \$50,000 in yearly salary and benefits.” 2024 WL 3625684, at *1, *3. In contrast, the contract here is for access to HSF.net, which has numerous uses separate and apart from the HSF Scholar Program, including access to a “Scholarship Finder” and “College Prep” resources, which are available to anyone who

accesses HSF.net regardless of race or ethnicity. See FAC ¶ 49; *Terms of Use Agreement*, HSF, perma.cc/UE33-KQ2T (listing both under “Resources”). Plaintiff does not allege the existence of any requirement for the recipients to perform anything in exchange for the Scholar Program or the scholarship.

2. The HSF Fund A Scholar Program is not a contract for the HSF Scholar Program

The HSF Fund A Scholar Program is a separate and distinct program from the HSF Scholar Program that is available to a narrow subset of Scholars who opt in. As discussed *supra* at § I.B, the Alliance lacks standing to challenge this program. Nonetheless, HSF does not interfere with any person’s right to “make” or “enforce” a contract for the Fund A Scholar Program based on race or ethnicity. 42 U.S.C. § 1981. And anyone regardless of race or ethnicity is welcome to become a Fund A Scholar donor. With respect to Scholars, access to the Fund A Scholar Program is based on a person’s status as an HSF Scholar and unmet financial need as determined by HSF. *Fund a Scholar Terms of Use Agreement*, HSF, perma.cc/D3BV-2D2Z.

Beyond this still, the Fund A Scholar Program is not a contract for the Scholar Program. It is “a public-facing platform that allows individuals to donate directly to HSF Scholars through HSF.” FAC ¶ 45. It “connect[s] generous donors with aspiring students seeking financial support for their educational journeys.” *Fund a Scholar Terms of Use Agreement*, HSF, perma.cc/D3BV-2D2Z. The Alliance argues that since Scholars must agree to Fund A Scholar’s separate “Terms of Use Agreement,” the program creates a contractual relationship with the Scholars. FAC ¶ 45. But the Alliance’s own allegations reveal that the Terms of Use Agreement consists of nearly the same terms as HSF’s Terms of Use and Privacy Policy. *Compare id. with id.* ¶ 38. So first, HSF’s arguments pertaining to its Terms of Use and Privacy Policy, *supra* § II.B.1, are also applicable here i.e., the Terms of Use Agreement, to the extent it is a contract, is a contract for access to the

platform, not for the HSF Scholar Program. Second, the Fund A Scholar Program itself is not a contract—it is a gift or a donation. Just like the HSF Scholar Program, the Fund A Scholar Program does not promise Scholars any funds and cannot do so in any case because it relies solely on donations. The Program is only funded by donors who may “make contributions in furtherance of an HSF Scholar’s completion of a college or post-graduate education.” *Fund a Scholar Terms of Use Agreement*, HSF, perma.cc/D3BV-2D2Z. That the Scholars will possibly receive funding via their participation in the Program, and that any funding awards will be sufficient to fill any unmet financial needs of the Scholars is not guaranteed. *Id.* So again, providing funds is optional, not guaranteed—that is not a contract. And that 10 cents of every dollar that *donors* contribute to the Program goes to support the Program’s “support services and technology that powers” the Program does not create a contract with the Scholars; instead, it concerns the donors and the apportionment of their donations. *See id.*; *cf.* FAC ¶ 45. The Scholars, in whose shoes the Alliance purports that their student members deserve to stand, are not giving anything to the Program, i.e., there is no consideration.

3. The post-Phase I essays and surveys do not convert the HSF Scholar Program into a contractual relationship

Without more, the Alliance mentions that HSF Scholars must “fill out and submit numerous ‘online Scholar surveys.’” FAC ¶ 41. The Alliance throws around “numerous” without any support in an attempt to paint a picture that HSF receives “a valuable benefit” from students. *Id.* But as the Alliance acknowledges, the benefit of filling out the surveys is to the Scholars, not to HSF. The Alliance alleges that the “valuable benefit” is “provid[ing] HSF with insight on the profile and needs of our Scholars to provide relevant and effective Scholar Support Services.” *Id.* So the surveys are simply a means for the Scholars to tell HSF what they need. The Alliance does not allege how HSF benefits here.

As a result, filling out some surveys periodically is not the type of consideration required to form a contract. *See Zoob v. Jordan*, 841 A.2d 761, 765 (D.C. 2004); *Davis v. Joseph J. Magnolia, Inc.*, 640 F. Supp. 2d 38, 45 (D.D.C. 2009). The Alliance’s argument is too attenuated to warrant any consideration, as a mere promise to fill out surveys is far from meeting any element of a contract.

Likewise, being required to complete an essay for a scholarship does not convert the scholarship gift into a contract. To the extent the Alliance relies on *Haskell* for the proposition that “‘answering an essay question’ is ‘a contest,’” FAC ¶ 76.b, that is nothing more than creative wordsmithing. In *Haskell*, the Court was evaluating whether various actions by magazines were lotteries or contests under California law where the differentiating factor is whether the competition requires “skill.” 857 F. Supp. at 1404. Because one of those competitions “require[d] listing presidents in order of date of service, answering an essay question, and a ‘wordfind,’” the court determined that it was a “contest” and not an “illegal lottery” under California law. *Id.* at 1404-05. But again, that has nothing to say about this case because charitable organizations are exempt from California’s contest law. *See* Cal. Bus. & Prof. Code § 17539.3(b). And even more, the Alliance has identified no support for the idea that an essay as part of an educational scholarship application converts the scholarship from a gift to a contract, and HSF is aware of none.

Ultimately, the Alliance has failed to identify any contract that, on account of someone’s race or ethnicity, interferes with that person’s right to make or enforce contracts. To the extent the Alliance identifies any contracts at all, it asks this Court to rewrite them to say something that they simply do not. That is a task this Court cannot undertake. *Conesco Indus., Ltd. v. Conforti & Eisele, Inc.*, 627 F.2d 312, 315 (D.C. Cir. 1980) (“We are of the general opinion that it is not the function of the courts to rewrite contracts.”); *Des Longchamps v. Allstate Prop. & Cas. Ins. Co.*, 102 F.

Supp. 3d 299, 306 (D.D.C. 2015). For the reasons explained above, the Alliance’s § 1981 claim fails, and its § 1981 claim must be dismissed with prejudice because amendment would be futile. *See Wheeler*, 2022 WL 17039208, at *8 (citations omitted).

III. The Alliance’s Title VI Claim Must Be Dismissed Because The Alliance Fails To Allege That HSF Is A Recipient Of Federal Funding.

Title VI plaintiffs must show that the defendant has a program or activity⁷ that “receiv[ed] Federal financial assistance.” 42 U.S.C. § 2000d; *Maddox v. United Network for Organ Sharing*, 773 F. Supp. 3d 1109, 1119 (W.D. Wash. 2025) (noting Title VI’s requirement that entity be “the recipient of federal funding”). The Alliance fails to meet this requirement. HSF’s scholarships are charitable gifts that HSF awards to students; it is hard to imagine how *HSF* could receive economic benefit from *giving money away*. Fittingly, the Alliance makes no claims that HSF received any money from the federal government. *See* FAC ¶¶ 82-93. Instead, it attempts to stretch the meaning of “financial” beyond any reasonable bounds and invites this Court to hold that statutory

⁷ The Title VI claim should also be dismissed because the Alliance fails to allege that the Scholar Program is a “program or activity.” A “program or activity” means the operations of a private organization “(i) if assistance is extended to [the entity] ... as a whole; or (ii) which is principally engaged in the business of providing education” 42 U.S.C. § 2000d-4a(3)(A). The Alliance concludes the “as a whole” requirement is satisfied. FAC ¶ 90. But conclusions are “not entitled to the assumption of truth,” *Iqbal*, 556 U.S. at 679, and this conclusion is unsupported. First, the statutory access is not “assistance.” *See supra* § III. Second, there are no facts alleged that support an inference that the access is extended to HSF “as a whole”; it is extended for a particular purpose not “general assistance.” *See Abadi v. Am. Airlines, Inc.*, No. 23-cv-4033, 2024 WL 1346437, at *33 (S.D.N.Y. Mar. 29, 2024) (quoting S. Rep. No. 100-64 (1987)); Guidance on the Use of Federal Tax Information (FTI), Free Application for Federal Student Aid (FAFSA®) Data, and Non-FAFSA Data, U.S. Dep’t of Educ., No. GEN-25-08 (Sep. 30, 2025) (“FAFSA Guidance”), <https://perma.cc/CQ4Z-HNBY> (noting constraints on purposes for which FAFSA data can be used). Further, the Alliance alleges only that the access is extended to the Scholar Program specifically, *see* FAC ¶ 91, not that it “touch[es] virtually every aspect of [HSF]’s business,” which the Alliance admits is broader than this single program, *see Abayev v. Am. Airlines, Inc.*, No. 22-CV-386, 2025 WL 2711279, at *5 (E.D.N.Y. Sep. 23, 2025); *see, e.g.*, FAC ¶ 49 (alleging “HSF programs” open to “non-Hispanics”). Third, there are no facts alleged from which it can be plausibly inferred HSF is “principally engaged in the business of providing education.” 42 U.S.C. § 2000d-4a(3)(A)(ii). HSF gifts “support services and scholarships” to students, *see* FAC ¶ 90; its business is funding and support, not providing education, *infra* § IV.B.1.

authorization to receive “access to FAFSA data” under 20 U.S.C. § 1090(a)(2)(D)—which has no economic value to HSF—“counts” as “Federal financial assistance” within the meaning of 42 U.S.C. § 2000d. *See id.* ¶ 89. Such an interpretation of “financial” has no basis in the statute, caselaw, or common sense. This Court should decline the Alliance’s invitation to adopt its overbroad definition of “federal financial assistance,” and dismiss the Alliance’s Title VI claim.

Where tasked with determining what constitutes “federal financial assistance” courts have found the obvious: that where an educational program is *funded by* the federal government, e.g., been given money by the federal government, that program has received “federal financial assistance.” *See, e.g., Maddox*, 773 F. Supp. 3d at 1119 (alleging 10% of program’s budget was provided by the federal government). The Alliance does not allege that the government funded HSF. *See* FAC ¶ 88. That ends the inquiry.

As an initial matter, the Alliance’s bare statement that FAFSA data access “counts as ‘Federal financial assistance’” for the purposes of § 2000d is “no more than [a] conclusion[],” which is “not entitled to the assumption of truth.” *Iqbal*, 556 U.S. at 679; *see also id.* at 678 (“[W]e ‘are not bound to accept as true a legal conclusion couched as a factual allegation.’” (quoting *Twombly*, 550 U.S. at 555)). Setting this legal conclusion aside, the Amended Complaint fails to allege any facts that would plausibly support a conclusion that the FAFSA data is “Federal financial assistance.” That dooms the Alliance’s Title VI claim. *Iqbal*, 556 U.S. at 678.

Disregarding the plain language of the statute, and that its purpose is specifically to halt *funding* of entities engaged in particular behavior rather than a far broader proscription of any government interaction with such entities, the Alliance alleges that the data access at issue here “counts” as “federal financial assistance” for Title VI purposes. This is so, in the Alliance’s view,

because federal financial assistance can be in “non-money” form, and the Alliance claims that any “thing of value” is “encompasse[d].” FAC ¶ 88. But this argument fails.

The case the Alliance relies on in asserting that HSF having access to FAFSA data is “federal financial assistance” because it is “like” “providing services [and] research” provides no support. *Id.* ¶ 88. In *Kamen v. Am. Tel. & Tel. Co.* (cited at FAC ¶ 88), the district court granted a motion to dismiss for lack of jurisdiction where the defendant company asserted it did not receive any federal financial assistance, *and the Second Circuit did not reverse that dismissal*. 791 F.2d 1006, 1013 (2d Cir. 1986). It never found that allegations of “arrangements providing services [and] research ... qualify as ‘federal financial assistance’” under the Rehabilitation Act such that they could subject a defendant to suit. *Id.* at 1007, 1013. Reviewing only the Rule 11 sanctions that the district court imposed on plaintiff’s attorney and not the merits of the dismissal, *see id.* at 1014 (Kearse, J., dissenting), the Second Circuit instead merely found that such allegations were well enough “‘grounded in fact and [were] warranted by existing law’ within the meaning of Rule 11” so that the *Kamen* plaintiff’s attorneys could avoid being sanctioned for filing a suit “so groundless as to be subject to Rule 11 sanctions.” *Id.* at 1013 (majority opinion) (citation omitted). To state the obvious: just because an argument is not sanctionable does not mean it is correct.

Nor does the Alliance plead sufficient facts to plausibly allege that HSF receives a thing of value by virtue of the statute’s terms granting it access to the FAFSA data. The Alliance alleges that for an entity to be the recipient of federal *financial* assistance, the entity must receive a *specific type* of non-monetary assistance. That is, it must “receive[] a “*thing of value*” from the federal government, *see* FAC ¶ 88 (quoting *U.S. Dep’t of Transp. v. Paralyzed Veterans of Am.*, 477 U.S. 597, 607 (1986) (emphasis added)). But it fails to support its allegation that the FAFSA data is a “thing of value” for Title VI purposes.

To be *financial* assistance—as the statute expressly adds “financial”, 42 U.S.C. § 2000d—the value provided to the receiving entity must be economic. *See Financial Assistance*, Black’s Law Dictionary (12th ed. 2024) (emphasis added) (“Any *economic* benefit, such as a scholarship or stipend, given by one person or entity to another” (emphasis added)); *Federal Financial Assistance*, Black’s Law Dictionary (12th ed. 2024) (“An *economic* benefit provided by the federal government to a recipient in the form of a trust, grant, or other federal program or activity” (emphasis added)).

“Something is a ‘thing of value’—it is ‘valuable’—if it has ‘financial or market value.’” *Ready for Ron v. Fed. Election Comm’n*, No. CV 22-3282, 2023 WL 3539633, at *8 (D.D.C. May 17, 2023) (quoting *Valuable*, Black’s Law Dictionary (10th ed. 2014); then citing *Value*, Black’s Law Dictionary, *supra* (def. 2 “The monetary worth or price of something; the amount of goods, services, or money that something commands in an exchange”); then citing *Valuable*, Webster’s Third New International Dictionary (2d. ed. 1976) (def. 1 “possessing monetary value in use or exchange”); and then citing *Value*, Webster’s Third New International Dictionary (2d ed. 1976) (def. 2 “the monetary worth of something”)).

Where courts have allowed “non-money” assistance to qualify as “federal financial assistance,” it has been in the form of assistance that provided tangible, quantifiable economic value to the entity at issue; for example, “property improvements, such as a[n airport] runway.” *U.S. Dep’t of Transp.*, 477 U.S. at 607 n.11. Or “assistance provided through the tax system” in the form of § 501(c)(8) deductions where that assistance was tangible and measurable in that it “operate[d] in effect as a Government matching grant.” *McGlotten v. Connally*, 338 F. Supp. 448, 461-62 (D.D.C. 1972). But allegedly having “access to FAFSA data” under a statutory provision,

FAC ¶ 88, is not remotely analogous to the quantifiable economic benefits of receiving tax exempt status, loans, or property improvements.

This is further confirmed by the constitutional authority Congress relied on in legislating Title VI. Title VI was “enacted pursuant to Congress’ spending power and [it] operate[s by] ... conditioning an offer of federal funding on a promise by the recipient not to discriminate, in what amounts essentially to a contract between the government and the recipient of funds.” *Parker v. Franklin Cnty. Cmty. Sch. Corp.*, 667 F.3d 910, 917 (7th Cir. 2012) (citing *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 286-88 (1998)); *Guardians Ass’n v. Civ. Serv. Comm’n of New York*, 463 U.S. 582, 598-99 (1983). Indeed, the purpose of Title VI was “to halt federal *funding* of entities that violate a prohibition of racial discrimination similar to that of the Constitution.” *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 284 (1978) (emphasis added).

The Alliance merely alleges that HSF “receiv[es]” and “uses” FASFA data. *See* FAC ¶¶ 89, 91. From these terms, it is not reasonable to infer that the statutory data access in § 1090(a)(2)(D) makes HSF a recipient of something “of value” from the federal government. For one thing, mere receipt of data does not warrant an inference that the data is valuable. For another, the Alliance’s assertion that HSF “uses the FAFSA data that it gets from the Department to calculate” scholarships similarly does not plausibly indicate that the data access is a thing of value. Indeed, as the Alliance elsewhere alleges and a portion of HSF’s website that the Alliance has incorporated into the Amended Complaint confirms, it is *students* who will be “send[ing] HSF their 2026-27 FAFSA.” FAC ¶¶ 89, 91. And HSF determines a “Scholar’s verified unmet financial need” based on that “*submitted* financial aid documentation (FAFSA Submission Summary and Financial Aid Award Letter),” not FAFSA data “receiv[ed]” from the Department, *see Fund a Scholar Terms of Use Agreement*, HSF, perma.cc/D3BV-2D2Z; FAC ¶¶ 17, 33 (alleging HSF requires applicants to

submit a FAFSA in October if they would like to be considered for funding); *Lang v. District of Columbia*, No. CV 20-1199, 2023 WL 2708820, at *9 n.5 (D.D.C. Mar. 30, 2023) (noting courts do not accept as true self-contradictory factual allegations or factual allegations insofar as they contradict exhibits to the complaint or matters subject to judicial notice (citation modified)). Since HSF gets its FAFSA information directly from student submissions, there is no basis to assume that HSF’s Scholar Program administration needs or would get an economically valuable benefit from the government’s provision of FAFSA data. *See id.*

The statutory language regarding FAFSA access reinforces this point because HSF is strictly forbidden from monetizing its access. The Department of Education recently explained that HSF is “not permitted to further disclose FAFSA data or FTI for any other purpose beyond the application, award, and administration of [its] specific aid programs.” *See* FAFSA Guidance, *supra* n.7. Unlike mailing lists, which ““have commercial value”” that is demonstrated by how they ““are routinely rented for fundraising or other solicitation purposes,”” *see Ready for Ron*, 2023 WL 3539633, at *9, it is impermissible to use FAFSA data in a similar manner. Crucially, as explained above, *supra* § II.A, HSF’s scholarships are charitable gifts that HSF awards to students—*HSF* does not receive economic benefit from giving money away via the Scholar Program.

Because HSF’s statutory FAFSA access lacks economic value, adopting the Alliance’s position that § 1090’s eligibility provision amounts to “federal financial assistance” would mean that anything at all that is made accessible by the federal government to any entity would count as “financial assistance.” *See* FAC ¶ 88. This interpretation impermissibly renders the “financial” term within the statute meaningless. *See TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001).

Even the Justice Department’s Office of Legal Counsel (OLC) refused to go so far as to call this data access “federal financial aid.” *Constitutionality of Race-Based Dep’t of Educ.*

Programs, 49 Op. O.L.C. (Dec. 2, 2025) (slip op. at 45-47). This Court should not accept the Alliance’s invitation to ignore the ordinary meaning of the terms of the statute and to, instead, read “financial” out of the statute altogether. The Alliance has failed to allege that HSF’s Scholar Program is a recipient of “federal financial assistance,” and its Title VI claim should be dismissed with prejudice since there is no version of it that will turn § 1090(a)(2)(D)’s data access grant into “financial assistance.” *See Wheeler*, 2022 WL17039208, at *8 (citations omitted).

IV. The Alliance’s State Law Claims Should Be Dismissed.

The Alliance’s state law claims are ill-fitted for supplemental jurisdiction and must otherwise be dismissed for failure to state a claim.

First, this Court may not exercise supplemental jurisdiction because the state law claims are not “so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.” 28 U.S.C. § 1367(a). *However*, even if the Court concludes that the claims are so related it should nonetheless decline to exercise supplemental jurisdiction either because (1) the federal law claims must be dismissed and as a result there is no need for this Court to retain the state law claims, *see* 28 U.S.C. § 1367(c)(3); or (2) the state law claims “raise[] a novel or complex issue of State law,” *id.* § 1367(c)(1); *see also Jones v. D.C. Water & Sewer Auth.*, 922 F. Supp. 2d 37, 43 (D.D.C. 2013); *Cannon v. District of Columbia*, 783 F.3d 327, 331 (D.C. Cir. 2015).

Second, on the merits, the Alliance’s state law claims must be dismissed because it fails to allege claims under D.C. Human Rights Act or the California Unruh Civil Rights Act. Accordingly, this Court should dismiss the state law claims for lack of supplemental jurisdiction or in the alternative decline to exercise supplemental jurisdiction, or dismiss these claims for failure to state a claim.

A. The state law claims must be dismissed for lack of supplemental jurisdiction, or in the alternative, this Court should decline to exercise supplemental jurisdiction.

Under § 1367, a district court is guided by a two-part test. “First, the court assesses whether the federal and non-federal claims ‘derive from a common nucleus of operative fact.’” *Doe #1 v. Am. Fed’n of Gov’t Emps.*, 554 F. Supp. 3d 75, 113 (D.D.C. 2021) (quoting *United Mine Workers v. Gibbs*, 383 U.S. 715, 725 (1966)). If they lack that nexus, the court may not exercise supplemental jurisdiction. *Id.* (“[I]f the court finds that the federal and non-federal claims ‘do not derive from a common nucleus of operative fact, it cannot exercise supplemental jurisdiction and the claims must be dismissed under Rule 12(b)(1).’” (quoting *Wisey’s #1 LLC v. Nimellis Pizzeria LLC*, 952 F. Supp. 2d 184, 188 (D.D.C. 2013))). However, “[i]f they do [derive from a common nucleus of operative fact], the court ... evaluates whether to decline supplemental jurisdiction based on the factors enumerated in section 1367(c).” *Id.* (citation modified) (citing *City of Chi. v. Int’l Coll. of Surgeons*, 522 U.S. 156, 173 (1997)). The Alliance’s state law claims fail to warrant supplemental jurisdiction under both parts of the test.

1. The state law claims do not derive from a common nucleus of operative fact with the federal claims

“State law claims do not derive from a common nucleus of operative facts if there is almost no factual or legal overlap between the state and federal claims.” *Wisey’s #1 LLC*, 952 F. Supp. 2d at 189 (quoting *Chelsea Condo. Unit Owners Ass’n v. 1815 A St., Condo. Grp., LLC*, 468 F. Supp. 2d 136, 141 (D.D.C. 2007)). This includes circumstances where “there is no legal overlap and only some background factual overlap.” *Id.* The legal theories of the Alliance’s federal claims are that (1) HSF violates § 1981 by declining to contract for its Scholar Program with non-Hispanic students (even though no contract exists as explained *supra* at § II), and (2) HSF violates Title VI by denying non-Hispanic students participation in and the benefits of the Scholar Program while

receiving “federal financial assistance” in the form of statutory authorization to access FAFSA data. FAC ¶¶ 71-93. These claims share almost nothing in common with the D.C. Human Rights Act and California Unruh Civil Rights Act.

For the D.C. Human Rights Act (“DCHRA”) claim, the legal and factual analysis turns on questions that have nothing to do with the federal claims, including: Whether HSF is an employment agency, educational institution, or public accommodation under the DCHRA; Whether hosting job fairs and posting job listings converts any nonprofit into an employment agency; Whether every nonprofit that hosts job fairs and posts job listings must make those available to any takers; Whether every organization that offers any educational or training courses of any kind is an educational institution under the DCHRA; Whether an organization may limit its educational and training opportunities solely to its members or must make those available to any takers; and Whether providing college prep and scholarship finder resources on its website converts HSF into a public accommodation like a hotel or restaurant. The answers to these questions have no impact whatsoever on the federal claims. Equally, the answer as to whether HSF’s Scholar Program is a contract that excludes non-Hispanic students, or whether the alleged access to FAFSA data is “federal financial assistance,” has no impact on this claim. *See Wisey’s #1 LLC*, 952 F. Supp. 2d at 191 (finding insufficient overlap where party alleging that the court had supplemental jurisdiction did not “show[] that the [state claims] provide a factual basis or overlap that will aid in the resolution of the [federal] claims”). As discussed *infra* at § IV.B.1 the answers to the questions posed by the DCHRA warrant dismissal, but the Court may not assume supplemental jurisdiction over the DCHRA claim in the first place because these legal and factual questions do not overlap with the federal claims.

The same is true for the California Unruh Civil Rights Act. The legal and factual questions are wholly disconnected from the federal claims, including: Whether HSF is a “business establishment” under the CUCRA; Whether having a relationship with other businesses makes a nonprofit a “business establishment” under the CUCRA; and Whether the CUCRA covers scholarship programs. Again, the answers to these questions do not bear on the federal claims. *See Wisey’s #1 LLC*, 952 F. Supp. 2d at 191. Interestingly, the Alliance admits that in its view the CUCRA claim depends not at all on “whether the [Scholar] program is contractual or receives federal funds,” FAC ¶ 114, which are essential to the federal claims, *see Wisey’s #1 LLC*, 952 F. Supp. 2d at 190 (insufficient overlap where “the adjudication of the [state law claims] would be unaffected if the Court were to dismiss [the federal] claims”). Furthermore, as is the case with any state law claims, the state claims here draw on completely different bodies of law than the federal claims. Accordingly, the Alliance has failed to properly invoke this Court’s supplemental jurisdiction under § 1367 and the state law claims must be dismissed.

2. Alternatively, this Court should decline to exercise supplemental jurisdiction over the state law claims

Even if the Court concludes that there is sufficient overlap between the federal and state law claims, it should nonetheless decline to exercise supplemental jurisdiction either because the federal claims warrant dismissal or the state law claims “raise[] a novel or complex issue of State law.” *See* 28 U.S.C. § 1367(c)(1), (3).

Dismissal is warranted because the federal claims must be dismissed. For the reasons discussed *supra* at §§ I-III, the federal claims must be dismissed. Accordingly, this Court should likewise dismiss the state law claims. *See Jones*, 922 F. Supp. 2d at 43.

Dismissal is warranted because the state law claims raise novel and complex issues of state law. No District of Columbia Court has held that a nonprofit that offers scholarships and

other benefits to students is an employment agency, educational institution, or public accommodation under the DCHRA. Accordingly, such a determination would be quintessentially novel.

Similarly, no California Court has held that an HSF-like organization is a business establishment under the CUCRA. The California Supreme Court has explained that “[t]he word ‘business’ embraces everything about which one can be employed, and it is often synonymous with ‘calling, occupation, or trade, engaged in for the purpose of making a livelihood or gain.’” *O’Connor v. Vill. Green Owners Ass’n*, 33 Cal. 3d 790, 795 (1983) (quoting *Burks v. Poppy Constr. Co.*, 57 Cal. 2d 463, 468-69 (1962)). And in the rare exception where California courts have extended the CUCRA to nonprofits, they have done so only when the nonprofit “has sufficient businesslike attributes.” *Id.* at 796. For example, when a nonprofit “performs all the customary business functions which in the traditional landlord-tenant relationship rest on the landlord’s shoulders,” *id.*; “its primary function is to operate a permanent physical plant offering established recreational facilities which patrons may use at their convenience during the hours the [nonprofit] is open,” *Isbister v. Boys’ Club of Santa Cruz, Inc.*, 40 Cal. 3d 72, 81 (1985); or “exhibits substantial businesslike attributes,” including maintaining “permanent offices throughout the world,” “vast numbers of staff,” and “[c]ommercial attributes and advantages, too,” *Rotary Club of Duarte v. Bd. of Dirs.*, 178 Cal. App. 3d 1035, 1053 (Cal. Ct. App. 1986). If the Alliance’s definition of “business establishment” carries the day, every nonprofit in California would be a “business establishment” subject to the CUCRA.

Accordingly, given these “novel and complex issues of State law” and questions of first impression, this Court should decline to exercise supplemental jurisdiction. *See Erdman v. Nationwide Ins. Co.*, 621 F. Supp. 2d 230, 238 (M.D. Pa. 2007).

B. The state law claims must be dismissed for failure to state a claim.

If the Court exercises supplemental jurisdiction over the state law claims, they must nonetheless be dismissed because they fail to state a claim on their merits.

1. The Alliance fails to state a claim under D.C. law because HSF is not an employment agency, educational institution, or public accommodation

No District of Columbia court has held that an HSF-like organization is an employment agency, educational institution, or public accommodation under the DCHRA, and with good reason: it is none of those.

HSF is not an employment agency, nor does it refuse to refer applicants based on ethnicity. The DCHRA defines “[e]mployment agency” as “any person regularly undertaking or attempting, with or without compensation, to procure employees for an employer or to procure for employees, opportunities to work for an employer, and includes an agent of such a person.” D.C. Code § 2-1401.02(11). No D.C. Court has expounded on that definition. However, the definition mirrors the definition of “employment agency” in Title VII. *See* 42 U.S.C. § 2000e(c); *D.C. Dep’t of Pub. Works v. D.C. Off. of Hum. Rts.*, 195 A.3d 483, 491 n.9 (D.C. 2018) (quoting *Nicola v. Washington Times Corp.*, 947 A.2d 1164, 1171 (D.C. 2008)). Federal courts have explained that with this definition “Congress had in mind to include only those engaged to a significant degree in that kind of activity as their profession or business.” *Brush v. S.F. Newspaper Printing Co.*, 315 F. Supp. 577, 580 (N.D. Cal. 1970); *see Bonomo v. Nat’l Duckpin Bowling Cong., Inc.*, 469 F. Supp. 467, 472 (D. Md. 1979); Who can be sued under Title VII?, 9 West’s Fed. Admin. Prac. § 11367 (“Not all entities that assist in the procurement of employees qualify as employment agencies.”). In short, the clear statutory scope of the employment agency definition is to cover staffing agencies who regularly match employers and employees—that is not HSF. As alleged, HSF “helps Scholars obtain internship and entry-level employment opportunities,” FAC ¶ 48,

“holds job fairs for HSF Scholars, including six Scholar Conferences held once a year,” *id.* ¶ 98, and “makes job listings available year-round on its HSF Insider portal,” *id.*; *see also id.* ¶ 13. That is not “engag[ing] to a significant degree” as a staffing agency “as [its] profession or business.” *Brush*, 315 F. Supp. at 580. That is no more than episodic, as opposed to regular, assistance. The Alliance’s conclusion would have the effect of turning every student organization that hosts job fairs or maintains a job board into an employment agency subject to Title VII and the DCHRA.

In any event, the Alliance does not allege that HSF refuses to refer *Scholars* to potential employers. All Scholars have equal access to the career support benefits offered by HSF without respect to any characteristic other than their being an HSF Scholar. Under the Alliance’s logic, every fraternity and sorority, which has as some part of its function assisting members with securing employment, likewise violates the DCHRA. Unsurprisingly, no court has so held because it is the membership in the organization that performs the gatekeeping function, not ethnicity in the case of HSF or sex in the case of fraternities and sororities.

HSF is not an educational institution. The DCHRA defines “[e]ducational institution” as “any public or private institution including an academy, college, elementary or secondary school, extension course, kindergarten, nursery, school system or university; and a business, nursing, professional, secretarial, technical, or vocational school; and includes an agent of an educational institution.” D.C. Code § 2-1401.02(8). HSF is not an educational institution. “An educational institution is one in which professors or teachers, using instructional material, follow a curriculum resulting in the increased skill or knowledge of their students.” *U.S. Jaycees v. Bloomfield*, 434 A.2d 1379, 1383 (D.C. Ct. App. 1981). The Court further noted that “[a]lthough it is not necessary that a degree or certificate be awarded, other indicia of accomplishment, such as credits, are generally required.” *Id.* The Alliance does not allege that HSF has professors or

teachers who follow a curriculum, nor that anyone earns “a degree or certificate” or “credits” through HSF. Accordingly, HSF is not an educational institution for purposes of the DCHRA.

HSF is not a public accommodation. The DCHRA defines “place of public accommodation” as “any person or place that provides, to a person in the District, access to an accommodation, service, or good, whether or not that person or place maintains a physical location in the District or charges for those goods or services.” D.C. Code § 2-1401.02(24). The Alliance includes that part of the definition in its Amended Complaint, FAC ¶ 105, but fails to include the rest of the definition, which demonstrates the frivolity of its contention that HSF is a place of public accommodation. The lengthy remainder of the DCHRA’s “place of public accommodation” definition provides a thorough list of examples of places of public accommodation. *See* D.C. Code § 2-1401.02(24). HSF is unlike any of the examples. That matters because under the maxim *expressio unius est exclusio alterius*, “the ‘mention of one thing implies the exclusion of another thing.’” *Halverson v. Slater*, 129 F.3d 180, 185 (D.C. Cir. 1997). That is particularly so here where it is evident that the drafters provide such an exhaustive list.

2. The Alliance fails to state a claim under California law because HSF is not a business establishment

The CUCRA provides in relevant part that “[a]ll persons within the jurisdiction of this state are free and equal, and no matter what their ... race, ... [or] ancestry, ... are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.” Cal. Civ. Code § 51(b). The CUCRA “secures equal access to public accommodations and prohibits discrimination by business establishments.” *Sprewell v. Golden State Warriors*, 266 F.3d 979, 989 (9th Cir. 2001) (quoting *Black v. Dep’t of Mental Health*, 83 Cal. App. 4th 739 (2000)); *see also Smith v. BP Lubricants USA Inc.*, 64 Cal. App. 5th 138, 149 (2021). But HSF is not a business establishment. Therefore, it is not subject to the CUCRA. None

of the cases cited in the Amended Complaint are to the contrary. Instead, they merely acknowledge that when a nonprofit operates a public accommodation or a commercial business it is subject to the CUCRA. *See O'Connor*, 33 Cal. 3d at 796 (landlord); *Isbister*, 40 Cal. 3d at 81 (physical club); *Rotary Club of Duarte*, 178 Cal. App. 3d at 1053-55 (“[T]he primary purpose for the formation of the Rotary movement was commercial advantage.”). Because there is no legal basis for concluding that HSF is a “business establishment” under the CUCRA, the CUCRA claim must be dismissed.⁸

CONCLUSION

For the foregoing reasons, the Amended Complaint should be dismissed with prejudice.

⁸ The Alliance requests a temporary restraining order and preliminary injunction in its Amended Complaint. FAC ¶ 116.C. Despite the local rules, D.C. LCvR 65.1(a), (c), the Alliance has not filed a new motion and it is too late for it to do so now as the parties’ joint motion expressly contemplated that if the Alliance “decide[d] to file a motion for interim relief” then “the briefing schedule and hearing [would] occur on the same timeline proposed” for the motion to dismiss, a timeline which is now substantially complete. *See* Joint Mot. Modify Schedule ¶ 6, Dkt. 14; *Laster v. District of Columbia*, 439 F. Supp. 2d 93, 100 (D.D.C. 2006).

Respectfully submitted,

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January 20, 2026

CERTIFICATE OF SERVICE

I hereby certify that on January 20, 2026, a copy of the foregoing Defendant's Memorandum of Points and Authorities in Support of Motion to Dismiss Plaintiff's Complaint was served on all parties of record.

/s/ Edward H. Williams II

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