IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Secular Student Alliance, et al., *Plaintiffs*, v. **U.S. Department of Education**, et al. *Defendants*.	**Case No.** 1:21-cv-00169-ABJ

PROPOSED INTERVENOR-DEFENDANT RATIO CHRISTI, INC.'S AMICUS CURIAE BRIEF IN OPPOSITION TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

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INTEREST OF AMICUS CURIAE[1]

As a Christian apologetics ministry with student chapters at over a hundred college and university campuses, Ratio Christi, Inc., has sought to intervene in this lawsuit and defend the Department of Education's regulations that ensure institutions of higher education are not unlawfully discriminating against religious student groups. Without a decision on its pending motion to intervene, ECF 6, Ratio Christi submits this amicus brief in support of the Department under Local Rule 7(o). The Department appropriately applied its legal authority to protect and defend the First Amendment rights of religious groups on college campuses. Plaintiffs Secular Student Alliance and Declan Galli are asking this Court to strike down the Department's regulations protecting the First Amendment rights of religious groups like Ratio Christi. Ratio Christi thus has a substantial interest in the subject matter of this case, and its outcome may impair its interests.

Because Ratio Christi requires its leaders to share its theological beliefs, including basic teachings about the Christian faith, several universities previously wanted to exclude it from campus resources or recognition as a registered student group. Ratio Christi has needed to go to court at least twice to persuade college administrators to respect its First Amendment freedoms. The Department's regulations sought to redress exactly this sort of exclusionary treatment for religious student groups by ensuring through grant conditions that religious groups are welcome on campus—rather than leaving students to seek redress on their own or through litigation. There is no dispute that Ratio Christi is a direct beneficiary of the Department's regulations.

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[1] Ratio Christi has no parent corporation and no publicly held corporation owns 10 percent or more of its stock. No counsel for a party authored this brief in whole or in part, and no person other than amicus and its counsel made any monetary contribution intended to fund the preparation or submission of this brief. Both Plaintiffs and Defendants consented to Ratio Christi filing this amicus brief.

Ratio Christi's interests cannot be adequately represented by the named parties because the Department of Education does not have the same interests as a private, religious, student-centered group, or Ratio Christi in particular. What's more, the Department has proposed to rescind its regulations, further undermining the federal government's ability to adequately defend them and its ability to represent Ratio Christi's interests. *See* Direct Grant Programs, State-Administered Formula Grant Programs, 88 Fed. Reg. 10,857 (Feb. 22, 2023) (proposing to rescind the regulations).

SUMMARY OF THE ARGUMENT

In response to Executive Order 13864, Improving Free Inquiry, Transparency, and Accountability at Colleges and Universities, 84 Fed. Reg. 11,401 (Mar. 21, 2019), the Department of Education revised its regulations to ensure that institutions of higher learning comply with the First Amendment to the U.S. Constitution as a material condition for participating in the Department's direct-grant and state-administered formula grant programs. Improving Free Inquiry, Transparency, and Accountability at Colleges and Universities, 85 Fed. Reg. 59,916 (Sept. 23, 2020). The regulations prohibit a public college or university that participates in these grant programs from denying a religious student organization any of the rights, benefits, or privileges that are otherwise afforded to other student organizations. 34 C.F.R. §§ 75.500, 76.500.

Plaintiffs sued the Department to challenge these regulations and moved for partial summary judgment roughly one month later. Their motion raises only two of the four counts enumerated in their complaint: (1) an *ultra vires* claim that the Department exceeded its authority to enact the regulations and (2) an Administrative Procedure Act claim that the regulations exceeded the Department's statutory authority. Pls.' Br. at 2; Compl. at 17–18.

But Plaintiffs have suffered no injury on these two claims. Their complaint, declarations, and motion for partial summary judgment confirm this fact. And any potential future injury is so speculative that they cannot specify any. Without an actual case or controversy, Plaintiffs lack standing to sue. The Court thus should deny Plaintiffs' motion for this reason alone.

Plaintiffs' attack on the Department's legal authority to enact these regulations is just as unavailing. The U.S. Constitution and federal law require the President and the Department to protect and support the Constitution of the United States. Executive Order 13864 also directed the Department to "take appropriate steps" to support the First Amendment and "promote free inquiry." 84 Fed. Reg. at 11,402. Given these mandates, the Department invoked its general rulemaking authority "to carry out functions otherwise vested in the Secretary by law or by delegation of authority pursuant to law" to "amend rules and regulations ... governing the applicable programs administered by[] the Department." 20 U.S.C. § 1221e-3; *see also* 20 U.S.C. § 3474 (authorizing Secretary "to prescribe such rules and regulations as the Secretary determines necessary or appropriate to administer and manage the functions of the Secretary or the Department"). The Department acted well within its broad statutory authority to require institutions of higher learning to comply with the First Amendment as a condition to receiving grants.

ARGUMENT

I. Plaintiffs lack standing.

Plaintiffs pressed for partial summary judgment early and in doing so passed over a threshold requirement for obtaining judicial relief: standing to sue. Plaintiffs allege that they "will be forced to pay … to support discrimination to which these students object, by official, university-funded groups that would exclude the students from membership on grounds currently forbidden by the schools'

nondiscrimination policies." Pls.' Br. at 9–10. But *none* of Plaintiffs' declarations identify a single student organization that previously excluded or would exclude the students from membership. And *none* of the declarations allege that they desire or intend to become members of these organizations. Alternatively, Plaintiffs allege that their universities might maintain their policies and thus forgo federal grants. But *none* of the declarations state that their schools have rejected federal grants. In fact, all indications show that their schools continue to receive Department funding. That alleged injury is not just speculative; it's non-existent. Plaintiffs also failed to establish how these hypothetically forgone grants for their schools would have benefited these individual students—rather than being a generalized grievance or one that only their schools could assert.

To establish standing, Plaintiffs must show that they "suffered a concrete and particularized injury in fact." *Sierra Club v. EPA*, 755 F.3d 968, 973 (D.C. Cir. 2014) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992)). "An allegation of future injury may suffice" to show injury in fact "if the threatened injury is 'certainly impending,' or there is a 'substantial risk' that the harm will occur." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) (quoting *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 414 n.5 (2013)). And when organizations sue on behalf of their members, they "must demonstrate that at least one of their members would otherwise have standing to sue in his or her own right." *Sierra Club*, 755 F.3d at 973. Because Plaintiffs have failed to meet the requirements for standing, the Court should deny their motion for partial summary judgment.

A. Plaintiffs speculate that an unidentified group will exclude them from membership that they do not claim to seek.

Plaintiffs cannot establish standing by speculating that an unidentified student group will exclude them from membership; nor can they rely on an imagined injury by failing to allege that they desire or intend to join the ranks of

membership. *See Lujan*, 504 U.S. at 560 (stating a "plaintiff must have suffered an 'injury in fact'—an invasion of a legally protected interest which is (a) concrete and particularized … (b) 'actual or imminent, not conjectural or hypothetical'") (cleaned up). Plaintiffs have provided no evidence that they have suffered an actual injury to date. Nor do any of their alleged future injuries come close to "certainly impending." *See Susan B. Anthony List*, 573 U.S. at 158 (citation omitted).

Plaintiffs assert that the declarant students would be forced to fund student groups that would exclude them from membership. Pls.' Br. at 9–10. But their declarations fail to support that assertion. Neither of the associational declarants (Bass and Rajeshnarayanan) supports Plaintiff Secular Student Alliance's standing to sue on behalf of its members, while Plaintiff Galli's declaration likewise fails to establish standing.

Declarant Bass was "concerned that the Rule … will require me to provide financial support to faith-based [Registered Student Organizations] that will be permitted to exclude me from the activities funded in by my mandatory contribution." ECF 12-6 at 4. Even though Bass names "belief-based RSOs" on campus and states that they have organized many events in the past, the declaration fails to state that these RSOs previously excluded students or would exclude Bass from these events in the future. *Id.* at 3. Nor does Bass ever express a desire or intention to attend these events. Plaintiffs also conflate attendance at these events with membership in these organizations. Faith-based groups often open their events to all students as a means to evangelize. But Bass's declaration lacks any evidence that these organizations exclude students from membership, let alone from attending these events.

Declarant Rajeshnarayanan was also "concerned that the Rule ... will require me to provide financial support to faith-based [Voluntary Student Organizations] that will be permitted to exclude me from the activities funded in part by my

mandatory contribution." ECF 12-7 at 4. Even though Rajeshnarayanan names "religious or spiritual VSOs" on campus and states that these VSOs have organized many events in the past, the declaration fails to state that these VSOs previously excluded students or would exclude Rajeshnarayanan from these events in the future. *Id.* at 3. Nor does Rajeshnarayan ever express a desire or intention to attend these events. Like Bass, Rajeshnarayan's declaration lacks any evidence that these organizations exclude students from membership, let alone from attending these events.

Plaintiff Galli asserts that the rule will require "financial and other forms of support to student groups that oppose our equal rights and would discriminate against us in membership and leadership positions." ECF 12-5 at 6. Earlier in the declaration, however, Plaintiff Galli admits this concern is speculative: some of the student fees may be allocated to support activities "*potentially* organized by religious [Recognized Student Organizations] that advocate against my sexual orientation and ... will be permitted to exclude me on that basis *should they choose* to do so. *Id.* at 5 (emphasis added). The declaration names twelve "religious or spiritual RSOs" on campus. *Id.* at 4. But the declaration lacks any evidence that these RSOs previously excluded students or would exclude Galli from their events. Nor does Galli express a desire or intention to become a member of these RSOs or attend their events: under the policy of Galli's school, "these faith-based RSOs may not exclude me from their membership or have rules excluding me from their activities … *should I choose to participate*." *Id.* at 4–5 (emphasis added).

Because these declarations contain only hypothetical injuries, Plaintiffs have failed to satisfy their burden of standing at the summary judgment stage. *See Lujan*, 504 U.S. at 561 (For a summary judgment motion, "the plaintiff can no longer rest on such 'mere allegations,' but must 'set forth' by affidavit or other evidence 'specific facts,' Fed. Rule Civ. Proc. 56(e), which for purposes of the

summary judgment motion will be taken to be true."). Plaintiffs' declarations lack specific facts necessary to establish their standing to challenge the Department's regulations. The law demands more.

B. Plaintiffs provided no evidence to support their unfounded fears that their schools would lose federal grants.

When Plaintiffs filed their motion in February 2021, they feared that the universities of their declarants would decline to change their policies and lose federal grants. Pls.' Br. at 10. But there is nothing in the record showing that this conjectural injury occurred in the following years. And every indication is that these schools have continued to receive Department grants since the regulations went into effect. *See, e.g.*, Dusty Baker, *Cal Poly School of Education granted $2.1 million for residency program*, KSBY (June 1, 2021), https://bit.ly/3ULOFGp (reporting that the school "received the approval for a U.S. Department of Education grant"); *Research Funding Support*, Or. State Univ. Coll. of Educ., https://bit.ly/3JSBkWu (stating that the school "receives significant financial support from federal, state, and private organizations, such as the US Department of Education"); Summer Poole, *University of West Florida gets grant to help student-parents*, WKRG (Oct. 22, 2023), https://bit.ly/4dsYFvA (reporting that the Department "has given the University of West Florida Educational Research Center for Child Development a $1.6 million, four-year grant").[2]

Nor did Plaintiffs establish how these grants for their schools would be "in turn available to the students"—rather than being a generalized grievance or one that only their schools could assert. Pls.' Br. at 10. Such a speculative injury cannot satisfy the requirements of standing for summary judgment. *See Lujan*, 504 U.S. at 561 (requiring specific facts, not mere allegations, for summary judgment).

[2] All internet-based sources were last visited on May 10, 2024.

C. Any alleged First Amendment injury falls outside the scope of this motion for *partial* summary judgment.

Plaintiffs' motion for partial summary judgment asserts that "the students and the campus organizations to which they belong will be denied equal access to a limited public forum." Pls.' Br. at 10. In a footnote, however, Plaintiffs concede that their "substantive legal claims regarding this deprivation of First Amendment rights ... are not the subject of this motion for partial summary judgment. *Id.* at 10 n.5. That means any alleged First Amendment injury cannot salvage standing for purposes of this motion. *See Davis v. FEC*, 554 U.S. 724, 734 (2008) (Because standing is not "dispensed in gross," a plaintiff must demonstrate standing for each claim "he seeks to press and for each form of relief that is sought.") (cleaned up).

Plaintiffs failed to establish standing before pressing for partial summary judgment roughly one month after filing their lawsuit. Without a case or controversy, the Court should deny Plaintiffs' motion for lack of standing.

II. Federal law authorized the Department to prescribe its First Amendment regulations.

Plaintiffs argue that "[b]ecause Congress has not conferred on the Secretary of Education any authority to enforce the First Amendment ... the challenged Rule is *ultra vires*" and "exceeds the Department's statutory authority and jurisdiction in violation of the [Administrative Procedure Act]." Pls.' Br. at 11. That argument betrays the U.S. Constitution and federal law. The Department must protect and defend constitutional rights to the best of its ability, especially when the President directs it to do so. And Congress has conferred broad rulemaking authority for the Department to govern its educational grants programs. The Department's proposed rescission of these regulations did not claim it lacked legal authority to require First Amendment compliance as a material condition of federal funding. *See generally* 88 Fed. Reg. 10,857–64. That is because the Department appropriately exercised its

authority to protect religious student groups from unconstitutional discrimination by colleges and universities across the country.

A. The Department must protect and support First Amendment rights to the best of its ability.

The U.S. Constitution requires the President to affirm that he "will to the best of [his] Ability, preserve, protect and defend the Constitution of the United States." U.S. Const. art. II, § 1. In turn, the President has directed the Department to "take appropriate steps, in a manner consistent with applicable law, including the First Amendment, to ensure institutions that receive Federal research or education grants promote free inquiry, including through compliance with all applicable Federal laws, regulations, and policies." 84 Fed. Reg. at 11,402; *see also* 3 U.S.C. § 301 (authorizing the president to "designate and empower the head of any department or agency in the executive branch ... to perform ... any function which is vested in the President by law" if the authorization is "in writing" and "published in the Federal Register").

Congress also requires every federal officeholder to affirm that they "will support and defend the Constitution of the United States." 5 U.S.C. § 3331. What's more, Congress has avowed that "no student attending an institution of higher education ... should, on the basis of participation in protected speech or protected association, ... be subjected to discrimination or official sanction under [numerous] education program[s], activit[ies], or division[s] of the institution[s] directly or indirectly receiving financial assistance." 20 U.S.C. § 1011a(a)(1). Congress also prohibited "any public secondary school which receives Federal financial assistance and which has a limited open forum" from "deny[ing] equal access or a fair opportunity to, or discriminate against, any students who wish to conduct a meeting within that limited open forum on the basis of the religious, political, philosophical, or other content of the speech at such meetings." 20 U.S.C. § 4071(a).

Under these mandates, the Department updated its regulations to "help protect the right to free exercise of religion for both institutions and students." 85 Fed. Reg. at 59,917. The Department affirmed that "[r]eligious student organizations should be able to enjoy the benefits, rights, and privileges afforded to other student organizations at a public institution." *Id*. Indeed, these regulations "clarify that public institutions allowing student organizations to restrict membership or hold certain standards for leadership may not implement non-neutral policies that single out religious student organizations for unfavorable treatment." *Id.* at 59,939. The Department explained that these "regulations are consistent with the statutes that govern institutions of higher education." *Id.* at 59,971 (citing 20 U.S.C. §§ 1011a(a)(1), 4071(a)). And the regulations align with the holding in *Christian Legal Society v. Martinez*, 561 U.S. 661 (2010), which does not mandate the policies that universities must adopt but merely allows them to adopt an all-comers policy for student organizations, as long as they enforce this policy in the same way for *all* student groups. 85 Fed. Reg. at 59,939 (explaining that "these regulations do not prohibit public colleges and universities from implementing all-comers policies, nor do they bar these institutions from applying neutral, generally applicable policies to religious student organizations").

These requirements do not impose new obligations on colleges and universities. Instead, the Department addressed the problem of federally funded institutions of higher education violating the First Amendment rights of religious student organizations by conditioning the participation in federal grant programs on compliance with the First Amendment.

B. Congress has provided the Department with broad authority to issue regulations governing its funding programs.

The Department relied on two statutory provisions that authorized its regulations to protect the First Amendment rights of student organizations. *First*,

the Department relied on the "General authority of [the] Secretary" conferred by Congress: "The Secretary, in order to carry out functions otherwise vested in the Secretary by law or by delegation of authority pursuant to law, … is authorized to make, promulgate, issue, rescind, and amend rules and regulations … governing the applicable programs administered by[] the Department." 20 U.S.C. § 1221e-3. *Second*, the Department cited its authority "to prescribe such rules and regulations as the Secretary determines necessary or appropriate to administer and manage the functions of the Secretary or the Department." 20 U.S.C. § 3474. The Department's application of its statutory authority here follows its previous First Amendment regulations and case law interpreting these statutory provisions.

As the Department noted, its final regulations "regarding the participation of faith-based and other community organizations in programs that the Federal agencies administer … cited the same authority, 20 U.S.C. § 1221e-3 and 20 U.S.C. § 3474, for its 2015 [proposed rulemaking] and subsequent final regulations issued in 2016." 85 Fed. Reg. at 59,971 (citing 80 Fed. Reg. 47,253 (Aug. 6, 2015) and 81 Fed. Reg. 19,355 (Apr. 4, 2016)). This multi-agency final rulemaking addressed, among other things, the effect of the First Amendment's Establishment Clause on the Department's financial assistance programs. 81 Fed. Reg. at 19,359.

Decades before, the Department used this general rulemaking authority to adopt a regulation that prohibited the use of federal funds to pay for "[r]eligious worship, instruction, or proselytization." 34 C.F.R. § 76.532(a)(1) (citing 20 U.S.C. §§ 1221e-3, 3474). The U.S. Supreme Court was not troubled when it found that this "regulation merely implements the Secretary of Education's understanding of (and thus is coextensive with) the requirements of the Establishment Clause" and was issued under "his general rulemaking power." *Zobrest v. Catalina Foothills Sch. Dist.*, 509 U.S. 1, 6 n.7 (1993).

The Department's 2020 regulations thus tracked prior agency actions under its general rulemaking authority. Granting Plaintiffs' motion would question the legality of these Department regulations.

C. The cases that have interpreted the Department's general rulemaking authority support the regulations here.

Plaintiffs cite no case that supports their theory that the Department may not use its general rulemaking authority to require compliance with the U.S. Constitution as a condition to federal funding without a more specific statute. But they ignore the cases that hold just the opposite: Congress conferred broad rulemaking power to the Department to issue regulations related to its programs. *See, e.g.*, *Ass'n of Priv. Colls. & Univs. v. Duncan*, 110 F. Supp. 3d 176, 199 (D.D.C. 2015) (20 U.S.C. §§ 1221e-3, 3474 "fashion an awfully big umbrella, and it is no stretch to conclude that the 2014 disclosure regulations fall under it," especially given that their goal "surely advances the purposes" of the "statute and programs 'administered' and 'manage[d]' by the Department."); *Ass'n of Priv. Colls. & Univs. v. Duncan*, 870 F. Supp. 2d 133, 156 (D.D.C. 2012) (The Department "has broad authority" under 20 U.S.C. §§ 1221e-3, 3474, and regulations mandating informational disclosures to prospective students "fall comfortably within that regulatory power."); *Am. Fed'n of Tchrs. v. DeVos*, 484 F. Supp. 3d 731, 736–37 (N.D. Cal. 2020) (citing 20 U.S.C. § 1221e-3; *id.* § 3474) (Because the Department "has broad authority [under 20 U.S.C. §§ 1221e-3 and 3474] to prescribe any rules and regulations that she deems necessary or appropriate to administer the [Higher Education Act of 1965]," Congress authorized the Department to define statutory terms "by regulation.").

Instead, Plaintiffs cite cases that stand for the "well[-]established" proposition that "an agency may not circumvent specific statutory limits on its actions by relying on separate, general rulemaking authority." *Air All. Houston v.*

EPA, 906 F.3d 1049, 1061 (D.C. Cir. 2018) (per curiam). In *Air Alliance Houston*, the D.C. Circuit held that the U.S. Environmental Protection Agency "cannot avoid [the Clean Air Act's] express limitations by invoking general rulemaking authority under a different statutory provision." *Id.* at 1053. Likewise for the other cases on which Plaintiffs rely. *See, e.g.*, *Am. Petroleum Inst. v. EPA*, 52 F.3d 1113, 1119 (D.C. Cir. 1995) ("EPA cannot rely on its general authority to make rules necessary to carry out its functions when a specific statutory directive defines the relevant functions of EPA in a particular area."); *NAACP v. DeVos*, 485 F. Supp. 3d 136, 144 (D.D.C. 2020) (quoting *Am. Petroleum Inst.*, 52 F.3d at 1119) ("The Department 'cannot rely on its general authority to make rules necessary to carry out its functions when a specific statutory directive defines the relevant functions ... in a particular area.'"); *Washington v. DeVos*, 481 F. Supp. 3d 1184, 1193 (W.D. Wash. 2020) (The Department could not rely on its general rulemaking authority because it "did not have explicit authority—either specific or general—to promulgate rules under [Section 180005] of the [Coronavirus Aid, Relief, and Economic Security] Act.").

Plaintiffs do not attempt to cite any express statutory limitation on the Department that would preclude it from invoking its general rulemaking authority. That's because none exists.

And Plaintiffs' references to laws that "established *statutory* rights to be free from federally funded discrimination," Pls.' Br. at 13 (emphasis added), are irrelevant because the Department exercised its authority to protect *constitutional* rights as it had in the past. In fact, those specific laws restrict the federal government's ability to enact regulations and likely preclude the Department from invoking its general rulemaking authority to attach conditions to grants. *See, e.g.*, 42 U.S.C. § 2000d-1 ("No such rule, regulation, or order shall become effective unless and until approved by the President."); 20 U.S.C. § 1682 (same); 29 U.S.C.

§ 794(a) ("Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees."); 42 U.S.C. § 12134 (requiring the Attorney General to issue regulations no later than July 26, 1991, and to "not to include any matter within the scope of the authority of the Secretary of Transportation"); 42 U.S.C. § 6103(a) (specifying when and how the Secretary of *Health and Human Services* may propose regulations on age discrimination for grant programs).

D. Plaintiffs' remaining arguments cannot save their claims.

Plaintiffs' remaining arguments fare no better. They argue that a failed bill in Congress "confirms" that the Department "did not already have the authority" to enact regulations to protect the First Amendment rights of religious student groups. Pls.' Br. at 14 (citing H.R. 4508, 115 Cong. (2018)). But that bill predates both Executive Order 13864 and the Department's rulemaking. That the proposed legislation did not attempt to confer statutory authority to the Department to implement the regulations is fatal to Plaintiffs' argument. By seeking to codify these protections into law, Congress showed an interest in using legislative power to protect First Amendment rights for religious student groups when the Department had not made it a priority through its regulatory power.

Finally, Plaintiffs conflate material conditions for educational grants with enforcement actions. They cite a now-obsolete Case Processing Manual, Pls.' Br. at 13, which states the Department's "[Office of Civil Rights] does not have jurisdiction to enforce the First Amendment to the U.S. Constitution." U.S. Dep't of Educ., Off. for Civ. Rts., *Case Processing Manual* 12 (Aug. 26, 2020),

https://bit.ly/3WwmNY2.[3] They also claim that only the Department of Justice has "the authority to enforce its statutory proscription against religious discrimination in institutions of higher education." Pls.' Br. at 14 (citations omitted). But the final rule expressly disclaimed any such enforcement authority: "the Department does not routinely enforce or handle matters regarding the First Amendment and would like to rely on the courts for their expertise in such judgments." 85 Fed. Reg. at 59,977.

At bottom, Plaintiffs' argument misunderstands the goal of the regulations. The Department sought to protect the First Amendment rights of religious student organizations *before* any violations occur—not to take enforcement actions against schools *after* they violate these rights. *See, e.g.*, 85 Fed. Reg. at 59,943 (The regulations "are designed to ... prevent public institutions from denying rights, benefits, and privileges to religious student organizations because of their religious character."); *Id.* at 59,944 (The regulations "prevent[] *public* institutions from failing to recognize religious student organizations because of their faith-based membership or leadership criteria."). The carrot of participating in the Department's grant programs differs in both form and substance from the stick of being subject to federal enforcement actions. Plaintiffs' red herring does not swim.

CONCLUSION

Because Plaintiffs lack standing and their claims lack merit, the Court should deny the motion for partial summary judgment.

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[3] The current manual says nothing about the Department's enforcement authority for First Amendment violations. U.S. Dep't of Educ., Off. for Civ. Rts., *Case Processing Manual* (July 18, 2022), https://bit.ly/3wthz4N.

Respectfully submitted this 10th day of May, 2024.

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**Admitted to the Bar of this Court 03/01/2021, renewed 03/05/2024*
***Application for admission to the Bar of this Court pending*