No. 20-1998

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

CONNECTICUT PARENTS UNION,

Plaintiff – Appellant,

v.

MIGUEL A. CARDONA, in his capacity as Commissioner, Connecticut State Department of Education, ALLAN B. TAYLOR, in his official capacity as Chairperson of the Connecticut State Department of Education's Board of Education, NED LAMONT, in his official capacity as Governor of Connecticut, WILLIAM TONG, in his official capacity as Connecticut Attorney General,

Defendants – Appellees.

On Appeal from the United States District Court
for the District of Connecticut
Honorable Stefan R. Underhill, District Judge

APPELLANT'S
OPENING BRIEF

OLIVER J. DUNFORD
Pacific Legal Foundation
4440 PGA Blvd., Suite 307
Palm Beach Gardens, Florida 33410
Telephone: (561) 691-5000

CHRISTOPHER M. KIESER
Pacific Legal Foundation
930 G Street
Sacramento, California 95814
Telephone: (916) 419-7111

Counsel for Plaintiff – Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Federal Statutes

State Statutes

Rule of Court

Miscellaneous

STATEMENT OF JURISDICTION

Appellant Connecticut Parents Union argues that Connecticut Public Act 17-172 and its implementing regulations violate the Equal Protection Clause because they require interdistrict magnet schools throughout the State to limit enrollment of Black and Hispanic students to 75 percent of total enrollment. The District Court (Underhill, J.) dismissed the complaint on the ground that Connecticut Parents Union lacked Article III standing. App. at 036–048. Had the District Court exercised jurisdiction, it would have done so under 28 U.S.C. § 1331 (federal question) and § 1343(a) (redress for deprivation of civil rights). This Court has appellate jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

Whether, under *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982), and this Court's precedent, Connecticut Parents Union has standing to challenge the racial quota for Connecticut's interdistrict magnet schools.

INTRODUCTION AND STATEMENT OF THE CASE

Connecticut Parents Union, a non-profit organization dedicated to supporting the educational rights of students to be free from

discrimination, brought this civil rights lawsuit challenging a statewide racial quota on enrollment at Connecticut's interdistrict magnet schools. Under a state law enacted in 2017, dozens of magnet schools across Connecticut must limit enrollment of Black and Hispanic students to 75 percent of the student body. One highly-regarded magnet school in New Haven has already closed rather than pay the substantial monetary sanction it would have incurred for enrolling "too many" Black and Hispanic students. Through legislative testimony, community forums, phone calls with concerned parents, and media events, the Parents Union is leading the effort to oppose the racial quota using expenses, time, and effort that its volunteer parents could be spending on other extremely important education issues.

Despite the Parents Union's significant and continued expenditure of resources to counteract the statewide racial quota, the District Court dismissed the complaint for lack of standing. For the reasons stated below, this Court should reverse the District Court's decision and remand the case for discovery and ultimate disposition on the merits.

SUMMARY OF ARGUMENT

Connecticut Parents Union may bring suit "on its own behalf so long as it can independently satisfy the requirements of Article III standing." *Nnebe v. Daus*, 644 F.3d 147, 156 (2d Cir. 2011). Under circuit precedent, the Parents Union need establish "only a 'perceptible impairment' of [its] activities" attributable to the challenged law to establish standing. *Id.* at 157 (quoting *Ragin v. Harry Macklowe Real Estate Co.*, 6 F.3d 898, 905 (2d Cir. 1993)). The bar is quite low; even "scant" evidence of "expenditure of resources that could be spent on other activities" is sufficient. *Id.* The Parents Union's evidence is anything but scant. The all-volunteer organization continues to spend significant resources to counteract the effect of the racial quota, helping parents navigate the magnet school landscape, hosting community forums, and at the same time advocating for the repeal of the law. It must continue to do so in order to further its mission. The Parents Union therefore has standing.

The District Court erred by applying a standard of causation foreign to this Court's case law. This circuit has never required an organizational plaintiff to allege that a challenged law legally required

or coerced it to spend resources to counteract the law's effect. Under such a standard, this Court's decisions in *Ragin*, *Nnebe*, and *Centro de la Comunidad Hispana de Locust Valley v. Town of Oyster Bay*, 868 F.3d 104 (2d Cir. 2017), would have come out the other way. This Court's case law makes clear that, following the Supreme Court's decision in *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982), it is enough that the challenged law "will force [the Parents Union] to divert money from its other current activities to advance *its established organizational interests*." *Centro*, 868 F.3d at 110 (emphasis added). Since the Parents Union's established organizational interests include supporting the rights of students to be free from racial discrimination, the Parents Union must spend resources helping to counteract and oppose the statewide racial quota if it is to continue to advance its mission. The decision below should be reversed and the case remanded for disposition on the merits.

STANDARD OF REVIEW

This Court reviews "de novo the district court's decision to dismiss a complaint for lack of standing pursuant to Federal Rule of Civil Procedure 12(b)(1), 'construing the complaint in plaintiff's favor and accepting as true all material factual allegations contained therein.'"

Katz v. Donna Karan Co., LLC, 872 F.3d 114, 118 (2d Cir. 2017) (quoting *Donoghue v. Bulldog Inv'rs Gen. P'ship*, 696 F.3d 170, 173 (2d Cir. 2012). The Court may, as the District Court did, "consider affidavits and other materials beyond the pleadings to resolve the jurisdictional issue." *J.S. ex rel. N.S. v. Attica Central Schs.*, 386 F.3d 107, 110 (2d. Cir. 2004).

I. STATEMENT OF FACTS

A. The Statewide Racial Quota for Interdistrict Magnet Schools

In this case, Connecticut Parents Union seeks to invalidate a statewide racial quota on enrollment at Connecticut's interdistrict magnet schools. In 2017, under the authority of Conn. Gen. Stat. § 10-264*r*, the Commissioner of Education released "reduced-isolation setting standards" that "establish[ed] a requirement for the minimum percentage of reduced-isolation students that can be enrolled in an interdistrict magnet school program." Under these standards, each interdistrict magnet school must ensure that at least 25 percent of its enrollment is comprised of "reduced-isolation students," defined as anyone who is "any combination other than Black/African American or Hispanic." App. at 024–025 (Exhibit to Complaint). The result is a cap on the number of Black and Hispanic students who may enroll at these

schools: since 25 percent of the seats at each interdistrict magnet school are effectively reserved for white and Asian-American students, Black and Hispanic students are limited to 75 percent of each school's enrollment. *Id.* at 015–016 (Complaint ¶ 15).

The statewide racial quota evolved out of the State's response to a 1996 decision of the Connecticut Supreme Court. In *Sheff v. O'Neill*, 238 Conn. 1, 24 (1996), the court ordered Connecticut to provide the schoolchildren of Hartford and surrounding suburban public schools with a "substantially equal educational opportunity," including access to schools that were "not substantially impaired by racial and ethnic isolation." The Connecticut Supreme Court remanded the case to the trial court, which later approved a settlement capping Black and Hispanic enrollment at Hartford-area interdistrict magnet schools at 75 percent. Several Black and Hispanic parents recently challenged the terms of that settlement, which had been codified by the State. *See Robinson v. Wentzell*, No. 3:18-cv-00274 (SRU), 2019 WL 1207858 (D. Conn. Mar. 14, 2019). After the District Court denied the defendants' motion for judgment on the pleadings, Connecticut and the *Sheff* plaintiffs executed another settlement, eliminating the racial quota for Hartford-area

magnet schools and freeing up hundreds of seats left empty due to the quota's operation. *See* Kristen Johnson, *Judge Approves Settlement in* Sheff v. O'Neill, *Hartford Public Schools Integration Case*, NBC Connecticut, Jan. 11, 2020, https://www.nbcconnecticut.com/news/local/attorney-general-to-present-settlement-in-sheff-v-oneill/2208249/. But this settlement applies only to Hartford-area schools; the statewide quota still applies everywhere else.

Introduction of the statewide quota in 2017 has already had significant consequences. Dr. Cortlandt V.R. Creed Health & Sports Sciences High School, an interdistrict magnet high school in New Haven, was forced to close when it faced sanctions of more than $100,000 for failure to maintain the racial quota. App. at 016 (Complaint ¶ 16). Creed High School, named for the first Black graduate of Yale Medical School, was 91 percent Black and Hispanic and "by all accounts popular, successful, and academically challenging." *Id.* (Complaint ¶ 17). It was penalized simply for enrolling "too many" Black and Hispanic students. Upon voting to close Creed, one member of the New Haven Board of Education lamented that "*Sheff* was supposed to be a remedy. Now, it's become a penalty." *Id.*

B. Connecticut Parents Union

The nonprofit Connecticut Parents Union was established in 2011 to ensure that "parents, guardians, and families are connected with the educational resources and support system necessary to protect their children's educational rights thus ensuring that neither race, zip-code, nor socio-economic status is a predictor of a child's success." *Id.* at 011 (Complaint ¶ 6), 029 (Samuel Decl. ¶ 5). Since 2018, the Parents Union "has led, and continues to lead, legislative-reform efforts to repeal the racial quota." *Id.* at 012 (Complaint ¶ 6), 029 (Samuel Decl. ¶¶ 6, 8). As Parents Union founder and president Gwendolyn Samuel affirmed, since 2018, activities designed to counteract the statewide quota "ha[ve] become the primary issue to which we have dedicated our efforts." *Id.* at 029 (Samuel Decl. ¶ 8). Because the "75% cap on Black and Hispanic enrollment in Connecticut interdistrict magnet schools continues to prevent [the Parents Union] from fulfilling its mission to prevent children's skin color from determining their educational opportunities[,]" *id.* at 017 (Complaint ¶ 20), the Parents Union must "expend a significant amount of time and resources opposing the unconstitutional cap on Black

and Hispanic students, at the expense of advancing and promoting other education reforms," *id.* at 017 (Complaint ¶ 22).[1]

The Parents Union's activities intended to counteract the statewide quota have been substantial, involving "extensive planning, community organizing, and collaboration with parents, teachers, and educational advocates, public outreach, media, and testimony before the Connecticut Legislature." *Id.* at 030 (Samuel Decl. ¶ 13). The Parents Union organized several community events across the state and conference calls with parents, civil rights leaders, and other community members. *Id.* at 030–033 (Samuel Decl. ¶¶ 15–19, 26–28). It also organized two "Educational Roundtables" in order "to discuss the race-based quota system in Connecticut with the community members, community leaders, and attorneys." *Id.* at 031 (Samuel Decl. ¶ 22). Further, the Parents Union

[1] "Some issues and opportunities that the Parents Union has foregone in order to focus on the racial quota issue include sponsoring legislative initiatives like House Bill 6677, testifying before the Connecticut Board of Education regarding school safety issues, and attending and participating in direct advocacy work on behalf of individual special needs students at Individualized Education Planning and Planning Placement Team meetings." App. at 029–030 (Samuel Decl. ¶ 11). House Bill 6677 "stopped the felony arrest of parents that enrolled their children in a school district outside of their neighborhood." *Id.* at 029 (Samuel Decl. ¶ 9).

organized conference calls and then sponsored an all-day statewide conference called "The True Cost of Integration in Connecticut Schools." *Id.* at 032–033 (Samuel Decl. ¶¶ 28, 30). And the Parents Union "planned, organized, and executed a public outreach event that gained wide media coverage outside the U.S. District Court in Bridgeport" where it "staged a mock 'classroom,' equipped with desks and students, to bring awareness to the race-based quota." *Id.* at 033 (Samuel Decl. ¶ 29).

The Parents Union has also sought to persuade the legislature to repeal the statewide racial quota. Ms. Samuel has offered legislative testimony in opposition to the quota, including before a legislative committee on February 16, 2019. *Id.* at 034 (Samuel Decl. ¶¶ 35–36). State Representative Brandon McGee attended the Parents Union's statewide conference and later made public statements opposing the racial quota. *Id.* at 033 (Samuel Decl. ¶¶ 31–32). Representative McGee subsequently requested that the Parents Union host a second conference, which was in the works at the time Ms. Samuel filed her declaration in the District Court. *Id.* at 033–034 (Samuel Decl. ¶¶ 33–34).

At the motion hearing before the District Court, Ms. Samuel further noted that after the statewide expansion of the racial quota, she in her

capacity as president of the Parents Union received many phone calls from concerned parents from across the state impacted by the quota. *Id.* at 056–059 (Transcript at 31–34). Many of these calls were from Black or Hispanic parents who were concerned that their children did not get into one of the magnet schools and sought guidance from the Parents Union. *Id.* at 057–059 (Transcript at 32–34). Ms. Samuel told the District Court that LaShawn Robinson, the lead plaintiff in the challenge to the Hartford quota, was one of the parents who sought the Parents Union's guidance. *Id.* at 059–060 (Transcript at 34–35). But because the Parents Union is a statewide advocacy group, the calls and activity heated up after the statewide quota went into effect in 2017. *Id.* at 060 (Transcript at 35). In short, the Parents Union is an invaluable resource for Connecticut parents seeking better educational opportunities for their children. The existence of the statewide quota "stands in direct opposition to the ability of the Parents Union to successfully perform its mission." *Id.* at 029 (Samuel Decl. ¶ 7).

C. Procedural History

The Parents Union filed this lawsuit on February 20, 2019, against Connecticut state officials in their official capacities (the State). *Id.*

at 009–023 (Complaint). The State moved to dismiss for lack of standing, arguing that the Parents Union failed to allege that it suffers harm as a result of the statewide quota and that any harm it might have suffered was not caused by the challenged law. The District Court agreed, principally on causation grounds, holding that the Parents Union "has failed to plead organizational standing because it has not plausibly alleged that it suffered an injury 'fairly traceable' to the Act or to actions of the defendants." *Id.* at 041 (District Court Order at 6). The Parents Union timely appealed. *Id.* at 050–052 (Notice of Appeal).

II. ARGUMENT

A nonprofit organization like Connecticut Parents Union may sue "on its own behalf so long as it can independently satisfy the requirements of Article III standing as enumerated in *Lujan* [*v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992)]." *Nnebe*, 644 F.3d at 156. To establish standing under *Lujan*, "a plaintiff must have suffered an 'injury in fact' that is 'distinct and palpable'; the injury must be fairly traceable to the challenged action; and the injury must be likely redressable by a favorable decision." *Denney v. Deutsche Bank AG*, 443 F.3d 253, 263 (2d Cir. 2006) (quoting *Lujan*, 504 U.S. at 560–61). The

Supreme Court's decision in *Havens Realty* and this Court's subsequent decisions in *Ragin*, *Nnebe*, and *Centro* explain how this standard applies to organizations. As shown below, under these precedents, Connecticut Parents Union has standing.

A. The Parents Union Alleged a "Perceptible Impairment" To Its Activities

To establish a sufficient injury under Article III, an organization must allege "only a 'perceptible impairment' of [its] activities." *Nnebe*, 644 F.3d at 157 (quoting *Ragin*, 6 F.3d at 905). The Parents Union's burden here is slight; even "scant" evidence of "expenditure of resources that could be spent on other activities" is sufficient. *Id.* Under this Court's case law, the Parents Union easily clears that low bar.

In *Ragin*, for instance, the organizational plaintiff, whose mission was "to reduce the amount of segregation in, and to eliminate all discrimination from, the metropolitan residential housing market," 6 F.3d at 901–02, sought to counteract allegedly racially discriminatory housing advertisements located on various buildings, *see id.* at 905. The organization provided "information at community seminars about how to fight housing discrimination[,]" and its deputy director testified that "she and her small staff devoted substantial blocks of time to investigating

and attempting to remedy the defendants' advertisements." *Id.* These steps included filing an administrative complaint, which involved "identifying the buildings' developers, the marketing agent and the advertising agent, as well as attending a conciliation conference." *Id.* The organization's attempts to counteract the allegedly discriminatory advertisements "prevented them from devoting their time and energies to other . . . matters." *Id.* Even though much of the organization's time was spent preparing for the lawsuit at issue, this Court held that these activities were sufficient to establish Article III injury.

The organization in *Nnebe* perhaps did even less. There, the New York Taxi Workers Alliance brought a due process challenge to New York City's policy to suspend without a hearing the license of any driver charged with one of a list of crimes. *See* 644 F.3d at 150. In response, the Alliance "expended resources to assist its members who face summary suspension by providing initial counseling, explaining the suspension rules to drivers, and assisting the drivers in obtaining attorneys." *Id.* at 157. In finding that the organization had standing to sue in its own right, this Court reasoned that "[e]ven if only a few suspended drivers are counseled by [the Alliance] in a year, there is some perceptible

opportunity cost expended by the Alliance, because the expenditure of resources that could be spent on other activities 'constitutes far more than simply a setback to the Alliance's abstract social interests.'" *Id.* (quoting *Havens Realty*, 455 U.S. at 379). In short, any measureable opportunity cost incurred in response to the challenged law satisfies the *Havens Realty* standard.

By the time this Court decided *Centro* in 2017, the Supreme Court had "recently reaffirmed *Havens Realty*'s holding that a nonprofit organization establishes an injury-in-fact if . . . it establishes that it 'spent money to combat' activity that harms its organization's core activities." *Centro*, 868 F.3d at 111 (quoting *Bank of Am. Corp. v. City of Miami*, 137 S. Ct. 1296, 1303 (2017)). As such, *Centro* found that organizations that "worked to advance the interests of day laborers" had standing to challenge a town ordinance prohibiting solicitation of employment on town streets. *See id.* at 107, 110–11. As the court explained, the ordinance would force one of the organizations "to divert money from its other current activities to advance its established organizational interests" and indeed force that organization "to devote attention, time, and personnel to prepare its response to the Ordinance"

before it went into effect. *Id.* As in *Ragin* and *Nnebe*, the opportunity cost of devoting resources to counteracting the challenged law was, on its own, enough to establish an Article III injury. *See id.* at 111 (noting that "each of Workplace's demonstrated injuries are sufficient to constitute an injury-in-fact").

The Parents Union's activities favorably compare to those of the organizations that established standing in the *Ragin*/*Nnebe*/*Centro* trio of cases. As noted above, the Parents Union's allegations and testimony establish that it has devoted—and must continue to devote—substantial resources towards counteracting the statewide racial quota. The Parents Union's attempts to counteract the statewide quota through community events, legislative testimony, and advising individual parents affected by the quota have "prevented [it] from devoting [its] time and energies to other . . . matters." *Ragin*, 6 F.3d at 905. These opportunity costs on their own qualify as a "perceptible impairment" of the Parents Union's activities. *See Centro*, 868 F.3d at 111; *Ragin*, 6.F.3d at 905.

Indeed, just last year this Court clarified that, under the *Ragin* trio, an organization that spends "nontrivial resources fielding . . . calls" from "aggrieved foster parents" had standing to challenge New York's alleged

failure to make adequate foster care maintenance payments under federal law. *N.Y. State Citizens' Coal. for Children v. Poole*, 922 F.3d 69, 75 (2d Cir. 2019). In addition to its other substantial activities, the Parents Union has fielded calls from concerned parents regarding the statewide racial quota—some of these calls precipitated the need to hold community events to reach more parents in less time. *See* App. at 054–057. If not for the introduction of the statewide quota, the Parents Union would not have had to redirect its limited resources towards counseling parents about how to respond to the State's racial discrimination.

To be sure, these cases establish a broad view of *Havens Realty*'s injury-in-fact holding. But that reading is now settled law in this circuit, to the exclusion of plausible narrower interpretations. *See Nnebe*, 644 F.3d at 157 ("We recognize that some circuits have read *Havens Realty* differently than we read it in *Ragin* . . . . Nevertheless, *Ragin* remains good law in this Circuit."). And as the *Nnebe* court explained, even those courts that have explicitly rejected *Ragin* and construed *Havens Realty* more narrowly "were largely concerned with the capacity of organizations to 'manufacture' standing by bringing a suit." *Nnebe*, 644 F.3d at 157 (quoting *Fair Housing Council of Suburban Phila. v. Montgomery*

Newspapers, 141 F.3d 71, 78–79 (3d Cir. 1998)); *see also Centro*, 868 F.3d at 121 (Jacobs, J., dissenting) (arguing that the organization found to have standing in *Centro* had actually manufactured standing). But here, the Parents Union is not "trolling for grounds to litigate." *Nnebe*, 644 F.3d at 157. Instead, it has allocated resources to help parents navigate and ultimately oppose a law that touches its "established organizational interests," *Centro*, 868 F.3d at 110 (majority opinion), interests that predate the enactment of the statewide quota by several years. Therefore, even under other circuits' narrower view of organizational standing, the Parents Union has alleged sufficient injury to invoke federal jurisdiction.

In short, the allegations in the complaint and Ms. Samuel's declaration, along with Ms. Samuel's in-court statements at the District Court's hearing on the motion to dismiss, suffice to establish organizational injury under *Havens Realty* and this Court's precedents.

B. The District Court's Causation Analysis Conflicts With This Court's Precedent

The District Court elided the question whether the Parents Union's activities constituted the necessary "perceptible impairment" to meet Article III's injury requirement. Instead it held that the Parents Union's injuries were not caused by the statewide racial quota because the law

did not actually *require* the Parents Union to do anything. App. at 043 (District Court Order at 8) ("CTPU is not the object of the Act, and the complaint does not allege that parents whose children were impacted by the Act were forced to seek assistance from CTPU. Nor does the complaint proffer any facts showing that the parents' calls 'coerc[ed]' or otherwise compelled CTPU to expend resources to oppose the Act."). But that is not the proper standard under this Court's precedent. If it were, the results of *Ragin*, *Centro*, *Poole*, and perhaps *Nnebe* would have been quite different. Instead, it is clear from this Court's case law that an organization's injuries may be attributable to the challenged law even where the law does not require any action on the part of the organization.

This Court's decisions in *Ragin*, *Centro*, and *Poole* are dispositive. The organization opposed to housing discrimination in *Ragin* was in no way coerced to take any action to counteract the allegedly racially discriminatory advertisements, nor was the organization supporting day laborers in *Centro* required to do anything in response to the town ordinance regulating solicitation. To be sure, the *Ragin* court did say that the organization was "'forced' to 'devote significant resources to identify and counteract' the advertising practices at issue." *Id.* at 044 (District

Court Order at 9) (quoting *Ragin*, 6 F.3d at 905). But it was "forced" to do so only in the sense that such activity furthered its "mission," which was "to reduce the amount of segregation in, and to eliminate all discrimination from, the metropolitan residential housing market." *Ragin*, 6 F.3d at 901–02. The same is true of the organization in *Centro*, which, as the dissent noted, was not even based in the town subject to the ordinance but nevertheless claimed that "the scope of its mission encompasses all of Long Island." *Centro*, 868 F.3d at 120 (Jacobs, J., dissenting). The principle behind these cases is that the activities of an organization like the ones in *Ragin* and *Centro*—and the Parents Union—are "not voluntary but rather . . . essential to fulfilling its core mission." *N.Y. State Citizens' Coal. for Children v. Velez*, No. 10-CV-3485, 2016 WL 11263164, at *6 (E.D.N.Y. Nov. 7, 2016), *report and recommendation adopted*, 2017 WL 4402461 (E.D.N.Y. Sept. 29, 2017).[2]

The District Court disregarded *Centro* and *Poole* because they "concerned the first prong of standing—injury—and therefore do not inform [the] causation analysis." App. at 045 (District Court Order at 10).

[2] This Court in *Poole* (a continuation of the *Velez* case) eventually agreed with the magistrate judge's standing conclusion. *Poole*, 922 F.3d at 74.

But both panels made similar findings as did *Ragin*—and would have had to do so to satisfy their "independent obligation to ensure that they do not exceed the scope of their jurisdiction." *Henderson ex rel. Henderson v. Shinseki*, 562 U.S. 428, 434 (2011). The *Centro* court held that "enforcement will *require* Workplace to divert resources from other of its activities to combat the effects of the Ordinance," and "force" it "to divert money from its other current activities to advance its established organizational interests." *Centro*, 868 F.3d at 110 (majority opinion) (emphasis added). The *Poole* court affirmed the holding of *Velez* and noted that "the Coalition has spent nontrivial resources fielding these calls, and that it will continue to *have to do so* absent relief." *Poole*, 922 F.3d at 74 (emphasis added). Neither organization legally had to do *anything* in response to the challenged actions. The organizations spent the resources they spent not out of legal obligation, but to advance their missions. Under this Court's precedent, these opportunity costs were fairly traceable to the challenged actions.

Like these organizations, the Parents Union is surely under no legal obligation to spend its limited resources helping children and families fight racial discrimination in Connecticut magnet schools.

Nonetheless, because the Parents Union's "established organizational interests," *Centro*, 868 F.3d at 110, include ensuring that "parents, guardians, and families are connected with the educational resources and support system necessary to protect their children's educational rights," including their right to be free from racial discrimination, App. at 011 (Complaint ¶ 6), its actions were "not voluntary," but "essential to fulfilling its core mission." *Velez*, 2016 WL 11263164, at *6. Under this standard, established by *Ragin*, *Nnebe*, and *Centro*, the Parents Union may challenge the statewide racial quota.

In opposition, the District Court cited various other district court opinions for the proposition that granting the Parents Union standing "would permit any organization that disagreed with a law to bring a suit merely because it chose to redirect its time and resources to opposing that very law." App. at 046 (District Court Order at 11). While district court opinions within this circuit appear to be split on the persuasiveness of this slippery-slope argument,[3] it has not prevailed in this Court. In

[3] *Compare Christa McAuliffe Intermediate Sch. PTO, Inc. v. de Blasio*, 364 F. Supp. 3d 253, 272 (S.D.N.Y. 2019), *aff'd on other grounds*, 788 F. App'x 85 (2d Cir. 2019) (The organizations "have all expended resources outside of this litigation organizing public events, speaking to press, and

Centro, Judge Jacobs lamented in dissent that, if the allegations there were sufficient to support standing, "a pop-up organization could gin up standing by alleging a mission to oppose any law it wished to challenge." *Centro*, 868 F.3d 120 (dissenting opinion). That fear did not prevail with the majority, which continued this Court's consistently broad reading of *Havens Realty*. Appellant is aware of no Second Circuit case adopting the narrow reading applied by the District Court below. The only way to change that is through rehearing *en banc*.

But in any event, holding that Connecticut Parents Union has standing to challenge the statewide racial quota would not bring the results the District Court feared. After all, courts can easily draw the line

---

lobbying officials to combat the proposed changes to the Discovery program. Resources expended for these activities could have gone towards other activities furthering the organizations' goals." (record cites omitted)), *with Center for Food Safety v. Price*, No. 17-CV-3833 (VSB), 2018 WL 4356730, at *5 (S.D.N.Y. Sept. 12, 2018) ("[T]o allow standing based on these allegations alone would mean that any entity that spends money on an issue of particular interest to it would have standing, which would in turn contravene the principle that an entity's 'mere interest in a problem' cannot support standing.").

Both of these cases—and many others—purport to address the injury prong of standing analysis, but, as cases like *Centro* and *Poole* make clear, injury and causation are often entangled. The question whether an organization has suffered an opportunity cost is intertwined with the question whether the organization was "compelled" to expend resources in the first place.

between an organization like the Parents Union, with a mission established long before any potential for litigation, and a "pop-up organization" that might "seem[] not to exist except as a vehicle for this litigation." *Id.* at 118, 120. There is no reason to withdraw standing from a bona fide organization like the Parents Union simply because some *other* group might potentially benefit from organizational standing in the future. Each organization should be evaluated on its own merits based on the analysis of *Ragin* and its progeny. Because the Parents Union's allegations are sufficient to establish both injury and causation under this Court's precedent, the judgment below cannot stand.

C. An Injunction Would Redress the Parents Union's Injury

The final element of standing analysis is redressability. Here, it is clear that a judgment in favor of the Parents Union granting injunctive and declaratory relief against the statewide racial quota would redress the Parents Union's injuries. *See Poole*, 922 F.3d at 75 ("the Coalition has spent nontrivial resources fielding these calls, and *that it will continue to have to do so absent relief*" (emphasis added); *see also Centro*, 868 F.3d at 118 (affirming the grant of an injunction where the only plaintiff was an organization which had standing partly due to expenditure of

resources). An injunction prohibiting enforcement of the statewide racial quota would allow the Parents Union to redirect its limited resources to other issues facing Connecticut families and children.

* * *

The standard a nonprofit organization must satisfy in order to sue in its own right is subject to some debate among the various circuits. But this Court has been remarkably consistent in holding that an organization may maintain suit when, in order to pursue its mission, it must divert resources away from its usual operations in order to counteract an allegedly unconstitutional state action. Because Connecticut Parents Union satisfies this test, it has standing to challenge Connecticut's statewide racial quota for interdistrict magnet schools.

CONCLUSION

Appellant Connecticut Parents Union respectfully asks this Court to reverse the judgment below and remand this case for further proceedings on the merits of the Parents Union's equal protection claim.

DATED: August 17, 2020.

Respectfully submitted,

CHRISTOPHER M. KIESER
OLIVER J. DUNFORD
Pacific Legal Foundation

s/ Christopher M. Kieser
CHRISTOPHER M. KIESER
Pacific Legal Foundation
930 G Street
Sacramento, California 95814
Telephone: (916) 419-7111

OLIVER J. DUNFORD
Pacific Legal Foundation
4440 PGA Blvd., Suite 307
Palm Beach Gardens, Florida 33410
Telephone: (561) 691-5000

Counsel for Appellant

CERTIFICATE OF COMPLIANCE

Certificate of Compliance with Type-Volume Limitation, Typeface Requirements, and Type Style Requirements

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because, excluding the parts of the brief exempted by Fed. R. App. P. 32(f):

[X] this brief contains 5,062 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii), or

[ ] this brief uses a monospaced typeface and contains [state the number of] lines of text, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because:

[X] this brief has been prepared in a proportionally spaced typeface using MicrosoftWord 2013 in 14-point Century Schoolbook, or

[ ] this brief has been prepared in a monospaced typeface using MicrosoftWord 2013 with [state number of characters per inch and name of type style].

DATED: August 17, 2020.

s/ Christopher M. Kieser
CHRISTOPHER M. KIESER

CERTIFICATE OF SERVICE

I hereby certify that on August 17, 2020, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Christopher M. Kieser
CHRISTOPHER M. KIESER

Kiren Mathews

From: cmecf@ca2.uscourts.gov
Sent: Tuesday, August 18, 2020 12:31 PM
To: Incoming Lit
Subject: 20-1998 Connecticut Parents Union v. Cardona "Appellant/Petitioner Brief FILED"

Follow Up Flag: Follow up
Flag Status: Completed

*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing.**

Court of Appeals, 2nd Circuit

Notice of Docket Activity

The following transaction was filed on 08/18/2020

Case Name:	Connecticut Parents Union v. Cardona
Case Number:	20-1998
Document(s):	Document(s)

Docket Text:
BRIEF, on behalf of Appellant Connecticut Parents Union, FILED. Service date 08/18/2020 by CM/ECF.[2911033] [20-1998]

Notice will be electronically mailed to:

Darren P. Cunningham, -: darren.cunningham@ct.gov
Ms. Clare E. Kindall, Assistant Attorney General: clare.kindall@ct.gov, lynn.rioux@ct.gov, clare.kindall@gmail.com
Oliver James Dunford, -: ojd@pacificlegal.org, incominglit@pacificlegal.org, ppuccio@pacificlegal.org
Christopher M. Kieser, -: ckieser@pacificlegal.org, incominglit@pacificlegal.org, tdyer@pacificlegal.org
Jason Wang, Deputy Clerk: Jason_Wang@ca2.uscourts.gov

Notice will be stored in the notice cart for:

Jason Wang, Deputy Clerk
Quality Control 1

The following document(s) are associated with this transaction:
Document Description: Appellant/Petitioner Brief FILED
Original Filename: AOB cites corrected.pdf
Electronic Document Stamp:
[STAMP acecfStamp_ID=1161632333 [Date=08/18/2020] [FileNumber=2911033-0]
[5a20f76922f4f2749ba89ed4b53aadec7d8bd451c402548cc29f837d970fc174cc93e306e4e9cda33886ed99d06ab
a11f9faf3056b06ed9869425b336a8bc7c1]]