

No. 25-

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IN THE  
**Supreme Court of the United States**

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DISABILITY RIGHTS NEW YORK,  
*Petitioner,*

*v.*

NEW YORK STATE DEPARTMENT OF HEALTH,  
JAMES V. MCDONALD, IN HIS OFFICIAL CAPACITY  
AS COMMISSIONER OF THE NEW YORK STATE  
DEPARTMENT OF HEALTH, NEW YORK STATE  
OFFICE FOR PEOPLE WITH DEVELOPMENTAL  
DISABILITIES, AND WILLOW BAER, IN HER  
OFFICIAL CAPACITY AS COMMISSIONER OF THE  
NEW YORK STATE OFFICE FOR PEOPLE WITH  
DEVELOPMENTAL DISABILITIES,  
*Respondents.*

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ON PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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**PETITION FOR A WRIT OF CERTIORARI**

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**QUESTION PRESENTED**

Whether DRNY, as a Protection & Advocacy System authorized by Congress to bring lawsuits in its own name on behalf of individuals with disabilities pursuant to the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. § 15041 et seq., the Protection and Advocacy for Individuals with Mental Illness Act of 1986, 42 U.S.C. § 10801 et seq., and the Protection and Advocacy of Individual Rights Act, 29 U.S.C. § 794e, has Article III standing to bring a case or controversy on behalf of injured individual(s) with disabilities?

## **PARTIES TO THE PROCEEDING**

Petitioner is Disability Rights New York. It was Plaintiff/Appellant below.

Respondents are New York State Department of Health, James V. McDonald, in his official capacity as Commissioner of the New York State Department of Health, New York State Office for People with Developmental Disabilities, and Willow Baer, in her official capacity as Commissioner of the New York State Office for People with Developmental Disabilities. They were Defendant-Appellees below.

Plaintiff-Appellants in the judgment appealed from are Respondents A.H., by her next friend E.H, R.D., by her next friend M.D., J.D., by his next friend D.D., H.L., on behalf of themselves and all others similarly situated, A.B., on behalf of themselves and all others similarly situated, J.S., on behalf of themselves and all others similarly situated, J.C.M., on behalf of themselves and all others similarly situated, and L.P., by her next friend C.P.

Intervenor-Plaintiffs-Appellants in the judgment appealed from are Respondents E.B., M.W., by his next friend T.D., J.D.C., J.P.S., by his next friend S.S., M.F., O.A., M.Y., by his next friend B.L., and C.H.

**RULE 29.6 STATEMENT**

Disability Advocates, Inc. d/b/a/ Disability Rights New York has no parent company or publicly held company with a 10% or greater ownership interest in it.

## **RELATED PROCEEDINGS**

This case arises from the following proceedings:

United States District Court (S.D.N.Y.):

*T.C., et. al, v. New York State Department of Health, et. al.*, No. 22-cv-5045 (Feb. 20, 2024)  
(opinion and order granting motion to dismiss)

United States Court of Appeals (2d Cir.):

*A.H., by her next friend E.H., et. al. v. New York State Department of Health, et. al.*, No. 24-725-cv(L), 24-728-cv(CON) (Aug. 13, 2025)  
(opinion)

*A.H., by her next friend E.H., et. al. v. New York State Department of Health, et. al.*, No. 24-725-cv(L), 24-728-cv(CON) (Oct. 14, 2025)  
(order denying rehearing *en banc*)

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**PETITION FOR WRIT OF CERTIORARI****OPINIONS BELOW**

The opinion of the Second Circuit is reported at 147 F.4th 270 (2d Cir. 2025) and is reproduced in the Appendix at Pet. App. 1a-59a. The Second Circuit's order denying rehearing *en banc* is reproduced in the Appendix at Pet. App. 88a-89a. The Southern District of New York's opinion, reproduced in the Appendix at Pet. App. 60a-87a, is not published in the Federal Supplement but is available at 2024 WL 689503.

**JURISDICTION**

The Second Circuit's judgment was entered on August 13, 2025. The Second Circuit issued an order denying rehearing *en banc* on October 14, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

**STATUTORY PROVISIONS INVOLVED**

The pertinent statutes are in the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. § 15041 et seq., the Protection and Advocacy for Individuals with Mental Illness Act of 1986, 42 U.S.C. § 10801 et seq. and the Protection and Advocacy of Individuals Rights Act, 29 U.S.C. § 794e.

42 U.S.C. § 15001(b)(2) states:

The purpose of this subchapter is to assure that individuals with developmental disabilities and their families participate in the design of and have access to needed community services,

individualized supports, and other forms of assistance that promote self-determination, independence, productivity, and integration and inclusion in all facets of community life, through culturally competent programs authorized under this subchapter, including specifically . . . protection and advocacy systems in each State to protect the legal and human rights of individuals with developmental disabilities;

42 U.S.C. § 15041 states:

The purpose of this part is to provide for allotments to support a protection and advocacy system (referred to in this part as a “system”) in each State to protect the legal and human rights of individuals with developmental disabilities in accordance with this part.

42 U.S.C. § 15043(a)(2)(A)(i) states:

System required . . . such system shall . . . have the authority to . . . (i) pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of such individuals within the State who are or who may be eligible for treatment, services, or habilitation, or who are being considered for a change in living arrangements . . .

42 U.S.C. § 15044(b)(1) states:

Nothing in this subchapter shall preclude a system from bringing a suit on behalf of



individuals with developmental disabilities against a State, or an agency or instrumentality of a State.

42 U.S.C. § 10801 states:

The Congress finds that . . . (1) individuals with mental illness are vulnerable to abuse and serious injury; (2) family members of individuals with mental illness play a crucial role in being advocates for the rights of individuals with mental illness where the individuals are minors, the individuals are legally competent and choose to involve the family members, and the individuals are legally incompetent and the legal guardians, conservators, or other legal representatives are members of the family; (3) individuals with mental illness are subject to neglect, including lack of treatment, adequate nutrition, clothing, health care, and adequate discharge planning; and (4) State systems for monitoring compliance with respect to the rights of individuals with mental illness vary widely and are frequently inadequate. . . . The purposes of this chapter are-- (1) to ensure that the rights of individuals with mental illness are protected; and (2) to assist States to establish and operate a protection and advocacy system for individuals with mental illness which will-- (A) protect and advocate the rights of such individuals through activities to ensure the enforcement of the Constitution and Federal and State statutes; and (B) investigate incidents of abuse and neglect of individuals with mental illness if the incidents are reported to the

system or if there is probable cause to believe that the incidents occurred.

42 U.S.C. § 10805(a)(1)(B) states:

A system established in a State under section 10803 of this title to protect and advocate the rights of individuals with mental illness shall . . . have the authority to . . . pursue administrative, legal, and other appropriate remedies to ensure the protection of individuals with mental illness who are receiving care or treatment in the State; . . .

29 U.S.C. § 794e(f)(3) states:

In order to receive assistance under this section, an eligible system shall submit an application to the Commissioner, at such time, in such form and manner, and containing such information and assurances as the Commissioner determines necessary to meet the requirements of this section, including assurances that the eligible system will . . . have the authority to pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of such individuals within the State or the American Indian consortium who are individuals described in subsection (a)(1) . . .

## STATEMENT OF THE CASE

### A. Factual Background

Disability Rights New York (DRNY) is the not-for-profit corporation designated as New York State's Protection and Advocacy System. N.Y. Exe. Law § 558(b) (McKinney). As the Protection and Advocacy System (P&A), DRNY is the recipient of eight federal grants that require DRNY to protect and advance the rights of individuals with disabilities. Pursuant to this mandate, DRNY investigates allegations of abuse and neglect and engages in direct and systemic legal advocacy. DRNY is specifically authorized by Congress to bring lawsuits in its own name on behalf of people with disabilities.

This case was filed as a putative class action on June 16, 2022, by eight individual plaintiffs and DRNY seeking injunctive and declaratory relief. Pet. App. 4a-5a. Plaintiffs alleged the failure to provide community-based residences and services resulted in their indefinite institutionalization, in violation of the Medicaid Act, the Rehabilitation Act, and the Americans with Disabilities Act. Pet. App. 5a. As it pertains to this appeal, in the amended complaint DRNY alleged:

DRNY is a Protection and Advocacy system, as that term is defined under the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. § 15041 et seq., the Protection and Advocacy for Individuals with Mental Illness Act of 1986, 42 U.S.C. § 10801 et seq. and the Protection and Advocacy of Individuals

Rights Act, 29 U.S.C. § 794e et seq. As New York State's Protection & Advocacy system, DRNY is specifically authorized to pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of individuals with disabilities.

Pet. App. 6a.

## **B. History of the P&A System**

In 1972, Geraldo Rivera exposed the horrific conditions of abuse and neglect at the Willowbrook State School in Staten Island, New York. Willowbrook was a massive state institution that housed thousands of children and adults with intellectual and developmental disabilities. The reporting exposed unconscionable treatment of Willowbrook residents in the form of beatings, inappropriate use of restraints, untreated wounds, and involuntary medical experimentation. Despite the profound and shocking injuries suffered by Willowbrook residents, prior to the exposé, none of them filed lawsuits seeking relief.

A national outcry over Willowbrook and other similar institutions prompted Congress to hold hearings focused on institutional abuse. Congress found that despite decades of federal funding, conditions in institutions remained unchanged:

The last four years have seen a dramatic increase in public awareness of the needs of institutionalized mentally retarded or developmentally disabled persons. This has

been highlighted by scandals in a number of institutions, by court cases, and by some excellent work done in the mass media. Testimony before this committee persuasively demonstrates that implementation and enforcement of minimum standards of care in institutions for the developmentally disabled are urgently needed and that the Federal government can and should play a significant role in upgrading the care and services provided to developmentally disabled persons in public and other facilities which operate with Federal funds.

REP. No. 94-160, 94th Cong., 1st Sess. 3-4.

The Committee further found that the:

inherent conflict in the role a State must play in delivering services and administering programs for persons with developmental disabilities and in protecting the human and legal rights of such persons. The Committee also believes that it is most important to distinguish between these two roles in light of the nature and the problems confronting such persons who are not able to adequately protect their own rights. It is for this reason that the Committee requires the establishment of a protective and personal advocacy function by the State. The protective and personal advocacy agency or agencies required by this provision shall be independent of any State agency administering or delivering services to developmentally disabled persons.

REP. No. 94-160, 94th Cong., 1st Sess. 3-4.

In response to its findings of abuse and neglect and in recognition that the individuals in institutions had no practical means of seeking redress, Congress enacted the Developmental Disabilities Assistance and Bill of Rights Act of 1975 (DD Act), 42 U.S.C. § 6000 et seq. (repealed and replaced by 42 U.S.C. § 15001 et seq.). The DD Act established a nationwide system to protect the rights and promote the inclusion of people with developmental disabilities into all aspects of everyday life.

Congress required that states must have a P&A system if they accept federal financial assistance to provide services to individuals with developmental disabilities. Congress provided the P&A with representational standing “authority to pursue legal and administrative remedies to assure protection of rights. Remedies include negotiations with agencies administering services programs as well as litigation.” *Oversight of Developmental Disabilities Assistance and Bill of Rights Act: Hearing S. 98-796 Before the Subcomm. on the Handicapped of the Comm. on Lab. and Hum. Res.*, 98th Congress 171 (1984) (Report of Mary P. Smith, Analyst in Social Legislation, Education and Public Welfare Division on The Developmental Disabilities Programs: Statutory Authority and Budget Information; see also 42 U.S.C. § 15043(a)(1). Congress directed that the P&A system could not be precluded from bringing a suit on behalf of individuals with developmental disabilities against a State, or an agency or instrumentality of a State. 42 U.S.C. § 15044(b)(1).

Eight years after the DD Act was enacted, Senator Lowell Weicker, chairman of two subcommittees on disability, led an investigation of state psychiatric

hospitals and other institutions across the country. Senate investigators, who visited 31 institutions in 12 states and conducted over 600 interviews, reported that residents were often subject to abuse and serious physical injury, sexual advances and rape, and verbal threats of injury and other forms of intimidation well out of the public eye.

On too many wards of state facilities for the mentally disabled, residents and staff exist in a climate of fear and intimidation. And despite the regular outside scrutiny of, at best, only a handful of state-paid monitors –whose internal reporting, however aggressive, is largely denied public airing – these residents and employees live and work in virtual secrecy.

*Care of Institutionalized Mentally Disabled Persons: Joint Hearings on S. 99-50 Before the Subcomm. on the Handicapped of the Comm. on Lab. and Hum. Res. and the Subcomm. on Lab. Health, and Hum. Servs., Educ. and Related Agencies of the Comm. on Appropriations, 99th Congress Appendix p. 2 (1985) (Staff Report on the Institutionalized Mentally Disabled Requested by Senator Lowell P. Weicker, Jr.).*

The investigation was prompted in part by testimony that William Bradford Reynolds, Assistant Attorney General in charge of the Civil Rights Division of the Justice Department gave at a Senate Hearing. Senator Weicker recalled the exchange:

If one of these [institutionalized] person's life could be snuffed out in the next hour and you know about it, do you have the power to go in

there and make sure that life will not be snuffed out? Do you have the authority right now to save that life? Mr. Reynolds gave the following answer, ‘I think that if you know in advance that someone is going to -your situation is if you know in advance somebody is going to snuff out a life in the next hour I would’ -and then there was a 30 second pause – ‘I am not sure what, I would have to look into that and whether the Federal Government is in a position to go in in advance on that.

*Care of Institutionalized Mentally Disabled Persons: Joint Hearings on S. 99-50 Before the Subcomm. on the Handicapped of the Comm. on Lab. and Hum. Res. and the Subcomm. on Lab. Health, and Hum. Servs., Educ. and Related Agencies of the Comm. on Appropriations, 99<sup>th</sup> Congress 2 (1985) (Statement of Senator Lowell P. Weicker).*

The Senate investigation raised “serious questions about the extent to which the Attorney General is frustrating congressional intent in enforcing the federal civil rights laws.” H.R. REP. NO. 98-759, at 3 (1984). The Attorney General was notified that “continued disregard for its statutory mandate will most surely result in legislative action in the upcoming year.” *Id.* The bases for the Committee’s conclusions and its resolve to legislate in the future were based on the failure of the Attorney General to investigate and take legal action against state and local governments for systemic violations of the constitutional or federal rights of individuals in public institutions as directed by the Civil Rights of Institutionalized Persons Act. *Id.* at 3-5.



Senator Weicker in a joint hearing before the Subcommittee on the Handicapped of the Committee on Labor and Human Resources and Subcommittee on Labor, Health and Human Services, Education and Related Agencies of the Committee on Appropriations stated:

Let us also be clear on the Federal Government's responsibilities to the institutionalized. When we passed the Civil Rights of Institutionalized Persons Act in 1980 we expected that these persons would, at least, live and be helped in conditions that meet tests of constitutional certainty and human decency. When we provided for Federal audits of institutional care as part of Medicaid funding, we expected that Federal tax money would be linked directly to quality care. However, neither the U.S. Justice Department, nor the Department of Health and Human Services has lived up to these expectations...Instead of tough Federal action to correct serious and potentially deadly institutional conditions, we are left with isolated media reports and limited State and congressional research, including this report by my staff.

*Care of Institutionalized Mentally Disabled Persons: Joint Hearings on S. 99-50 Before the Subcomm. on the Handicapped of the Comm. on Lab. and Hum. Res. and the Subcomm. on Lab. Health, and Hum. Servs., Educ. and Related Agencies of the Comm. on Appropriations, 99<sup>th</sup> Congress 2 (1985) (Statement of Senator Lowell P. Weicker).*

After these hearings, in 1985 Congress enacted the Protection and Advocacy System for Individuals with Mental Illness (“PAIMI”) Act to protect and enforce the rights of individuals with mental illness. Like the DD Act, the PAIMI Act empowers P&A systems with representational standing to “pursue administrative, legal and other appropriate remedies to ensure the protection of individuals with mental illness” and “the enforcement of the Constitution and Federal and State statutes.” 42 U.S.C. § 10805(a)(1)(B), 10801(b)(2)(A). The federal regulations implementing PAIMI provide that a P&A system may “bring lawsuits in its own right to redress incidents of abuse or neglect, discrimination, and other rights violations.” 42 C.F.R. § 51.6(f).

There are 57 P&A Systems today, one in every state and territory. There can be no doubt that Congress bestowed P&A systems with broad authority to investigate, advocate, *and* with representational standing to enforce the rights of people with disabilities. Each of the 57 P&A systems are federally regulated, monitored, and audited. 42 U.S.C. § 15043(a)(2)(C) and (D); 42 U.S.C. § 10805(a)(5)-(8). For the last 50 years, Congress has consistently funded and expanded the reach of the P&A system.<sup>1</sup>

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1. Since the enactment of the DD Act in 1975 and the PAIMI Act in 1986, Congress has continued to expand the national P&A system. In 1993 the P&A for Individual Rights, 29 U.S.C § 794e; in 1994 the P&A for Assistive Technology, 29 U.S.C. § 3004; in 1999 the P&A for Beneficiaries of Social Security, Public Law 106-170; in 2002 the P&A for Individuals with Traumatic Brain Injury, 42 U.S.C. § 300-d-53; in 2003 the P&A for Voter Access, Public Law 107-252; and in 2018 the P&A for individuals with Representative Payees, Public Law 115-165.

### C. Lower Court's Rulings

On December 1, 2022, Defendants filed a partial motion to dismiss, arguing in part, that DRNY lacked standing. Pet. App. 62a. On January 24, 2024, while the motion was still pending, Defendants sought permission to file a new motion arguing that all named Plaintiffs were moot. On February 20, 2024, the District Court, without any hearing or full briefing on the issues, dismissed the case in its entirety. The District Court granted Defendants' motion with respect to DRNY's standing because "in this Circuit, there is a bar on . . . third-party standing." Pet. App. 77a. DRNY and other Plaintiffs sought review in separately briefed appeals to the Second Circuit.

A divided Second Circuit panel affirmed the District Court's decision on DRNY's standing, albeit on entirely different grounds. While the District Court's decision rested on a bar to third party standing, the majority acknowledged the "right of litigants to bring actions on behalf of third parties" at least in "limited circumstances." Pet. App. 13a-14a. However, the majority opinion limits this to where the litigant has itself suffered an injury-in-fact, or is an association consisting of members who have suffered the injury-in-fact, complained of. Like the District Court opinion, the majority opinion does not analyze the text of Article III, or account for the long history of courts permitting litigants to assert the injury of another where there is a representational relationship prescribed by Congress.

The Second Circuit's dissenting opinion finds that the majority opinion "rests on a surface-level reading of precedent and fails to grapple with the complex interplay

between the legislative and judicial powers throughout the Supreme Court’s standing cases.” Pet. App. 23a. While the dissenting opinion explicitly acknowledges that “the irreducible minima of standing” are “injury-in-fact, causation, and redressability” it also correctly recognizes that “representation standing, by definition, comes into play only where those requirements are satisfied, but by a third party’s injury.” Pet. App. 39a. “[N]either [this Court] nor the Supreme Court have exhaustively enumerated the relationships that can support representational standing.” Pet. App. 29a. The dissenting opinion makes a critical point which underscores the importance of granting Certiorari. While it is a legitimate function of federal courts to ensure that the other branches of government do not overstep their authority, it is no less important for courts to ensure they themselves do not “overreach . . . to cut away at democratically enacted legislation.” Pet. App. 22a. Therefore, courts are “ill-suited to second-guess Congress’s conclusion that DRNY’s constituents have been denied autonomy in the past, and that their autonomy is better served through representation by an organization purpose-built to advance their interests faithfully and protect their rights vigorously, including in federal court.” Pet. App. 58a – 59a.

After the Second Circuit issued its decision, DRNY filed a Petition for *en banc* review on September 11, 2025. That petition was denied on October 14, 2025.

### **REASONS FOR GRANTING THE PETITION**

Congress specifically authorized P&A systems, like DRNY, to bring claims in their own name on behalf of individuals with disabilities who are abused, neglected or face rights violations. The divided decision

below ignored this Congressional action as well as this Court's longstanding precedent on statutory authorized representation. In doing so, the Second Circuit eliminated a critical function of the P&A system - an act of judicial overreach that cannot stand.

**I. This Court should grant certiorari to provide doctrinal clarification on Congressionally authorized representational standing requirements**

This Court upholds Article III standing of litigants authorized by a statute who have not directly suffered an injury. Why? The answer is simple. Because Congress has the Constitutional authority to say so.

Congress may, by legislation, expand standing to the full extent permitted by Article III, to those asserting the legal interests of third parties rather than their own. *Gladstone Realtors v. Vill. of Bellwood*, 441 U.S. 91, 100 (1979). To be sure see, *Nat'l Motor Freight Traffic Ass'n v. United States*, 372 U.S. 246 (1963) (statute authorized representation of members who were aggrieved by the contested order); *Gen. Tel. Co. of the Nw., Inc. v. EEOC*, 446 U.S. 318, 324–26 (1980) (EEOC is authorized by statute to sue in its own name to seek relief, such as hiring or reinstatement, constructive seniority, or damages for backpay or benefits denied, on behalf of discrimination victims); *Whitmore v. Arkansas*, 495 U.S. 149, 164–65 (1990) (next friend authorized by statute to seek habeas relief); *United Food and Commercial Workers Union Local 751 v Brown Group, Inc.*, 517 US 544, 557 (1996) (union is authorized by statute to sue on behalf of members, and reaffirming that the EEOC is statutorily authorized to enforce Title VII of the Civil Rights Act of 1964, and

the Secretary of Labor is authorized to enforce the Fair Labor Standards Act of 1938); *Vt. Agency of Nat. Res. v. U.S. ex rel. Stevens*, 529 U.S. 765, 773–74 (2000) (relator is authorized by statute to seek relief under False Claims Act); *Sprint Communications Co. v. APCC Services, Inc.*, 554 U.S. 269, 287–88, 290 (2008) (assignees had standing based on injuries originally suffered by third parties, and listing trustees, guardians ad litem, receivers, assignees in bankruptcy, and executors as having representational standing); *Thole v. U.S. Bank N.A.*, 590 U.S. 538, 543–44 (2020) (guardians, receivers, and executors have standing because they were “legally or contractually appointed to represent” injured parties); *Brnovich v. DNC*, 594 U.S. 647, 665 (2021) (attorney general had standing because he was authorized by statute to represent the State in any action in federal court).

The Federal Rules of Civil Procedure provide additional support. The Fed. R. Civ. P. go through a rigorous process before they are ultimately approved by this Court and then transmitted to Congress. By approving Rule 17(a)(1)(G), this Court confirmed that when a party is authorized by statute to sue in their own name, they can do so without joining the injured person for whose benefit the action is brought and without asserting their own injury.

DRNY’s P&A standing is not “a special license to roam the country in search of governmental wrongdoing.” *Valley Forge Christian Coll. v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 487 (1982). Rather, Congress assigned standing to the P&A system by creating a sufficient “personal stake” to facilitate the government’s interest in preventing the

abuse, neglect, and rights violations of individuals with disabilities. *Food & Drug Admin. v. All for Hippocratic Med.* 602 U.S. 367, 379 (2024). P&A representational standing is only available to the P&A and is inherently limited to situations where it is necessary to prevent such abuse, neglect, and rights violations.

Despite all of this, the Second Circuit’s majority opinion inexplicitly held that “Congress cannot legislate away Article III’s injury-in-fact requirement by conferring statutory representative status on a private party.” Pet. App. 14a. However, injury in fact has always existed in this case. DRNY merely exercised its statutory authority, as prescribed by Congress, to bring this action on behalf of the injured person. The Second Circuit ignored this Court’s longstanding precedent related to statutorily authorized representational standing, preventing DRNY as a purpose-built organization from fulfilling its statutory mandate to protect and advocate for people with disabilities.

As shown above, this Court has held that an uninjured third party can have representational standing pursuant to a Congressionally authorized statute. See pp. 15-16, *supra*. However, the Second Circuit majority opinion relied upon a different ruling of this Court requiring the named plaintiff to have suffered an injury in fact. *Powers v. Ohio*, 499 U.S. 400, 410-11(1990). Importantly, the plaintiff in *Powers* did not have or claim to have standing pursuant to any specifically authorized statute.

DRNY has never claimed that the standing provisions of the P&A statutes create an injury in fact or provide for a cause of action. Instead, DRNY has standing to

litigate a case or controversy on behalf of an individual with a disability who has suffered an injury in fact for the violation of a law other than the P&A statutes. This satisfies the requirements of Article III.

There is great confusion in the lower courts regarding this Court's jurisprudence of congressionally authorized representational standing. Indeed, the Second Circuit's opinions provide a Master Class curriculum. Here, the lower courts blurred the distinction between a litigant like DRNY who has been statutorily authorized to bring claims on behalf of another, with a litigant without any such statutory authority. This incongruity needs to be remedied and this case provides the perfect vehicle for its consideration.

## **II. This Court should grant certiorari to remedy the Second Circuit's violation of the Constitutional Separation of Powers reserved to Congress**

The divided decision of the Second Circuit got an exceptionally important issue exceptionally wrong. The Second Circuit infringed upon the Constitutional powers of the Legislative branch – an infringement that is a matter of national importance requiring this Court's review and resolution.

“Article III standing is built on a single basic idea - the idea of separation of powers.” *TransUnion LLC v. Ramirez*, 594 U.S. 413, 422 (2021) *citing* *Raines v. Byrd*, 521 U. S. 811, 820 (1997) (internal quotation marks omitted). Separation of powers is not an “abstract generalization in the minds of the Framers: it was woven into the document that they drafted in Philadelphia in the



summer of 1787.” *Id* at 422-423 *citing INS v. Chadha*, 462 U. S. 919, 946 (1983) (internal quotation marks omitted). The Second Circuit’s decision eviscerates this founding principle by rejecting Congress’s separate authority to authorize and identify representational parties.

Congress has the Constitutional authority to grant representational standing by simply saying so. *Director, Office of Workers’ Compensation Programs v. Newport News Shipbuilding & Dry Dock Co*, 514 U.S. 122, 129-30 (1995) (finding that Congress can grant standing and without clear statutory authority to do so, government agencies do not have standing to act on behalf of injured individuals).

Congress, as a co-equal branch of the federal government created the P&A system to “fit comfortably within Congress’s limited, but nonetheless meaningful, power to shape the standing inquiry within the boundaries set by Article III.” Pet. App. 23a. Congress bestowed representational standing upon the P&A System under the plain language of the governing statutes and regulations. The DD and PAIMI Acts authorize the P&A system to pursue legal, administrative, and other appropriate remedies to ensure the protection of people with disabilities. 42 U.S.C. § 15043(a)(1), (a)(2)(A)(i); 42 U.S.C. § 10805(a)(1)(B), 10801(b)(2)(A).

The DD Act provides that, “[n]othing in this subchapter shall preclude a system from bringing a suit on behalf of individuals with developmental disabilities against a State, or an agency or instrumentality of a State.” 42 U.S.C. § 15044(b). The legislative history of the DD Act, 42 U.S.C. 6000 et seq, likewise settles any question of Congressional intent.

The Committee heard testimony about the waste of scarce resources that are expended on litigating the issue of whether P&A systems have standing to bring suit. The Committee wishes to make it clear that we have reviewed this issue and have decided that no statutory fix is necessary because the current statute is clear that P&A systems have standing to pursue legal remedies to ensure the protection of and advocacy for the rights of individuals with developmental disabilities within the State. The Committee has reviewed and concurs with the holdings and rationale in *Goldstein v. Coughlin*, 83 F.R.D. 613 (W.D.N.Y. 1979) and *Rubenstein v. Benedictine Hosp.*, 790 F. Supp. 396 (N.D.N.Y. 1992).

S. REP. 103-120, 39 (1993), reprinted in 1994 U.S.C.C.A.N. 164, 202-03.

This commentary must also be read in conjunction with the legislative purpose. Congress enacted the P&A statutes, finding that “individuals with [disabilities] are vulnerable to abuse and serious injury” as well as neglect, and that “[s]tate systems for monitoring compliance with respect to the rights of individuals with [disabilities] ... are frequently inadequate.” 42 U.S.C. § 10801(a)(4). Congress created the P&A System to remedy this problem, giving a voice to people with disabilities as they navigate state-operated systems and discriminatory policies. 146 Cong. Rec. H9787-02.

The “P&A shall not implement a policy or practice restricting the remedies that may be sought on behalf

of individuals with developmental disabilities or compromising the authority of the P&A to pursue such remedies through litigation, legal action or other forms of advocacy.” 45 C.F.R. § 1326.21(c). The P&A can recover costs when “bringing lawsuits in its own right to redress incidents of abuse or neglect, discrimination and other rights violations” on behalf of individuals with developmental disabilities. 45 C.F.R. § 1326.24.

The PAIMI Act provides that the P&A shall have the authority to “pursue administrative, legal, and other remedies to ensure the protection of individuals with mental illness.” 42 U.S.C. § 10805(a)(1)(B); *See also* 132 Cong. Rec. H2642-02 (daily ed. May 13, 1986) (statement of Rep. Waxman) (discussing the language of what is now 42 U.S.C. § 10805(a)(1)(B) and stating that “[i]t is also clear that the conferees do not intend for questions of standing or jurisdiction to limit the effectiveness, range, or forums in which P&A agencies can work”).

Congress created the P&A system as an independent, state-level, administrative agency with the duty of enforcing the legal rights of persons with disabilities. Congressional appropriations for the P&A system are designed to provide P&A agencies with adequate resources for legal advocacy. See 145 Cong. Rec. S14313-04. As such, any interpretation of the P&A statute against its authority to bring suit in its own right on behalf of people with disabilities would render the powers Congress vested to it meaningless.

The Second Circuit’s divided decision violates Article III of the Constitution, imposes impermissible limits on Congressional authority, and nullifies critical portions

of the P&A statutes enacted by democratically elected legislators. The P&A statutes cannot be reconciled with the majority opinion that strips a P&A from pursuing legal action in its name on behalf of people Congress directed it to protect. This Court should be “hesitant to take this shield against judicial overreach and use it as a sword to cut away at democratically enacted legislation.” Pet. App. 21a-22a. Such constraint on Congress’s authority is not permitted and warrants this Court’s review.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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January 12, 2026

## **APPENDIX**

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**APPENDIX A — OPINION OF THE UNITED STATES  
COURT OF APPEALS FOR THE SECOND CIRCUIT,  
FILED AUGUST 13, 2025**

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

No. 24-725-cv(L), 24-728-cv(CON)

A.H., BY HER NEXT FRIEND E.H., R.D., BY  
HER NEXT FRIEND M.D., J.D., BY HIS  
NEXT FRIEND D.D., H.L., ON BEHALF OF  
THEMSELVES AND ALL OTHERS SIMILARLY  
SITUATED, A.B., ON BEHALF OF THEMSELVES  
AND ALL OTHERS SIMILARLY SITUATED,  
J.S., ON BEHALF OF THEMSELVES AND ALL  
OTHERS SIMILARLY SITUATED, J.C.M., ON  
BEHALF OF THEMSELVES AND ALL OTHERS  
SIMILARLY SITUATED, L.P., BY HER NEXT  
FRIEND C.P., DISABILITY RIGHTS NEW YORK,

*Plaintiffs-Appellants,*

E.B., M.W., BY HIS NEXT FRIEND T.D., J.D.C.,  
J.P.S., BY HIS NEXT FRIEND S.S., M.F., O.A., M.Y.,  
BY HIS NEXT FRIEND B.L., C.H.,

*Intervenor-Plaintiffs-Appellants,*

v.

NEW YORK STATE DEPARTMENT OF HEALTH,  
JAMES V. MCDONALD, IN HIS OFFICIAL CAPACITY  
AS COMMISSIONER OF THE NEW YORK STATE  
DEPARTMENT OF HEALTH, NEW YORK STATE

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OFFICE FOR PEOPLE WITH DEVELOPMENTAL  
DISABILITIES, WILLOW BAER, IN HER  
OFFICIAL CAPACITY AS COMMISSIONER OF  
THE NEW YORK STATE OFFICE FOR PEOPLE  
WITH DEVELOPMENTAL DISABILITIES,

*Defendants-Appellees.\**

August Term 2024  
Argued: October 18, 2024  
Decided: August 13, 2025

Appeal from the United States District Court  
for the Southern District of New York  
No. 22-cv-5045  
Mary Kay Vyskocil, *Judge*.

Before: PARK, LEE, and PÉREZ, *Circuit Judges*.

Judge Pérez dissents from Section II.A in a separate  
opinion and otherwise concurs in the judgment of the  
Court.

PARK, *Circuit Judge*:

Plaintiffs in this case are an organization called  
Disability Rights New York (“DRNY”) and eight  
individuals with developmental disabilities (“Individual  
Plaintiffs”) who allege long delays in moving from  
restrictive institutional facilities to community-based

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\* The Clerk of Court is respectfully directed to amend the  
caption accordingly.



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residential settings. Plaintiffs sued various New York State defendants under the Medicaid Act, the Americans with Disabilities Act, the Rehabilitation Act, and the Fourteenth Amendment. Defendants moved to dismiss DRNY's claims for lack of standing. They also argued later in a pre-motion letter that the Individual Plaintiffs' claims were moot because they had since been moved out of institutional facilities. The district court dismissed both DRNY's and the Individual Plaintiffs' claims and also denied a motion to intervene by additional proposed plaintiffs. Plaintiffs challenge all three rulings on appeal. We conclude that the district court correctly dismissed DRNY's claims for lack of standing because DRNY suffered no injury in fact, and we reject its theory of "congressionally authorized representational standing." But the district court erred in dismissing the Individual Plaintiffs' claims as moot based solely on pre-motion letters. Finally, the district court did not abuse its discretion by denying the motion to intervene. We thus affirm in part, vacate in part, and remand.

**I. BACKGROUND****A. Factual Background**

The New York State Office for People with Developmental Disabilities ("OPWDD") coordinates services for New Yorkers with developmental disabilities, including cerebral palsy, Down syndrome, autism spectrum disorders, and other neurological impairments. Part of OPWDD's work is to administer Medicaid's Home and Community Based Services ("HCBS") Waiver Program, which provides services

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for disabled people in residential facilities. OPWDD licenses or operates over 34,000 certified community residence beds in New York.

OPWDD determines whether an individual is eligible for the HCBS Waiver Program. To qualify, the individual must (1) be diagnosed with a developmental disability; (2) be eligible for placement in an Intermediate Care Facility (“ICF”); (3) be enrolled or eligible for enrollment in Medicaid; (4) exercise freedom of choice between receipt of waiver services or placement in an ICF; (5) reside in an appropriate living arrangement at the time of enrollment (*e.g.*, in a relative’s home and not an ICF); and (6) have demonstrated a need for waiver services. 14 N.Y. Comp. Codes R. & Regs. § 635-10.3(b). OPWDD then considers an individual’s particular needs and the availability of suitable residential opportunities.

The eight Individual Plaintiffs here have developmental disabilities and were deemed eligible by OPWDD for placement in community-based settings. They allege, however, that they remained institutionalized. As of October 2022, the Individual Plaintiffs claim to have waited from nine months to six years for placement in community-based residences. They allege that this prolonged institutionalization caused them to suffer physical and psychological regression.

Plaintiff DRNY is an organization that advocates for the rights of New Yorkers with developmental disabilities. It is a Protection and Advocacy System authorized under federal law to “pursue legal, administrative, and other appropriate remedies or approaches to ensure the

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protection of, and advocacy for, the rights” of individuals with developmental disabilities. 42 U.S.C. § 15043(a)(2)(A)(i).

Defendants are OPWDD, the New York State Department of Health (“DOH”), and their respective commissioners, Willow Baer and James V. McDonald.

**B. Procedural History**

On June 16, 2022, Plaintiffs filed suit, bringing claims under the Medicaid Act, the Americans with Disabilities Act (“ADA”), and the Rehabilitation Act. They sought injunctive and declaratory relief on behalf of themselves and a purported class of similarly situated “[i]ndividuals who have been, or will be, determined by OPWDD to be eligible for HCBS Waiver services and certified residential opportunities, but remain institutionalized due to Defendants’ failure to deliver these services.” Joint App’x at 62. Several months later, Plaintiffs filed an amended complaint removing two plaintiffs, adding two new ones, and adding a due process claim under 42 U.S.C. § 1983.

On December 1, 2022, Defendants filed a partial motion to dismiss DRNY’s claims for lack of standing. On July 5, 2023, eight additional institutionalized individuals moved to intervene as named plaintiffs.

While both the motion to dismiss and the motion to intervene were pending, Defendants submitted a letter to the district court requesting a pre-motion conference in anticipation of filing another partial motion to dismiss

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the Amended Complaint under Rule 12(b)(1). Defendants argued that the court lacked subject-matter jurisdiction because the claims of all eight Individual Plaintiffs were moot. Plaintiffs filed a letter responding that DRNY and the Individual Plaintiffs had standing and the case was not moot.

On February 20, 2024, without further briefing or a hearing, the district court issued a written opinion dismissing the action and denying the motion to intervene.

**II. DISCUSSION**

Plaintiffs argue that the district court (1) erred in dismissing DRNY's claims for lack of standing; (2) erred in dismissing the Individual Plaintiffs' claims as moot based on pre-motion letters; and (3) abused its discretion in denying the motion of additional proposed plaintiffs to intervene.

**A. Standing**

DRNY claims to have "congressionally authorized representational standing." DRNY Br. at 16. It argues that Congress "unequivocally bestowed representational standing" on DRNY to sue in its own name on behalf of individuals with disabilities under the Developmental Disabilities Assistance and Bill of Rights Act of 1975 and the Protection and Advocacy System for Individuals with Mental Illness Act. *Id.* at 2, 10. Supreme Court precedent forecloses this argument.

*Appendix A***1. Legal Standards**

“On appeal from a district court’s dismissal for lack of subject-matter jurisdiction, we review factual findings for clear error and legal conclusions *de novo*.” *Avon Nursing & Rehab. v. Becerra*, 995 F.3d 305, 310-11 (2d Cir. 2021) (quotation marks omitted). That includes “questions of standing.” *Conn. Citizens Def. League, Inc. v. Lamont*, 6 F.4th 439, 444 (2d Cir. 2021).

The federal judicial power extends only to the resolution of “Cases” and “Controversies.” U.S. Const. art. III, § 2. “For there to be a case or controversy under Article III, the plaintiff must have a personal stake in the case—in other words, standing.” *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423, 141 S. Ct. 2190, 210 L. Ed. 2d 568 (2021) (quotation marks omitted).

To establish standing, a plaintiff must show “(i) that she has suffered or likely will suffer an injury in fact, (ii) that the injury likely was caused or will be caused by the defendant, and (iii) that the injury likely would be redressed by the requested judicial relief.” *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 380, 144 S. Ct. 1540, 219 L. Ed. 2d 121 (2024).

An organization “may have standing in one of two ways: by establishing so-called ‘associational’ or ‘representational’ standing to sue on behalf of its members, or by establishing that it was directly injured as

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an organization.” *Conn. Parents Union v. Russell-Tucker*, 8 F.4th 167, 172 (2d Cir. 2021).<sup>1</sup>

## **2. Application**

### **a. DRNY’s Theory of Standing**

DRNY argues that it has standing because Congress granted it the authority to “stand in the shoes” of individuals with disabilities. DRNY Br. at 7. Under the Developmental Disabilities Assistance and Bill of Rights Act (“DD Act”), states accepting federal funds to provide services for individuals with developmental disabilities are required to have “a system to protect and advocate the rights of individuals with developmental disabilities.”

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1. In *Hunt v. Washington State Apple Advertising Commission*, the Supreme Court articulated a three-part test for associational standing. 432 U.S. 333, 343, 97 S. Ct. 2434, 53 L. Ed. 2d 383 (1977). “[A]n association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization’s purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *Id.* The Court also stated that an organization need not have “members” in the “traditional . . . sense”; it is sufficient to have a “constituency” with “the indicia of membership in an organization.” *Id.* at 344. We have thus “recognized that—assuming the other criteria for associational standing are met—non-membership organizations may sue in a representative capacity when they function effectively as a membership organization.” *Disability Advocs., Inc. v. N.Y. Coal. for Quality Assisted Living, Inc.*, 675 F.3d 149, 157 (2d Cir. 2012) (cleaned up).

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42 U.S.C. § 15043(a)(1). Those Protection and Advocacy (“P&A”) Systems are vested with the “authority” to “pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of such individuals.” *Id.* § 15043(a)(2)(A)-(A)(i). That includes “bringing a suit on behalf of individuals with developmental disabilities against a State, or an agency or instrumentality of a State.” *Id.* § 15044(b)(1).

Like the DD Act, the Protection and Advocacy for Individuals with Mental Illness Act (“PAIMI Act”) empowers P&A Systems to “pursue administrative, legal, and other appropriate remedies to ensure the protection of individuals with mental illness” and “the enforcement of the Constitution and Federal and State statutes.” 42 U.S.C. §§ 10805(a)(1)(B), 10801(b)(2)(A). The PAIMI Act also gives P&A Systems the authority to “pursue administrative, legal, and other remedies on behalf of an individual.” *Id.* § 10805(a)(1)(C).

The federal regulations implementing the PAIMI Act permit allotments to “be used to pay the otherwise allowable costs incurred by a P&A system in bringing lawsuits in its own right to redress incidents of abuse or neglect, discrimination, and other rights violations impacting on individuals with mental illness.” 42 C.F.R. § 51.6(f).

DRNY, a not-for-profit corporation, was “designated as New York State’s P&A System and Client Assistance Program on June 1, 2013.” DRNY Br. at 2 (citing N.Y.

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Exec. Law § 558(b)). As the P&A System for New York, DRNY receives “eight federal grants that require [it] to protect and advance the rights of individuals with disabilities.” *Id.*

DRNY thus argues that Congress has bestowed “representational standing” on it as a P&A System under the plain language of the governing statutes and regulations. In other words, because Congress has specifically authorized DRNY to bring suit in its own name on behalf of people with disabilities, it maintains that it has satisfied the constitutional requirements for standing.

**b. Discussion**

DRNY does not claim to have direct standing and it expressly disclaims reliance on associational standing.<sup>2</sup> It also does not argue that it is the “next friend” of the Individual Plaintiffs.<sup>3</sup> And its novel theory of

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2. DRNY does not argue that it has associational standing, so we do not reach that issue here. But to the extent that DRNY brings claims under 42 U.S.C. § 1983, “[i]t is the law of this Circuit that an organization does not have standing to assert the rights of its members in a case brought under 42 U.S.C. § 1983.” *Nnebe v. Daus*, 644 F.3d 147, 156 (2d Cir. 2011); *see also Conn. Citizens Def. League*, 6 F.4th at 447 (holding that an organization lacked standing to pursue a preliminary injunction because it “brought this case under 42 U.S.C. § 1983”); *Aguayo v. Richardson*, 473 F.2d 1090, 1099 (2d Cir. 1973).

3. Such an argument is thus forfeited. In any event, the Individual Plaintiffs do not assert that they are unable to “appear on [their] own behalf to prosecute the action.” *Whitmore v.*



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“congressionally authorized representational standing” is squarely foreclosed by Supreme Court precedent.

“Congress cannot erase Article III’s standing requirements by statutorily granting the right to sue to a plaintiff who would not otherwise have standing.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339, 136 S. Ct. 1540, 194 L. Ed. 2d 635 (2016) (cleaned up). Congressional authorization by statute “does not relieve courts of their responsibility to independently decide whether a plaintiff has suffered a concrete harm under Article III.” *TransUnion*, 594 U.S. at 426. There is an “important difference” between “a plaintiff’s statutory cause of action to sue a defendant over the defendant’s violation of federal law” and “a plaintiff’s suffering concrete harm because of the defendant’s violation of federal law.” *Id.* at 426-27. Concluding that “Congress could freely authorize *unharmed* plaintiffs to sue defendants who violate federal law” would “flout constitutional text, history, and precedent,” “violate Article III,” and “infringe on the Executive Branch’s Article II authority.” *Id.* at 428-29.<sup>4</sup>

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*Arkansas*, 495 U.S. 149, 164, 110 S. Ct. 1717, 109 L. Ed. 2d 135 (1990). To the contrary, several of them assert claims on behalf of themselves and all others similarly situated. Moreover, those who do not assert their own claims already appear through a next friend. The concurrence’s suggestion that Congress could bestow next-friend status on DRNY is thus not only incorrect, but irrelevant. *See post* at 25-26.

4. The concurrence asserts that the “text, context, and history of DRNY’s authorizing statutes make plain that Congress intended to authorize DRNY to assert representational standing.” *Post* at 33. But that is beside the point because Congress cannot

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DRNY argues that the Supreme Court has “unequivocally held that representational standing can exist based on particular relationships authorized by Congress.” DRNY Br. at 8 (citing *United Food & Com. Workers Union Loc. 751 v. Brown Grp., Inc.*, 517 U.S. 544, 557, 116 S. Ct. 1529, 134 L. Ed. 2d 758 (1996)). But *United Food* did not create a new species of standing; it addressed a question of associational standing—*i.e.*, “whether Congress has the constitutional authority to alter the third prong of the associational standing enquiry” under *Hunt v. Washington State Apple Advertising Commission*. See *United Food*, 517 U.S. at 548. The Court held that while the first two prongs of the *Hunt* test are “constitutional and absolute” in nature, the third—whether the asserted claim or requested relief requires individual member participation—is “prudential and malleable by Congress.” *Id.* at 551. So a union had associational standing to sue on behalf of its members under the Worker Adjustment and Retraining Notification Act when the union had already established that its “members would have had standing to sue on their own (the first prong)” and “that the interests the union sought to protect were germane to its purpose (the second prong).” *Id.* at 553.

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grant Article III standing. In any case, it is not clear that Congress intended for a P&A System to sue in a representative capacity. The DD Act states only that a P&A System can bring “suit on behalf of individuals with developmental disabilities.” 42 U.S.C. § 15044(b) (1). That is consistent with a P&A System’s ability to bring claims as a legal advocate for its constituents, and it does not necessarily authorize the System to act as a representational plaintiff.

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DRNY also contends that Congress may constitutionally delegate authority to a private entity, as it does to governmental agencies. This too is misguided.

As an example, DRNY points to the fact that the General Counsel of the Equal Employment Opportunity Commission (“EEOC”) is authorized to conduct litigation on behalf of the EEOC. And the concurrence similarly suggests that DRNY has “statutory representational standing” analogous to the EEOC’s litigation authority when it “seek[s] back pay on behalf of victims.” *Post* at 28. But the General Counsel of the EEOC is an Officer of the United States, who is appointed by the President and confirmed by the Senate. *See* 42 U.S.C. § 2000e-4(b) (1). DRNY, by contrast, is a private organization whose employees are not democratically accountable public officials.<sup>5</sup> DRNY’s reliance on federal agency analogs is misplaced.

In limited circumstances, the Supreme Court has acknowledged the “right of litigants to bring actions on behalf of third parties.” *Powers v. Ohio*, 499 U.S. 400, 410-11, 111 S. Ct. 1364, 113 L. Ed. 2d 411 (1991). But

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5. And unlike the Federal Trade Commission, Congress did not authorize DRNY to “commence, defend, or intervene in, and supervise . . . litigation . . . in its own name by any of its attorneys.” 15 U.S.C. § 56(a)(1)(B). Congress’s grant of authority to P&A Systems to “pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of” individuals with disabilities does not convey the same standing as federal agencies that can assert the sovereign’s injuries and rights. 42 U.S.C. § 15043(a)(2)(A)(i).

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even in such instances, the litigant “must have suffered an injury in fact, thus giving him or her a sufficiently concrete interest in the outcome.” *Id.* at 411 (quotation marks omitted). DRNY alleges no such injury. Moreover, the Supreme Court has cautioned that a nominal agency relationship between a principal and purported agent is insufficient to satisfy Article III, because “[a]gency requires more than mere authorization to assert a particular interest.” *Hollingsworth v. Perry*, 570 U.S. 693, 713, 133 S. Ct. 2652, 186 L. Ed. 2d 768 (2013). Here, concluding that DRNY has standing based on its theory of “congressionally authorized representational standing” would issue a “private part[y] who otherwise lack[s] standing a ticket to the federal courthouse.” *Id.* at 715. Congress cannot legislate away Article III’s injury-in-fact requirement by conferring statutory representative status on a private party.<sup>6</sup>

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6. The concurrence explains that “standing doctrine is not a box-checking exercise,” *post* at 1, but then goes too far in suggesting that we must embrace “congressionally authorized representational standing” because it might have some connection to “principles we can derive from the history and tradition of representational standing,” *id.* at 40. Although history and tradition can be useful for identifying harms that may qualify as concrete injuries, the inquiry is “not an open-ended invitation for federal courts to loosen Article III based on contemporary, evolving beliefs about what kinds of suits should be heard in federal courts.” *TransUnion*, 594 U.S. at 424-25.

We also note that while several Justices have acknowledged the “need for greater doctrinal coherence” in third-party standing doctrine, they have advised that “federal courts should take care to apply [the doctrine’s] limitations conscientiously” in the meantime. *Trump v. CASA, Inc.*, 145 S. Ct. 2540, 2565-66, 222 L. Ed. 2d 930 (2025) (Alito, *J.*, concurring) (quotation marks omitted).

*Appendix A***B. Mootness**

The Individual Plaintiffs argue that the district court erred in dismissing their claims on mootness grounds based on pre-motion letters. We agree. District courts generally should not dismiss a case without providing the opportunity to be heard unless a jurisdictional defect is obvious. Here, the Individual Plaintiffs' claims do not on their face appear obviously moot.

**1. *Legal Standards***

As noted above, “[o]n appeal from a district court’s dismissal for lack of subject-matter jurisdiction, we review factual findings for clear error and legal conclusions *de novo*,” *Avon Nursing & Rehab.*, 995 F.3d at 310-11 (quotation marks omitted), including “questions of . . . mootness,” *Conn. Citizens Def. League*, 6 F.4th at 444.

In *International Code Council, Inc. v. UpCodes Inc.*, we held that a “district court erred by *sua sponte* and without notice construing the parties’ pre-motion letters as briefing on a motion to dismiss and granting that motion.” 43 F.4th 46, 53 (2d Cir. 2022). We have repeatedly instructed district courts not to “dismiss an action pending before it without first providing the adversely affected party with notice and an opportunity to be heard.” *Id.* (quoting *McGinty v. New York*, 251 F.3d 84, 90 (2d Cir. 2001)). We have also warned that doing so can be grounds for vacatur. *See id.*

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Proper notice “gives the adversely affected party a chance to develop the record to show why dismissal is improper; it facilitates *de novo* review of legal conclusions by ensuring the presence of a fully-developed record before an appellate court; and, it helps the trial court avoid the risk that it may have overlooked valid answers to what it perceives as defects in plaintiff’s case.” *McGinty*, 251 F.3d at 90 (citations omitted); *see also Snider v. Melindez*, 199 F.3d 108, 113 (2d Cir. 1999) (explaining that failure to give proper notice “may tend to produce the very effect the court seeks to avoid—a waste of judicial resources—by leading to appeals and remands” (cleaned up)).

To be sure, we have “occasionally affirmed the granting of dispositive motions without full briefing.” *Kowalchuck v. Metro. Transp. Auth.*, 94 F.4th 210, 217 (2d Cir. 2024). But “we have done so only when the issues were predominantly legal and the complaint had substantial deficiencies, while emphasizing our concerns with such an approach.” *Id.* (quotation marks omitted). Of course, it is also “well established that courts are obligated” to consider deficiencies in subject-matter jurisdiction *sua sponte*. *Int’l Code Council*, 43 F.4th at 54 n.1 (citing *Gonzalez v. Thaler*, 565 U.S. 134, 141, 132 S. Ct. 641, 181 L. Ed. 2d 619 (2012)). Nonetheless, it is “bad practice” to dismiss a case without providing a plaintiff the opportunity to be heard “[u]nless it is unmistakably clear that the court lacks jurisdiction.” *Snider*, 199 F.3d at 113.

*Appendix A***2. Application**

The district court erred in dismissing this action based on three-page pre-motion letters without full briefing or a hearing. It is not obvious that the Individual Plaintiffs' claims are moot. On appeal, the Individual Plaintiffs argue that their claims are not moot for three reasons: (1) the "inherently transitory" exception to mootness applies, (2) their claims are "capable of repetition, yet evading review," and (3) Defendants voluntarily ceased their unlawful actions. *See Salazar v. King*, 822 F.3d 61, 73 (2d Cir. 2016); *Murphy v. Hunt*, 455 U.S. 478, 482, 102 S. Ct. 1181, 71 L. Ed. 2d 353 (1982); *United States v. W. T. Grant Co.*, 345 U.S. 629, 632, 73 S. Ct. 894, 97 L. Ed. 1303 (1953).

It is not "unmistakably clear" that these arguments are meritless, so the district court should consider them in the first instance after giving the parties the opportunity to brief a motion to dismiss.

**C. Intervention**

Finally, the Individual Plaintiffs argue that the district court erred in denying a motion to intervene filed by Plaintiffs' counsel. We disagree and conclude that the district court did not abuse its discretion in denying the motion.

**1. Legal Standards**

We review a district court's denial of a motion to intervene for abuse of discretion. *MasterCard Int'l Inc. v.*

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*Visa Int’l Serv. Ass’n*, 471 F.3d 377, 389 (2d Cir. 2006). “A district court abuses or exceeds the discretion accorded to it when (1) its decision rests on an error of law (such as application of the wrong legal principle) or a clearly erroneous factual finding, or (2) its decision—though not necessarily the product of a legal error or clearly erroneous factual finding—cannot be located within the range of permissible decisions.” *Id.* at 385 (quotation marks omitted).

Under Rule 24(a) of the Federal Rules of Civil Procedure, “[t]o prevail on a motion for intervention as of right, a movant must (1) timely file an application, (2) show an interest in the action, (3) demonstrate that the interest may be impaired by the disposition of the action, and (4) show that the interest is not protected adequately by the parties to the action.” *Payne v. City of N.Y. (In re N.Y. City Policing During Summer 2020 Demonstrations)*, 27 F.4th 792, 799 (2d Cir. 2022) (quotation marks omitted). “[A] failure to satisfy *any one* of these four requirements is a sufficient ground to deny the application.” *Floyd v. City of New York*, 770 F.3d 1051, 1057 (2d Cir. 2014) (cleaned up).

Under Rule 24(b), a court may permit anyone to intervene who on a timely motion “has a claim or defense that shares with the main action a common question of law or fact.” Fed. R. Civ. P. 24(b)(1)(B). A district court has broad discretion in denying permissive intervention, and “a denial of permissive intervention has virtually never been reversed.” *AT&T Corp. v. Sprint Corp.*, 407 F.3d 560, 561 (2d Cir. 2005) (cleaned up).



*Appendix A***2. Application**

The district court did not abuse its discretion in denying the motion to intervene as of right and by permission because the motion was untimely. “The timeliness requirement is flexible and the decision is one entrusted to the district judge’s sound discretion.” *United States v. Yonkers Bd. of Educ.*, 801 F.2d 593, 594-95 (2d Cir. 1986). Factors that the district court may consider include: “(a) the length of time the applicant knew or should have known of its interest before making the motion; (b) prejudice to existing parties resulting from the applicant’s delay; (c) prejudice to the applicant if the motion is denied; and (d) the presence of unusual circumstances militating for or against a finding of timeliness.” *MasterCard Int’l*, 471 F.3d at 390 (cleaned up).

Here, the district court considered the circumstances of the case and found that the motion to intervene was untimely. The motion was filed over a year after the lawsuit began. Moreover, “Plaintiffs’ counsel waited long after it was apparent that Defendants would continue their efforts to place [the Individual Plaintiffs], and, as such, plaintiffs would receive the very relief they sought, and their claims would become moot.” *T.C. v. N.Y. State Dep’t of Health*, No. 22-cv-5045, 2024 U.S. Dist. LEXIS 28684, 2024 WL 689503, at \*9 (S.D.N.Y. Feb. 20, 2024). The district court reasoned:

More than a year ago, Plaintiffs filed the Amended Complaint and removed two of the original plaintiffs because they had been

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placed in community residences, even before Plaintiffs filed their motion for a preliminary injunction requesting prompt placement for each individual plaintiff. Shortly after the Court denied the motion for a preliminary injunction, Defendants reported finding placements for several more plaintiffs. Yet Plaintiffs' counsel waited five months after that status report to seek intervention. The motion is not timely.

*Id.* (citations omitted). In short, the proposed intervenors were on notice of their interest in the case long before moving to intervene. That untimeliness is sufficient to deny the motion to intervene. *See Floyd*, 770 F.3d at 1057.<sup>7</sup>

### III. CONCLUSION

For the foregoing reasons, we affirm the judgment of the district court dismissing the claims of DRNY for lack of standing and denying the motion to intervene. We vacate the judgment of the district court dismissing the Individual Plaintiffs' claims as moot and remand for further proceedings.

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7. Although we discern no abuse of discretion in the district court's denial of the motion to intervene, we note that the same analysis may not apply to a renewed motion to intervene in light of our decision to remand on the issue of mootness.

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MYRNA PÉREZ, *Circuit Judge*, concurring in part and dissenting in part:

Congress authorized DRNY to bring lawsuits on behalf of its constituents, New Yorkers with developmental disabilities and mental illnesses, to protect their rights. The Court today holds that authorization unconstitutional by inventing a new limit on Article III standing not explained by the Constitution’s limitation of federal jurisdiction to “Cases” and “Controversies.” The majority opinion downplays this extraordinary arrogation of Congress’s power to the courts by focusing on whether DRNY’s theory of standing fits into one of a few discrete doctrinal categories that DRNY never argued apply to this case, knocking down a strawman of the Court’s own creation. I respectfully dissent from Section II.A of the majority opinion affirming the dismissal of DRNY’s claims for lack of standing.

Article III standing doctrine is not a box-checking exercise but a set of principles that “implements ‘the Framers’ concept of the proper—and properly limited—role of the courts in a democratic society.’” *Diamond Alternative Energy, LLC v. EPA*, 145 S. Ct. 2121, 2133, 222 L. Ed. 2d 370 (2025) (quoting *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 380, 144 S. Ct. 1540, 219 L. Ed. 2d 121 (2024); in turn quoting John G. Roberts, *Article III Limits on Statutory Standing*, 42 Duke L. J. 1219, 1220 (1993)). Those principles indirectly constrain Congress in extreme cases, such as where Congress has enacted a statute that calls upon courts to exceed the judicial power vested therein by the Constitution. But we should

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be hesitant to take this shield against judicial overreach and use it as a sword to cut away at democratically enacted legislation. The majority opinion’s misreading of Supreme Court precedent, rote application of standing doctrine as a checklist, and failure to take seriously the separation-of-powers principles underlying standing doctrine, have led it down the wrong path.

**I.**

In this case, DRNY asserts representational standing—that is, standing to seek redress for harms suffered by its constituents, even though DRNY does not claim that it directly suffered harm. DRNY does not assert associational standing, a theory of representational standing commonly invoked by similar organizations, but instead bases its theory of standing in the powers granted to and duties imposed on it by statute, as a Protection and Advocacy (“P&A”) system for New Yorkers with developmental disabilities and mental illnesses.

To determine whether DRNY can assert standing as authorized by Congress consistent with Article III, the majority opinion ought to have answered three broad questions. First, in what circumstances is representational standing consistent with Article III, and is it limited to a few discrete doctrinal categories like associational and “next friend” standing? Second, what power does Congress have, if any, to create and recognize relationships that give rise to representational standing, and what are the constitutional limits on that power? Third, has Congress exercised that power here, consistent with the Constitution?

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Instead, the majority opinion assumes, without analysis, that Congress has no role to play in articulating the relationships that can support representational standing, that the courts alone are the supreme federal lawmakers in this area, and that a few discrete doctrinal categories exclusively occupy the field. This view rests on a surface-level reading of precedent and fails to grapple with the complex interplay between the legislative and judicial powers throughout the Supreme Court’s standing cases. In fact, as explained below, the statutes at issue here fit comfortably within Congress’s limited, but nonetheless meaningful, power to shape the standing inquiry within the boundaries set by Article III.

**II.**

Any delineation of the scope and limits of representational standing must begin by situating it within the broader doctrine of Article III standing. The standing requirement arises from Article III of the Constitution, which “confines the jurisdiction of federal courts to ‘Cases’ and ‘Controversies.’” *Diamond*, 145 S. Ct. at 2133 (quoting U.S. Const., art. III, § 2, cl. 1). Standing is a doctrine of judicial restraint, which “operates ‘to ensure that federal courts do not exceed their authority as it has been traditionally understood.’” *Faculty, Alumni, & Students Opposed to Racial Preferences v. N.Y. Univ. (“FASORP”)*, 11 F.4th 68, 74-75 (2d Cir. 2021) (quoting *SM Kids, LLC v. Google LLC*, 963 F.3d 206, 211 (2d Cir. 2020); in turn quoting *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338, 136 S. Ct. 1540, 194 L. Ed. 2d 635 (2016)). The Supreme Court’s standing cases “establish[] that the irreducible

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constitutional minimum of standing contains three elements: injury in fact, causation, and redressability.” *Diamond*, 145 S. Ct. at 2133 (quotation marks omitted) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992)). If those elements are satisfied, the dispute meets the standing requirements of a justiciable “Case” or “Controversy.”

The Supreme Court has also recognized that before any given plaintiff may ask a federal court to decide that dispute, the Constitution requires that she answer another “basic question—What’s it to you?” *Id.* (quotation marks omitted) (quoting *All. for Hippocratic Med.*, 602 U.S. at 379; in turn quoting Antonin Scalia, *The Doctrine of Standing as an Essential Element of the Separation of Powers*, 17 Suffolk U. L. Rev. 881, 882 (1983)). “In other words, plaintiffs must show that they possess ‘a “personal stake” in the dispute’ and are not mere bystanders.” *Id.* (quoting *All. for Hippocratic Med.*, 602 U.S. at 379); see Scalia, *supra*, at 882 (“The Supreme Court has described standing as ‘a sufficient stake in an otherwise justiciable controversy . . . .’” (quoting *Sierra Club v. Morton*, 405 U.S. 727, 731, 92 S. Ct. 1361, 31 L. Ed. 2d 636 (1972))).

The Supreme Court has explained that this requirement—that the plaintiff before the court have a personal stake in a dispute that satisfies the three prerequisites of standing—serves at least three purposes in restraining the federal courts. First, it “helps ensure that courts decide litigants’ legal rights in specific cases . . . [and] do not opine on legal issues in response to citizens who might ‘roam the country in search of governmental

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wrongdoing.” *All. for Hippocratic Med.*, 602 U.S. at 379 (quoting *Valley Forge Christian Coll. v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 487, 102 S. Ct. 752, 70 L. Ed. 2d 700 (1982)). As *Alliance for Hippocratic Medicine* illustrates, federal courts are skeptical of theories that would grant litigants a broad license to manufacture controversies and challenge vast swaths of government policies. *See id.* at 391-92 (rejecting theory that would “allow doctors to sue in federal court to challenge almost any policy affecting public health”); *id.* at 394-95 (rejecting theory that would allow organizations to “manufacture [their] own standing” to “challenge almost every federal policy that they dislike”).

Second, these requirements “tend[] to assure that the legal questions presented to the court will be resolved, not in the rarified atmosphere of a debating society, but in a concrete factual context conducive to a realistic appreciation of the consequences of judicial action.” *Id.* (quotation marks omitted) (quoting *Valley Forge*, 454 U.S. at 472); *accord Diamond*, 145 S. Ct. at 2133. Put differently, to decide whether a plaintiff has standing, “we ask whether it has alleged a personal stake in the outcome of the controversy, so as to ensure that the dispute sought to be adjudicated will be presented in an adversary context and in a form historically viewed as capable of judicial resolution.” *FASORP*, 11 F.4th at 74 (quotation marks omitted and alterations adopted) (quoting *Sierra Club*, 405 U.S. at 732).

Third, standing doctrine “protect[s] the ‘autonomy’ of those who are most directly affected so that they can

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decide whether and how to challenge the defendant’s action.” *All. for Hippocratic Med.*, 602 U.S. at 379-80 (quoting *Valley Forge*, 454 U.S. at 473).

These limits constrain federal courts in all cases, but their role in any given case varies based on the character of the injuries suffered by the plaintiffs before the court and the parties on whose behalf plaintiffs seek redress. To fully articulate the limits that these principles impose on standing, including representational standing, and why DRNY’s theory fits within those limits, it is helpful to discuss three categories of cases involving different kinds of injuries, which I refer to as first-party, representational, and third-party standing cases.

**A.**

“First-party” standing—what the majority opinion calls “direct” standing—is the default in most cases. In first-party standing cases, the plaintiffs demonstrate that they possess the requisite “personal stake” by showing that they personally suffered concrete and particularized injuries traceable to the defendants and redressable by the courts. Such standing is often based on harm to one’s person, property, or economic interests, but “various intangible harms” have been recognized as sufficient. *TransUnion LLC v. Ramirez*, 594 U.S. 413, 417, 141 S. Ct. 2190, 210 L. Ed. 2d 568 (2021) (citing *Spokeo*, 578 U.S. at 340-41). An organization can assert first-party standing based on, for example, frustration of its mission (though DRNY has not done so here). *See, e.g., All. for Hippocratic Med.*, 602 U.S. at 394-95; *Moya v. U.S. Dep’t of Homeland*



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*Sec.*, 975 F.3d 120, 129-30 (2d Cir. 2020); *Centro de la Comunidad Hispana de Locust Valley v. Town of Oyster Bay*, 868 F.3d 104, 110-11 (2d Cir. 2017).

A plaintiff who has personally experienced the kind of injury that Article III requires will generally possess a sufficiently “personal stake” in redressing that injury. The Supreme Court has even said that, “the general ‘personal stake’ requirement and the more specific standing requirements (injury in fact, redressability, and causation) are flip sides of the same coin” and “simply different descriptions of the same judicial effort to ensure, in every case or controversy, ‘that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination.’” *Sprint Comm’ns Co. v. APCC Servs., Inc.*, 554 U.S. 269, 288, 128 S. Ct. 2531, 171 L. Ed. 2d 424 (2008) (quoting *Baker v. Carr*, 369 U.S. 186, 204, 82 S. Ct. 691, 7 L. Ed. 2d 663 (1962)). First-party standing is so common that courts sometimes use shorthand suggesting that first-party standing is the only kind. *See, e.g., All. for Hippocratic Med.*, 602 U.S. at 380 (“[A] plaintiff must demonstrate . . . that she has suffered or likely will suffer an injury in fact . . . .”); *Spokeo*, 578 U.S. at 339 (“[A] plaintiff must show that he or she suffered ‘an invasion of a legally protected interest’ . . . .” (quoting *Lujan*, 504 U.S. at 560)). But as discussed below, first-party standing is not the whole story.

**B.**

“Representational” (or “representative”) standing is a category distinct from first-party standing. Some courts

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use the term “representational standing” as a synonym for associational standing, but that is just one of many forms. *See Warth v. Seldin*, 422 U.S. 490, 511, 95 S. Ct. 2197, 45 L. Ed. 2d 343 (1975); *Conn. Parents Union v. Russell-Tucker*, 8 F.4th 167, 172 (2d Cir. 2021). I use the term “representational standing” in the same sense in which the Supreme Court used it in *United Food & Commer. Workers Union Local 751 v. Brown Grp.* (“UFCW.S. 544, 116 S. Ct. 1529, 134 L. Ed. 2d 758, as a catch-all term for the many theories under which federal cases may be brought by plaintiffs who have not personally suffered any injury, but who sue in a representative capacity to seek redress for injuries suffered by others. 517 U.S. 544, 557, 116 S. Ct. 1529, 134 L. Ed. 2d 758 (1996); *see also Sprint*, 554 U.S. at 287 (“[F]ederal courts routinely entertain suits which will result in relief for parties that are not themselves directly bringing suit.”).

In *UFCW*, the Supreme Court recognized “representational standing” as a subset of standing doctrine that “rests on the premise that in certain circumstances, particular relationships (recognized either by common-law tradition or by statute) are sufficient to rebut the background presumption (in the statutory context, about Congress’s intent) that litigants may not assert the rights of absent third parties.” 517 U.S. at 557 (footnotes omitted). “[R]epresentational standing, however, does not eliminate or attenuate the constitutional requirement of a case or controversy.” *Warth*, 422 U.S. at 511. In every such case, the plaintiff must allege that it represents the interests of a party or parties who “are suffering immediate or threatened injury as a result of

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the challenged action of the sort that would make out a justiciable case had the [represented parties] themselves brought suit.” *Id.*

The Court in *UFCW* also recognized that “associational standing,” by which an organization can seek redress for harm to its members if it satisfies certain requirements, “is only one strand” of representational standing (again, one on which DRNY expressly does not rely). 517 U.S. at 557. To date, neither we nor the Supreme Court have exhaustively enumerated the relationships that can support representational standing. *See Doe v. Hochul*, 139 F.4th 165, 177, 180 (2d Cir. 2025) (noting “we have long acknowledged several narrow exceptions” to the first-party standing default, “under which a plaintiff may invoke the injuries of a third party to establish standing,” including, but not necessarily limited to, associational and “next friend” standing). Yes, dicta in some cases implies that organizations can have standing in only “two ways”—associational or first-party “organizational” standing. *Cf. N.Y.C.L. Union v. N.Y.C. Transit Auth.*, 684 F.3d 286, 294 (2d Cir. 2012). But the Supreme Court’s representational standing cases, discussed below, make clear that phrasing is hasty shorthand rather than an accurate portrayal of the doctrine. In fact, associational standing is just one of several potential answers to the question, “When does an organization . . . have a personal stake in the outcome of a litigation such that it is entitled to sue?” *FASORP*, 11 F.4th at 75.<sup>1</sup>

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1. As the majority opinion notes at 12-13, *UFCW* itself addressed the requirements of associational standing, in the context of claims brought by a labor union, a paradigmatic

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Representational-standing relationships arise from various sources, as *UFCW* recognized. Associational standing, for example, has been elaborated by the courts, with the canonical test having been articulated in *Warth*, 422 U.S. at 511, and *Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333, 342-44, 97 S. Ct. 2434, 53 L. Ed. 2d 383 (1977). Other relationships are enshrined in federal and state statutes, in more or less “ancient” traditions of common law and equity, or in some combination thereof. *See, e.g., Brnovich v. DNC*, 594 U.S. 647, 665, 141 S. Ct. 2321, 210 L. Ed. 2d 753 (2021) (holding attorney general had standing to appeal as a party over objection of other state actors because he was “authorized to represent the State in any action in federal court”); *Thole v. U.S. Bank N.A.*, 590 U.S. 538, 543-44, 140 S. Ct. 1615, 207 L. Ed. 2d 85 (2020) (recognizing “guardians, receivers, and executors” who were “legally or contractually appointed to represent” injured parties as exceptions to the usual rule that a plaintiff only has “a sufficiently concrete interest in the outcome of the issue in dispute” if they “themselves . . . have suffered an injury in fact” (quotation marks omitted) (quoting *Hollingsworth v. Perry*, 570 U.S. 693, 708, 133 S. Ct. 2652, 186 L. Ed. 2d 768

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membership organization. But the Court did not hold that associational standing is the only theory of representational standing that may be asserted by any organizational plaintiff; it acknowledged associational standing as “only one strand” of the doctrine. *Id.* at 557. The Court held that the union had standing “[b]ecause Congress authorized the union to sue for its members’ damages, and because the only impediment to that suit is a general limitation, judicially fashioned and prudentially imposed.” *Id.* at 558. As explained below, the same is true in this case.

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(2013)); *Sprint*, 554 U.S. at 287-88, 290 (holding assignees had standing even though they were “suing based on *injuries* originally suffered by third parties,” and listing “[t]rustees,” “guardians ad litem,” “receivers,” “assignees in bankruptcy,” and “executors” among representational-standing relationships); *Vt. Agency of Nat. Res. v. U.S. ex rel. Stevens*, 529 U.S. 765, 773-74, 120 S. Ct. 1858, 146 L. Ed. 2d 836 (2000) (concluding “the United States’ injury in fact suffices to confer standing on” a relator, because False Claims Act effected “partial assignment,” and while the Court had not “expressly recognized ‘representational standing’ on the part of assignees,” it had “routinely entertained their suits . . . and also suits by subrogees, who have been described as ‘equitable assignees’”); *Whitmore v. Arkansas*, 495 U.S. 149, 164-65, 110 S. Ct. 1717, 109 L. Ed. 2d 135 (1990) (recognizing “next friend” standing in accordance with “the ancient tradition of the doctrine,” but suggesting it also rests on “congressional authorization”); *Gen. Tel. Co. of the Nw., Inc. v. EEOC*, 446 U.S. 318, 324-26, 100 S. Ct. 1698, 64 L. Ed. 2d 319 (1980) (holding EEOC is authorized to “sue in its own name” to seek “relief, such as hiring or reinstatement, constructive seniority, or damages for backpay or benefits denied, on behalf of discrimination victims”); *see also UFCW*, 517 U.S. at 557 n.8 (listing EEOC’s standing to enforce Title VII and Secretary of Labor’s standing to enforce the Fair Labor Standards Act as examples of representational standing). These cases show that in a variety of circumstances, not limited to associational and “next friend” standing, Article III permits an uninjured plaintiff to invoke federal jurisdiction to seek redress for harm suffered by another, as long as they have a relationship of sufficient constitutional pedigree.

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“Third-party standing,” on the other hand, refers to a doctrine that has long been invoked in a subset of *first-party* standing cases, though its status as part of Article III standing doctrine is now in doubt. In third-party standing cases, “the litigants themselves still must have suffered an injury in fact.” *All. for Hippocratic Med.*, 602 U.S. at 393 n.5 (quoting *Hollingsworth*, 570 U.S. at 708). But historically, where a plaintiff’s first-party injury was caused by an action that somehow more directly injured a third party, the “so-called third-party standing bar” has sometimes blocked the suit, even though the plaintiff’s injury otherwise met Article III requirements. *See N.Y. State Citizens’ Coal. for Child. v. Poole*, 922 F.3d 69, 74-75 (2d Cir. 2019). The third-party standing bar could be overcome where the plaintiff and third party had a close relationship and there existed some barrier to the third party asserting their own rights. *Id.* at 75. But third-party standing, and its “relationship-plus-obstacle” test,<sup>2</sup>

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2. Curtis Bradley & Ernest Young, *Unpacking Third-Party Standing*, 131 Yale L. J. 1, 3 (2021). Some commentators have used the phrase “third-party standing” as an umbrella term for various situations in which the plaintiffs before the court are not the only ones who were harmed by the defendants’ challenged actions, including where the plaintiffs (1) were not harmed at all but sue as representatives, (2) were personally harmed by an action that also infringes upon rights held by third parties, and (3) were personally harmed in effectively the same way as third parties. *See id.* at 6. I use “representational standing” to refer to the first category, and when I use the term “third-party standing,” I generally refer to the second category, where the existence of an injured third party sometimes bars assertions of first-party standing.

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have been understood as part of “a ‘prudential’ branch of standing, a doctrine not derived from Article III,” which is on uncertain footing since the Supreme Court’s decision in *Lexmark International, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 126, 134 S. Ct. 1377, 188 L. Ed. 2d 392 (2014).

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As those same commentators have noted, the third category above is traditionally the realm of aggregate litigation tools like multi-district litigation (“MDL”) and class action practice. In my view, while those mechanisms may raise interesting due process questions, “third-party standing” is generally a non-issue. MDLs are generally made up of many suits brought by plaintiffs who each have standing. And in a class action, “[s]tanding is satisfied so long as at least one named plaintiff can demonstrate the requisite injury.” *Hyland v. Navient Corp.*, 48 F.4th 110, 117-18 & n.1 (2d Cir. 2022). The standing of absent class members, even in the most muscular conception of standing’s role in class actions, comes into play only in the predominance inquiry required to certify a damages class, if ever. *See Lab’y Corp. of America Holdings v. Davis*, 145 S. Ct. 1608, 1611, 221 L. Ed. 2d 948 (2025) (Kavanaugh, J., dissenting) (“Rule 23 authorizes damages class certification only when common questions of law and fact predominate. A damages class consisting of both injured and uninjured members does not meet that requirement.”); *see also Denney v. Deutsche Bank AG*, 443 F.3d 253, 264 (2d Cir. 2006) (stating, in a putative Rule 23(b)(3) class action, that “no class may be certified that contains members lacking Article III standing”); *Hyland*, 48 F.4th at 118 n.1 (clarifying that that “single sentence in *Denney*” does not heighten the requirements of Article III standing for class actions). However, even if one believes a third-party standing bar continues to apply, and one reconceptualizes class actions as raising a potential third-party standing issue, the problem is already taken care of by existing Rule 23 requirements, which “tend to be considerably more rigorous than their family relations in the traditional law of third-party standing.” Bradley & Young, *supra*, at 71-72.

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In *Lexmark* the Supreme Court addressed “three broad principles” that made up traditional “prudential standing” doctrine and recognized that at least two of those principles were misnamed as such. *Id.* at 126 (quoting *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 12, 124 S. Ct. 2301, 159 L. Ed. 2d 98 (2004)). First was “the rule barring adjudication of generalized grievances,” which is no longer considered prudential but now is part of the constitutional case-or-controversy requirement. *Id.* at 126, 127 n.3 (quotation marks omitted). Second was “the requirement that a plaintiff’s complaint fall within the zone of interests protected by the law invoked,” which is now not about “standing” at all, but is simply a principle of interpretation used to discern on whom a given law bestows a cause of action (or a defense). *Id.* at 126-27 & n.3. And third was “the general prohibition on a litigant’s raising another person’s legal rights,” which had been applied to limit third-party standing. *Id.* at 126, 127 n.3 (quotation marks omitted). While the Court reserved the question of third-party standing’s “proper place in the standing firmament,” *id.*, it “cast doubt on the entire doctrine of prudential standing,” leaving “considerable uncertainty as to whether the third-party standing rule continues to apply.” *Poole*, 922 F.3d at 75.

To the extent there is a need for “greater doctrinal coherence,” it may be found by conceptualizing any third-party standing “bar” as resting on the same principles as representational standing, derived from Article III’s “personal stake” requirement. *See Trump v. CASA, Inc.*, 145 S. Ct. 2540, 2565, 222 L. Ed. 2d 930 (2025) (Alito, J., concurring) (quoting Curtis Bradley & Ernest Young,



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*Unpacking Third-Party Standing*, 131 Yale L. J. 1, 7 (2021)). As the Supreme Court said in *UFCW*, almost two decades before *Lexmark*, “the general prohibition on a litigant’s raising another person’s legal rights” is best understood not as a prudential bar to claims by plaintiffs with first-party standing, but as a “background presumption” against representational standing, which can be rebutted by “particular relationships (recognized either by common-law tradition or by statute).” *UFCW*, 517 U.S. at 557. Under this conception of standing, where an *uninjured* plaintiff seeks redress for an Article III injury suffered by a third party, the representative plaintiff presumptively lacks the required personal stake and bears the burden to establish a relationship that allows him to assert the absent party’s rights. But where a plaintiff is personally *injured* in a manner that meets the minimum requirements of Article III (and has a cause of action), that plaintiff asserts his own right to seek redress and enjoys a strong presumption that his injury gives him “a sufficiently concrete interest in the outcome of the issue in dispute.” *All. for Hippocratic Med.*, 602 U.S. at 393 n.5. In such a case, a federal court “cannot apply its independent policy judgment” to “limit [that] cause of action . . . merely because ‘prudence’ dictates.” *Lexmark*, 572 U.S. at 128.

That is not to say the concept of third-party standing has no place in standing doctrine after *Lexmark*. Extreme assertions of first-party standing by plaintiffs with too tenuous a “personal stake” could undermine the separation of powers and distort the judicial role just as excessive indulgence of representational standing could. Thus, a court might still deny standing to first-party

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plaintiffs who assert the power to “roam the country in search of governmental wrongdoing,” whose lawsuits threaten “the ‘autonomy’ of those who are most directly affected,” and who leave the courts without “a realistic appreciation of the consequences of judicial action.” *All. for Hippocratic Med.*, 602 U.S. at 379. For example, in the 2020 abortion-rights case *June Medical Services L.L.C. v. Russo*, when four Justices of the Supreme Court said they would apply the third-party standing bar to the provider plaintiffs, they rooted their arguments in concerns about the autonomy of those who might seek abortions, and whether the providers would present issues in a way that would adequately represent the third-parties’ interests. 591 U.S. 299, 401-03, 140 S. Ct. 2103, 207 L. Ed. 2d 566 (2020) (Alito, J., dissenting) (arguing that a “potential conflict of interest between the plaintiff and the third party” precluded “third-party standing,” though such arguments are foreclosed by precedent in that context even under a more restrictive view of the third-party standing bar), *overruled in part by*, *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 142 S. Ct. 2228, 213 L. Ed. 2d 545 (2022). And in *Alliance for Hippocratic Medicine*, the recent challenge to federal approval of the medication mifepristone, the Supreme Court only briefly mentioned the third-party standing bar explicitly, but the Court identified similar concerns in rejecting the plaintiffs’ claims to first-party standing. The plaintiffs there asserted just the sort of standing theories that, if they were accepted, would undermine the judicial role by allowing doctors and organizations to roam the country, ginning up standing to challenge any government policy they disliked. *See All. for Hippocratic Med.*, 602 U.S. at 391, 395.

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Outside of those edge cases, however, the Supreme Court has seemingly abandoned any general rule against injured parties seeking redress for their injuries by invoking the rights of others, if one ever really existed. This term, in *Diamond*, the Court held that fuel producers had standing to challenge regulations of automakers without analyzing whether they had any relationship or whether the automakers could sue in their own right. 145 S. Ct. at 2134-38. That case echoed one from a hundred years earlier, where the Court allowed a private school to challenge a law that regulated parents, again without discussing whether the parents should assert their own rights. See *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 45 S. Ct. 571, 69 L. Ed. 1070 (1925). In the meantime, the Court has allowed all manner of private challenges to purported structural constitutional violations. Before *Lexmark*, even when such structural challenges were asserted defensively, the Court felt compelled to explain how individuals asserting rights rooted in federalism were actually asserting their own first-party rights, not generally dispersed third-party rights. See *Bond v. United States*, 564 U.S. 211, 220-24, 131 S. Ct. 2355, 180 L. Ed. 2d 269 (2011). But more recently, the Court did not pause to consider who—other than the President—has an individual right to demand greater Presidential control over executive branch officials. See, e.g., *Seila Law LLC v. CFPB*, 591 U.S. 197, 210-11, 140 S. Ct. 2183, 207 L. Ed. 2d 494 (2020).

In sum, I have no dispute with those who claim the prudential form of third-party standing doctrine has long been applied inconsistently. See, e.g., Bradley & Young,

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*supra*, at 3. To the extent some third-party standing cases can be reframed in terms of constitutional principles, I agree they are the same principles of judicial restraint that counsel against representational standing in some—but not all—cases. Representational standing is an appropriate exception to the default of first-party standing that brings more disputes within the scope of Article III, though it is reserved for certain relationships “recognized either by common-law tradition or by statute.” *UFCW*, 517 U.S. at 557. Third-party standing, on the other hand, just describes a common variant of first-party standing that courts usually permit and only selectively police and which, properly understood, is rarely if ever relevant to jurisdiction to redress first-party injuries. Turning more attention to Article III’s “personal stake” requirement, as the principle that constrains both representational standing and “third-party” standing, may focus courts on reining in extreme assertions of standing that threaten to distort the judicial role.

**III.**

The body of standing precedent discussed above, while still just a sliver of the full picture, offers a wider aperture than the majority opinion does through which to appreciate the limited but important role of representational standing in defining the judicial power, including Congress’s role in shaping it at the margins. The Supreme Court’s standing cases make plain that representational standing is permitted in a range of cases outside of associational and “next-friend” standing, and it is distinct from the “third-party” standing doctrine

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that once “barred” certain first-party plaintiffs’ causes of action if they could not meet a “relationship-plus-obstacle” test. Bradley & Young, *supra*, at 3. With those issues out of the way, it is clear that Congress has a role to play in creating and recognizing relationships that support representational standing. Relators, next friends, and federal executive branch agencies, among others, rely on federal statutes to one degree or another for their capacity to invoke federal jurisdiction. Many others rely on state legislative enactments that, one would think, do not confer higher status under Article III than federal law. The question, however, is what limits the Constitution places on Congress’s power to recognize representational-standing relationships.

This power, like all of Congress’s powers, is limited, since it “is settled that Congress cannot erase Article III’s standing requirements by statutorily granting the right to sue to a plaintiff who would not otherwise have standing.” *Spokeo*, 578 U.S. at 339 (quoting *Raines v. Byrd*, 521 U.S. 811, 820 n.3, 117 S. Ct. 2312, 138 L. Ed. 2d 849 (1997)). And those limits must arise from a source other than the three irreducible minima of standing—*injury in fact*, *causation*, and *redressability*—because representational standing, by definition, comes into play only where those requirements are satisfied, but by a third party’s injury. The natural source of limits on this power is thus Article III’s “personal stake” requirement. The Supreme Court has not squarely addressed the precise limits imposed by the “personal stake” requirement outside of the three black-letter elements of standing above, but the Court has elaborated on its content in recent cases like *Diamond*

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and *Alliance for Hippocratic Medicine*. Further, the Court has begun to articulate the limits of Congressional power over standing in cases like *Spokeo* and *TransUnion*. The principles articulated in those cases should guide any evaluation of claims to representational standing, as explained below.

**A.**

The Supreme Court's recent decisions on Congress's role with respect to the injury-in-fact requirement offer a useful frame for considering Congress's role in shaping representational standing. In *Spokeo*, the Supreme Court held that "Congress' role in identifying and elevating intangible harms does not mean that a plaintiff automatically satisfies the injury-in-fact requirement whenever a statute grants a person a statutory right and purports to authorize that person to sue to vindicate that right." 578 U.S. at 341. But while the majority opinion reads *Spokeo* to say that Congress therefore has *no* role whatsoever to play in informing courts' Article III standing inquiry, that is simply not what the Supreme Court said. True, Congress cannot authorize private plaintiffs to invoke federal jurisdiction to redress injuries that are not "concrete" or that represent "generalized grievances." *Id.* at 341 (concreteness); *TransUnion*, 594 U.S. at 417 (same); *cf. Hollingsworth*, 570 U.S. at 715 (holding state legislature cannot authorize a private party to redress a "generalized grievance"). Any injury complained of in federal court "must be '*de facto*'; that is, it must actually exist." *Spokeo*, 578 U.S. at 340. But if that threshold is met, Congress has power to "elevate to

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the status of legally cognizable injuries concrete, *de facto* injuries that were previously inadequate in law,” and “to define injuries and articulate chains of causation that will give rise to a case or controversy *where none existed before*.” *Id.* at 341 (alteration adopted and emphasis added) (quoting *Lujan*, 504 U.S. at 578; then quoting *id.* at 580 (Kennedy, J., concurring)).

The same basic framework can be applied to representational standing, where Congress confronts the “personal stake” requirement generally, rather than “injury in fact.” Congress cannot authorize just *anyone* to assert the rights of anyone else in federal court. *Hollingsworth*, 570 U.S. at 710 (rejecting proposition that “mere authorization to represent a third party’s interests is sufficient to confer Article III standing on private parties with no injury of their own”). As the *Spokeo* Court might have put it, their relationship “must actually exist,” which here means the plaintiff must *actually* have a “personal stake” in the dispute and “cannot be a mere bystander.” *All. for Hippocratic Med.*, 602 U.S. at 379 (quoting *TransUnion*, 594 U.S. at 423). Such a relationship ensures that the representational plaintiff is not simply “roam[ing] the country in search of governmental wrongdoing,” will faithfully represent the injured party’s rights and give the courts “a realistic appreciation of the consequences of judicial action,” and will not infringe on “the ‘autonomy’ of those who are most directly affected.” *Id.* (quoting *Valley Forge*, 454 U.S. at 472, 473, 487). But where such a relationship exists—including where it has been created by Congress and endowed with features that traditionally support representational standing—the logic of *Spokeo* tells us that Congress can recognize that relationship as a basis for representational standing.

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The next question a court must answer, in applying the *Spokeo* framework to representational standing claims rooted in statute, is when a relationship is sufficiently real and meaningful to merit recognition. This inquiry may be guided to some extent by the long “history and tradition” in which Congressionally authorized representational standing follows. Supreme Court precedent on the injury-in-fact requirement again teaches that, at a minimum, Congress has power to recognize Article III standing in situations that have “a close historical or common-law analogue.” *TransUnion*, 594 U.S. at 424 (“[H]istory and tradition offer a meaningful guide to the types of cases that Article III empowers federal courts to consider.” (quotation marks omitted) (quoting *Sprint*, 554 U.S. at 274)).

Importantly, when courts apply this “history and tradition” approach across a range of constitutional adjudications, they seek a “historical *analogue*, not a historical *twin*,” *N.Y. State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 30, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022). “[T]he appropriate analysis involves considering whether the challenged regulation is consistent with the *principles* that underpin our regulatory tradition, *United States v. Rahimi*, 602 U.S. 680, 692, 144 S. Ct. 1889, 219 L. Ed. 2d 351 (2024) (emphasis added). Careful review of the relevant tradition here reveals that the Supreme Court’s representational standing doctrine follows the principles of the “personal stake” requirement laid out in the Court’s recent cases: ensuring courts only address



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specific cases with real stakes, which promise vigorous adversary presentation of important issues, and protect the autonomy of those most affected.

Next-friend standing, for example, follows in an “ancient tradition,” but the Supreme Court has expressed doubt about “whether a ‘next friend’ may ever invoke the jurisdiction of a federal court absent congressional authorization.” *Whitmore*, 495 U.S. at 164-65. Whether the “next friend” relationship owes its status under Article III to recognition by the common law or by Congress, one of its fundamental requirements is that “the ‘next friend’ must be truly dedicated to the best interests of the person on whose behalf he seeks to litigate.” *Id.* at 163. This requirement, along with the requirement that the injured party be unable to appear himself, ensures that next-friend standing cannot “be availed of, as matter of course, by intruders or uninvited meddlers, styling themselves next friends.” *Id.* at 164 (quoting *U.S. ex rel. Bryant v. Houston*, 273 F. 915, 916 (2d Cir. 1921)). But next-friend standing does not require a pre-existing “significant relationship” between the plaintiff and the injured party. *See id.* at 163-64 (leaving this question open); *Doe*, 139 F.4th at 174 (holding that this is not a requirement). In other words, it requires only that the court satisfy itself that the plaintiff has a personal stake in the outcome of the lawsuit sufficient to safeguard the interests discussed above.

The various categories of representational-standing relationships that are recognized primarily by state law, some of which are also recognized by Congress,

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function similarly. These relationships, many of which are helpfully cataloged in Federal Rule of Civil Procedure 17, are generally characterized either by duties to the represented parties (such as care and loyalty)—in the cases of trustees, executors, administrators, conservators, committees, guardians, and other fiduciaries—or by consensual exchange in which the injured party can bargain for the duties he wants owed to him—in the case of assignees, bailees, and others. *See* Fed. R. Civ. P. 17(a)(1)(A)-(F), (c)(1); *see also* Fed. R. Civ. P. 17(a)(1)(G) (authorizing “a party authorized by statute” to sue in their own name for the benefit of another).

While many of the foregoing relationships are primarily creatures of state law, analogous relationships have also been created from whole cloth by Congress and recognized as conferring representational standing. *See Vt. Agency*, 529 U.S. at 765-66 (construing the relationship between the government and a False Claims Act relator, created by Congress, as conferring representational standing because the Act effected a “partial assignment”). The Supreme Court has recognized that these relationships, in which a representative plaintiff is appointed either by the injured party or by operation of law, substitute for the “concrete interest in the outcome of the issue in dispute” that usually comes from personally suffering injury. *Thole*, 590 U.S. at 543 (quoting *Hollingsworth*, 570 U.S. at 708); *Sprint*, 554 U.S. at 288-89 (discussing common law recognition that assignees have a sufficient “personal stake” to give rise to “concrete adverseness”).<sup>3</sup>

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3. It is no answer to say that such parties do not assert representational standing because they are not really parties at all but simply litigate on behalf of the “real party in interest.”

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The major category of representational standing created by the courts follows a similar pattern. At the outset of the *Hunt* test for associational standing, the organization must demonstrate either that it has actual members, or that its constituency bears sufficient “indicia of membership,” such as voting rights and/or the power of the purse. 432 U.S. at 344-45. But even where that requirement is met, indicating that the organization will likely faithfully represent its members as a general matter, the court must assure itself that other requirements are met in the specific case. The suit must be “germane” to the organization’s purpose and its members must be injured in a way that would otherwise confer standing, *id.* at 343, which assures that cases arise in “concrete factual context[s] conducive to a realistic appreciation of the consequences of judicial action,” and the organization is not merely “roam[ing] the country in search of governmental wrongdoing.” *All. for Hippocratic Med.*, 602 U.S. at 379 (quoting *Valley Forge*, 454 U.S. at 487). And the suit must be able to proceed without requiring the participation of the injured members, *Hunt*, 432 U.S. at 343, which protects those members’ “autonomy.” *All. for Hippocratic Med.*, 602 U.S. at 379 (quotation marks omitted).<sup>4</sup>

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*See* Fed. R. Civ. P. 17; *Sprint*, 554 U.S. at 304 n.2 (Roberts, C.J., dissenting). “[T]his is just a legal fiction,” and “[i]n practice” the representative party “initiates the suit, asserts the [represented party’s] rights, and controls the litigation,” and may even take actions “against the [represented party’s] own expressed wishes.” Bradley & Young, *supra*, at 63-64 (discussing specific context of next friends litigating on behalf of incarcerated people).

4. The Supreme Court has said that this third requirement of *Hunt* is “prudential,” rather than constitutional, *UFCW*, 517

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Lastly, a common and vitally important form of Congressionally recognized representational standing arises when Congress authorizes federal agencies to seek redress on behalf of specific individuals. Examples include the authorities of the EEOC to seek back pay on behalf of discrimination victims, and of the Secretary of Labor to seek unpaid wages. *See Gen. Tel. Co.*, 446 U.S. at 324; 29 U.S.C. § 216(c). *See generally UFCW*, 517 U.S. at 557 n.8 (listing these examples of representational-standing relationships recognized “by statute”). These authorities are distinct in important ways from, for example, other agencies’ authorities to assert the purely sovereign interest of the United States in the enforcement of the laws. The distinctions between these authorities illuminate fundamental principles of, and limits on, statutory representational standing.

The requirements for governmental standing as a subset of representational standing depend on the nature of the injury being asserted. On the one hand, executive agencies plainly may have standing to enforce federal law, though they still require Congressional authorization to assert such representational standing on behalf of the

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U.S. at 555. But after *Lexmark* cast doubt on the entire concept of prudential standing, the Supreme Court has suggested this third prong may be constitutional in nature after all. *See Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 199, 201, 143 S. Ct. 2141, 216 L. Ed. 2d 857 (2023) (noting “SFFA satisfies the three-part test for organizational standing” from *Hunt*, and “[b]ecause SFFA complies with the standing requirements demanded of organizational plaintiffs in *Hunt*, its obligations under Article III are satisfied”).

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United States. *See Dir., Off. of Workers' Comp. Programs v. Newport News Shipbuilding & Dry Dock Co.*, 514 U.S. 122, 129, 115 S. Ct. 1278, 131 L. Ed. 2d 160 (1995) (“[W]hen an agency in its governmental capacity *is* meant to have standing, Congress says so.” (emphasis in original)). However, because an injury to that purely sovereign interest would be a mere “generalized grievance” in the hands of a private party, the Supreme Court has suggested that a plaintiff must be a true “agent[] of the people” in order to assert it. *Hollingsworth*, 570 U.S. at 706, 712. Otherwise, the plaintiff will “have no ‘personal stake’ in defending its enforcement that is distinguishable from the general interest of every citizen.” *Id.* at 707; *see also*, e.g., Myriam E. Gilles, *Representational Standing*: U.S. ex rel. Stevens *and the Future of Public Law Litigation*, 89 Calif. L. Rev. 315, 353-54 (2001) (noting that “[t]he agency concept alone is suited to the pursuit of sovereign interests” which “are analogous to private law claims that are ‘personal’ and non-assignable”).

The presumption recognized in *Hollingsworth*—that the government has standing and private parties do not, when purely sovereign interests are at stake—is flipped where the government seeks to redress concrete, particularized harms to private persons. In such cases, the government cannot rely solely on its sovereign standing to prevent and punish violations of its laws, since “standing is not dispensed in gross; rather, plaintiffs must demonstrate standing for each claim that they press and for each form of relief that they seek.” *TransUnion*, 594 U.S. at 431. And “ordinarily the United States cannot sue simply to advance the private interests of some third party.” Wright

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& Miller, Fed. Prac. & Proc. Juris. § 3531.11 (3d ed., May 2025 update); *see United States v. San Jacinto Tin Co.*, 125 U.S. 273, 286, 8 S. Ct. 850, 31 L. Ed. 747 (1888) (holding that a suit by the government “must fail” if it “has actually been brought for the benefit of some third person, and . . . no obligation to the general public exists which requires the United States to bring it”).

This background presumption *against* government standing, however, may be overcome where the statute is structured to give the agency a sufficient stake in the litigation—that is, where Congress creates a relationship by statute that it can then recognize as a basis for representational standing. For example, Title VII makes the EEOC responsive to the interests of the injured parties in a way that addresses many values protected by the “personal stake” requirement, including autonomy and concrete adverseness. *See Gen. Tel. Co.*, 446 U.S. at 326 (noting that when the EEOC acts “at the behest of and for the benefit of specific individuals, it acts also to vindicate the public interest,” and that “the aggrieved person may bring his own action” if the EEOC does not act quickly and “may also intervene in the EEOC’s enforcement action”); *All. for Hippocratic Med.*, 602 U.S. at 379. And the Fair Labor Standards Act, among other things, can be understood to effect a partial assignment of a private claim to the Secretary—the mirror image of the assignment effected by the False Claims Act—by providing that residual recoveries not paid out, “shall be covered into the Treasury of the United States.” 29 U.S.C. § 216(c); *see Vt. Agency*, 529 U.S. at 773. Those grants of authority within the Executive branch resemble the

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conditions under which Congress assigns representational standing to private parties, as next friends, assignees, and otherwise.

The lesson of all this is, again, that representational standing has been recognized in a great variety of factual and legal settings. Some such relationships are created and recognized by statute, including by state legislatures and Congress. There is no reason to believe representational standing functions as a multiple-choice menu from which a prospective plaintiff must choose, rather than a set of principles rooted in Article III that guide courts even when they are asked to apply the doctrine to what appears to be a new fact pattern. And at a minimum, where Congress creates a relationship that gives a representative party a sufficient “personal stake” in litigation on behalf of another and gives that representative standing to sue, it follows in a long “history and tradition” full of close analogues that put its legislation on firm constitutional footing. *TransUnion*, 594 U.S. at 424.<sup>5</sup>

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5. None of this is to say that courts, particularly inferior federal courts, should be free to recognize new forms of representational standing based on free-floating application of Article III’s “personal stake” requirement, in situations where Congress has *not* authorized it. *Contra* Maj. Op. at 15 n.6. As the Supreme Court observed in *UFCW*, representational-standing relationships may be “recognized either by common-law tradition or by statute,” which places Congress and the courts in distinct roles. 417 U.S. at 557 (footnotes omitted). Congress is free to deviate from common-law defaults by statute, within the limits set by Article III, and therefore can create new representational standing schemes from whole cloth, like the one DRNY invokes. *See, e.g., Jesinoski v. Countrywide Home Loans, Inc.*, 574 U.S. 259,

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## IV.

Applying the foregoing principles to the facts before us, I see no basis in the relevant statutes or in the Constitution to deny DRNY standing, and the majority opinion certainly has not supplied one. Congress created a detailed framework to govern P&A systems like DRNY and, having endowed those entities with the prerequisites of representational standing, recognized that Article III allows them to bring suit in federal court on behalf of their constituents. That authorization deserves the same strong “presumption of constitutionality” that almost all federal statutes enjoy, and because it does not clearly conflict with Article III, it should have been upheld. *United States v. Carolene Prods. Co.*, 304 U.S. 144, 148, 58 S. Ct. 778, 82 L. Ed. 1234 (1938).

## A.

The text, context, and history of DRNY’s authorizing statutes make plain that Congress intended to authorize

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264, 135 S. Ct. 790, 190 L. Ed. 2d 650 (2015) (“[T]his is simply a case in which statutory law modifies common-law practice.”). Federal courts, on the other hand, must at least act more incrementally in elaborating the common law, and generally we are constrained to apply the law as established by Congress and the states. *See, e.g., Smith v. United States*, 30 U.S. 292, 300, 8 L. Ed. 130 (1831) (“The legislature may establish new rules of evidence, in derogation of the common law, but the judicial power is limited to the rule laid down.”). This is all the more reason why the majority opinion’s fabrication of a new judge-made limit on Article III standing in this case is an act of judicial overreach, not judicial restraint.



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DRNY to assert representational standing. As the majority opinion notes, there are two related statutory schemes at issue here: the Developmental Disability Assistance and Bill of Rights Act of 1975 (“DD Act”), and the Protection and Advocacy of Individuals with Mental Illness Act of 1985 (“PAIMI Act”). In both, Congress enacted detailed factual findings concerning the vulnerability of individuals with developmental disabilities and mental illnesses, and the inadequacy of then-existing systems to protect their rights. *See* 42 U.S.C. § 15001(a) (finding that “(4) individuals with developmental disabilities often encounter discrimination in the provision of critical services” and “(5) individuals with developmental disabilities are at greater risk than the general population of abuse, neglect, financial and sexual exploitation, and the violation of their legal and human rights”); *id.* at § 10801(a) (finding that “(1) individuals with mental illness are vulnerable to abuse and serious injury” and “(4) State systems for monitoring compliance with respect to the rights of individuals with mental illness vary widely and are frequently inadequate”). Each statute had as one of its major goals the creation of P&A systems to “protect and advocate the rights of such individuals through activities to ensure the enforcement of the Constitution and Federal and State statutes.” *Id.* § 10801(b)(2)(A); *see id.* § 15001(b) (“The purpose of this subchapter is to assure that individuals with developmental disabilities and their families participate in the design of and have access to . . . (2) protection and advocacy systems in each State to protect the legal and human rights of individuals with developmental disabilities”).

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Both statutes pursued this goal in similar ways. The DD Act granted P&A systems authority to access facilities and records, investigate abuse and neglect, and “pursue legal, administrative, and other appropriate remedies . . . to ensure the protection of, and advocacy for, the rights of” people with developmental disabilities. 42 U.S.C. § 15043(a)(2)(A)(i), (B), (H), (I), (J). This includes authority to “bring[] a suit on behalf of individuals with developmental disabilities against a State, or an agency or instrumentality of a State.” *Id.* § 15044(b)(1). The PAIMI Act similarly authorizes P&A systems to enforce federal and state law on behalf of their constituents by granting access to facility and constituent records, authority to investigate abuse and neglect, and authority to “pursue administrative, legal, and other appropriate remedies to ensure the protection of individuals with mental illness.” *Id.* § 10805(a)(1), (3), (4). Again, this includes the authority, in certain cases, to “institut[e] . . . legal action in a Federal or State Court on behalf of a[n] individual with mental illness.” *Id.* § 10807(a); *see also id.* § 10805(a)(1)(C).

While these statutes are unambiguous, the legislative history confirms that Congress intended to confer standing on P&A systems. When Congress amended and re-enacted the DD Act in 1993, it considered whether to amend the statute to more clearly grant P&A systems standing to sue, and it decided “no statutory fix is necessary.” S. Rep. 103-120, at 39 (1993), *as reprinted in* 1994 U.S.C.C.A.N. 164, 202. The committee expressly agreed with two district courts that had already found, in effect, that P&A systems had representational standing and determined that “the current statute is clear that P&A systems have standing

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to pursue legal remedies to ensure the protection of and advocacy for the rights of individuals with developmental disabilities.” *Id.*; see *ACLU v. Clapper*, 785 F.3d 787, 819 (2d Cir. 2015) (noting that, even where Congress does not expressly say so, “Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it reenacts a statute without change” (quotation marks omitted)). Taken together, these provisions make clear that Congress intended to authorize P&A systems, including DRNY, to bring suit on behalf of their constituents and seek redress for violations of their rights.

The majority opinion is wrong to suggest that the statutory language “is consistent with a P&A System’s ability to bring claims as a legal advocate for its constituents,” but “not necessarily . . . as a representational plaintiff.” Maj. Op. at 12 n.4. That reading is unreasonable because, unlike an agency that owes its entire existence and all its powers to Congress, like the Federal Trade Commission, *cf.* Maj. Op. at 14 n.5, an organization like DRNY does not need Congress’s permission to provide legal services to the people on whose behalf it advocates. If all these provisions meant was that DRNY could act like a non-profit law firm, then significant pieces of the statutes would be surplusage. See *Fischer v. United States*, 603 U.S. 480, 486, 144 S. Ct. 2176, 219 L. Ed. 2d 911 (2024) (“[W]e must give effect, if possible, to every clause and word of the statute.” (alteration adopted and quotation marks omitted)). Where Congress confers quasi-public responsibilities on an entity outside of the federal government, there is no basis for a magic-words test

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requiring Congress to specify that it may sue “in its own name.” Maj. Op. at 14 n.5. An unambiguous authorization to sue in federal court on behalf of one’s constituents is enough.<sup>6</sup>

To the extent any doubt lingers, other textual features of these statutes confirm that they authorize DRNY to act as a representational plaintiff, not merely to offer legal aid. For example, § 15044(b) provides that when a P&A system brings “a suit on behalf of individuals with developmental disabilities against a State” and wins a monetary award, the P&A system may not use the money it won to pay “legal contractors or to award personal bonuses.” That provision would be superfluous if P&A systems were authorized only to help their constituents bring their own lawsuits. Similarly, § 10807(a) provides that, while P&A systems generally must exhaust administrative remedies, in cases of delay, P&A systems may bypass administrative

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6. In contrast, when the Supreme Court rejected an assertion of statutory representational standing in *Thole*, the relevant provisions of ERISA only granted defined-benefit plan participants “a general cause of action to sue for restoration of plan losses and other equitable relief,” and did not specifically grant them power to sue on behalf of others. 590 U.S. at 544 (citing 29 U.S.C. § 1132(a) (2), (3)); *see id.* at 564-66 (Sotomayor, J., dissenting) (arguing that was an appropriate case for representational standing). In other words, unlike DRNY’s authorizing statutes, ERISA could reasonably be read as authorizing participants to seek certain remedies only as necessary to redress harm they suffered personally. Or at least, the ERISA provisions were not clear enough to rebut the “background presumption (in the statutory context, about Congress’s intent)” that disfavors representational standing in most (but not all) cases. *UFCW*, 517 U.S. at 557.

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procedures and “initiat[e] . . . a legal action.” That provision also makes sense only if P&A systems can sue in their own right. If P&A systems could act only as non-profit law firms for their constituents, it would be bizarre to create different administrative exhaustion rules for similarly situated individuals based only on which lawyer they happen to hire.

**B.**

Finally, given that Congress unambiguously authorized representational standing, the last question is whether Congress exceeded its power in doing so. In my view, three aspects of DRNY’s authorizing statutes ensure that DRNY has a “personal stake” in litigating these claims on behalf of its constituents, and bring its assertion of standing comfortably within the long and varied traditions of other forms of representational standing. Accordingly, I would conclude that DRNY’s assertion of standing here is consistent with Article III.

First, the statutes contain numerous features that ensure DRNY represents its constituents’ interests zealously and faithfully. Not only is that DRNY’s entire reason for existing and for being granted P&A status under the statute, but the statutes also contain built-in accountability mechanisms. Similar to many government officers, DRNY can be removed from its position by democratically accountable officials for certain types of “good cause.” 42 U.S.C. § 15043(a)(4)(A). DRNY must

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report regularly to the federal government and the public on its priorities, activities, accomplishments, and expenditures. *Id.* § 15043(a)(2)(C)-(D); *id.* § 10805(a)(7)-(8). DRNY must establish grievance procedures for constituents. *Id.* § 15043(a)(2)(E); *id.* § 10805(a)(9). And DRNY must establish governing bodies made up of members “who broadly represent or are knowledgeable about the needs of” its constituents. *Id.* § 15044(a)(1); *id.* § 10805(c)(1)(B). Through these and other provisions, “P&As are statutorily constructed to be responsive to the population[s] that they are charged with serving.” Kelsey McCowan Heilman, Comment, *The Rights of Others: Protection and Advocacy Organizations’ Associational Standing to Sue*, 157 U. Pa. L. Rev. 237, 264 (2008).

Second, DRNY is also given a financial stake in its litigation “on behalf of individuals with developmental disabilities,” because while it may not use the monetary awards it wins for certain proscribed purposes, it is not prohibited from retaining those funds for other purposes. 42 U.S.C. § 15044(b)(1)-(2). This feature grants DRNY something like “a partial assignment” of its constituents’ claims, *Vt. Agency*, 529 U.S. at 773, similar to the stake the government has when it sues for unpaid wages and can, in certain cases, retain some proceeds, 29 U.S.C. § 216(c).

Third, as discussed above, the statutes contain extensive findings, made and enacted into law by Congress, about why representational litigation by P&A systems would better protect constituents’ autonomy than

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available alternatives, including first-party litigation. Congress found, even though constituents of P&A systems and their families could in theory hire their own lawyers to vindicate their rights, that those mechanisms had historically been inadequate to the task.

True, DRNY's relationship to its constituents does not take exactly the same shape as that of a fiduciary, a "next friend," a traditional membership association, an assignee, or a government agency. And it may be that some of its constituents have more access to the courts than individuals traditionally represented by next friends and other representatives like guardians. But DRNY's theory of standing shares important attributes with each of those traditions, and standing doctrine does not require an exact match to one of a pre-set list of options.

When applying the "history and tradition" approach, which has been imported into standing doctrine by *TransUnion*, 594 U.S. at 424, we look for a "historical analogue," not a "historical twin," and we ask whether the modern regulation is consistent with the "principles that underpin our regulatory tradition." *Rahimi*, 602 U.S. at 692, 701. As discussed above, the principles we can derive from the history and tradition of representational standing are essentially those set out in the Supreme Court's recent cases elaborating the "personal stake" requirement. Functionally, these statutes make DRNY loyal and accountable to its constituents and narrowly focused on serving those constituents. Those features ensure that

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DRNY is not simply “roam[ing] the country in search of governmental wrongdoing,” *All. for Hippocratic Med.*, 602 U.S. at 379 (quoting *Valley Forge*, 454 U.S. at 487), and will present disputes “with the concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination.” *Sprint*, 554 U.S. at 288. And, in light of Congress’s extensive findings to the contrary, we have no basis to find that recognizing DRNY’s standing will disserve “the ‘autonomy’ of those who are most directly affected.” *All. for Hippocratic Med.*, 602 U.S. at 379 (quoting *Valley Forge*, 454 U.S. at 473).<sup>7</sup>

In sum, while we have an independent duty to ensure we have jurisdiction, we are ill-suited to second-guess Congress’s conclusion that DRNY’s constituents have been denied autonomy in the past, and that their autonomy is better served through representation by an organization purpose-built to advance their interests faithfully and protect their rights vigorously, including in federal court.

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7. In my view, as discussed in this section, DRNY derives its authorization to sue on behalf of its constituents, and its representational standing to do so, from Congress by statute. However, to the extent standing doctrine may also serve separation-of-powers values in part by protecting the prerogatives of the executive branch, it is worth noting (as the majority opinion does at 10) that the relevant regulations reinforce DRNY’s authorization to “bring[] lawsuits in its own right to redress” injuries suffered by its constituents. 42 C.F.R. § 51.6(f); *cf. TransUnion*, 594 U.S. at 429 (“A regime where Congress could freely authorize unharmed plaintiffs to sue . . . also would infringe on the Executive Branch’s Article II authority.” (emphasis omitted)).



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Nothing in Article III prohibits Congress from making that judgment, and the majority is wrong to substitute its views for those of the people's elected representatives.

\* \* \*

For the foregoing reasons, while I join most of the majority opinion, I respectfully dissent from its decision that DRNY lacks Article III standing.

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**APPENDIX B — MEMORANDUM OPINION AND  
ORDER OF THE UNITED STATES DISTRICT  
COURT FOR THE SOUTHERN DISTRICT OF  
NEW YORK, FILED FEBRUARY 20, 2024**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

No. 22-cv-5045 (MKV)

T.C. *et al.*,

*Plaintiffs,*

-v-

NEW YORK STATE DEPARTMENT  
OF HEALTH *et al.*,

*Defendants.*

Filed February 20, 2024

**MEMORANDUM OPINION & ORDER  
GRANTING MOTION TO DISMISS AND  
DENYING MOTION TO INTERVENE**

MARY KAY VYSKOCIL, District Judge:

This case is about individuals with various developmental and intellectual disabilities who face long delays in moving from restrictive institutional facilities to community-based residential settings. Plaintiffs' counsel

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originally filed this case on behalf of eight individuals, an organization named Disability Rights New York (“DRNY”), and a purported class of individuals alleged to be similarly situated to the eight original individual plaintiffs [ECF No. 1]. Within a few months of the filing of the original complaint, two of the individual plaintiffs were placed in community residences, and Plaintiffs filed their operative pleading, the Amended Complaint, which removed the plaintiffs who had been placed, added two new individual plaintiffs, and added claims of constitutional violations [ECF No. 35 (“AC”)].

Plaintiffs then moved for a preliminary injunction requiring Defendants—the New York State Department of Health, Mary Bassett in her official capacity as Commissioner of DOH, the New York State Office for People with Developmental Disabilities (“OPWDD”), and Kerri Neifeld in her official capacity as Commissioner of OPWDD—“promptly” to place the individual plaintiffs in community residences [ECF Nos. 37, 38, 39, 40]. Defendants responded that they were working diligently to secure appropriate placements (and had found a placement for one of the plaintiffs since the filing of the Amended Complaint), but each individual presented a unique and complex set of behavioral challenges, clinical needs, and geographical preferences, and, in many instances, community residences had concluded they could not safely serve these individuals alongside their other residents [ECF No. 46, 47, 48, 49, 50, 51, 52, 53, 54].

The Court denied Plaintiffs’ motion for a preliminary injunction [ECF No. 71 (“Op.”)]. The Court concluded that

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Plaintiffs had failed to show a likelihood of success on the merits of any of their claims. Moreover, Plaintiffs had failed to identify specific relief that would remedy their alleged injuries. Nevertheless, the Court set a relatively short deadline for Defendants to file an affidavit detailing what further steps they had taken to place the remaining individual plaintiffs, and Defendants reported significant progress [ECF No. 72-1].

In the interim, Defendants filed a motion to dismiss most, but not all, of Plaintiffs' claims [ECF Nos. 67, 68, 70]. As relevant here, Defendants argued that DRNY lacks standing. Plaintiffs opposed that motion [ECF No. 69 ("Pl. Opp.")].

Thereafter, approximately thirteen months after they initiated this case, Plaintiffs' counsel filed a motion to intervene, arguing that "the addition of the Proposed Plaintiffs is needed to protect the interests of all class members" [ECF No. 77, 78 ("Pl. Mot.") at 2, 79, 80]. By that time, Defendants had secured community-based placements for nine of the ten individual plaintiffs who had appeared in this action since its inception. *See* Pl. Mot. at 1. Plaintiffs' counsel proposed to allow intervention as plaintiffs by eight new individuals, with diverse diagnoses, requirements, and preferences, who were awaiting placements in community residences at the time Plaintiffs' counsel filed the motion.

Now, as Plaintiffs concede, Defendants have "successfully placed" all of the individual plaintiffs and many of the proposed intervenors [ECF No. 97 ("Pl.

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January 2024 Letter”)]. Defendants now seek dismissal of this entire action for lack of subject matter jurisdiction [ECF Nos. 96, 98]. Plaintiffs’ counsel argue that the Court should respond to the mootness of the individual plaintiffs’ claims by granting intervention. For the reasons set forth below, this case is DISMISSED, and the motion to intervene is DENIED.

**I. BACKGROUND****A. Plaintiffs Initiate this Action with Eight Individual Plaintiffs and DRNY**

Plaintiffs initiated this action by filing the original complaint [ECF No. 1 (“OC”)]. The original complaint named as plaintiffs eight individuals who have various developmental and intellectual disabilities, among other issues, and who, when the original complaint was filed, were living in institutions. OC ¶¶ 2, 11–18. Several of these plaintiffs appeared through a next friend.<sup>1</sup> The other individual plaintiffs asserted their claims on behalf of themselves and a purported class of similarly situated individuals. An organization called Disability Rights New York (“DRNY”), “a Protection and Advocacy system,” was also named as a plaintiff. OC ¶ 20.

Plaintiffs alleged that Defendants had determined each individual plaintiff was entitled to move from the

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1. The Court granted Plaintiffs’ unopposed motion for the individuals with disabilities and their next friends to proceed anonymously [ECF Nos. 30, 42].

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institution where he or she was living to a less restrictive, community-based Certified Residential Opportunity (“CRO”) and to receive support services funded by the Medicaid Home and Community Based Services Waiver (“HCBS Waiver”). OC ¶¶ 1–4, 91; *see also* AC ¶¶ 1–4. Plaintiffs further alleged that they had remained in institutions long after they were deemed entitled to move to community residences. *See* OC ¶¶ 6, 88–89, 128–129, 132, 159, 163, 185–189, 218, 243, 260, 279. According to Plaintiffs, there were plenty of vacancies in community residences, but Defendants had failed to furnish the services to which the individual plaintiffs were entitled because, Plaintiffs alleged, Defendants had failed to develop an adequate system for placing these individuals. *See* OC ¶¶ 6, 319. Notably, after treating physicians recommend an individual for a CRO, individuals at OPWDD attempt to identify an appropriate placement and make referrals, and then a provider of residential services, whether private or state operated, must agree to accept the individual. *See* OC ¶¶ 6, 319.

Defendants filed a pre-motion letter seeking leave to file a motion to partially dismiss the original complaint, pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), on the grounds that DRNY lacks standing and various claims were facially deficient [ECF No. 31]. Plaintiffs first filed a letter responding to arguments in Defendants’ pre-motion letter [ECF No. 32]. Plaintiffs then filed another letter informing the Court of their intention to file an amended complaint as of right [ECF No. 34].

*Appendix B***B. The Amended Complaint**

Plaintiffs filed the Amended Complaint [ECF No. 35 (“AC”)]. The Amended Complaint removed two of the individual plaintiffs named in the original complaint because they had been placed in appropriate CROs. It added two new individual plaintiffs and constitutional claims. The Amended Complaint asserts nine causes of action.

First, Plaintiffs alleged that Defendants’ failures to provide the plaintiffs with Certified Residential Opportunities and HSBC Waiver services (which cannot be provided to individuals in institutions) violate the “reasonable promptness” provision of the Medicaid Act, 42 U.S.C. § 1396a(a)(8), and 42 U.S.C. § 1983. AC ¶¶ 384–389. Second, Plaintiffs alleged that Defendants’ failures to make community residences and HSBC Waiver services available as an alternative to continued institutionalization violates the “freedom of choice” provision of the Medicaid Act, 42 U.S.C. § 1396n(c)(2)(C), and Section 1983. AC ¶¶ 390–393. Third, Plaintiffs alleged that they were being denied the right to an administrative hearing under the Medicaid Act, 42 U.S.C. § 1396a(a)(3). AC ¶¶ 394–398. Fourth, Plaintiffs alleged that they were being discriminated against and unnecessarily segregated in violation of Title II of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12132, and its “integration mandate,” 28 C.F.R. § 35.130(d). AC ¶¶ 399–408. Fifth, Plaintiffs alleged that Defendants’ methods of administering the HSBC Waiver program are discriminatory, in violation of the ADA, 42 U.S.C. § 12132. AC ¶¶ 409–415. Sixth,

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Plaintiffs alleged violation of the inclusion mandate of the Rehabilitation Act, 29 U.S.C. § 794, and its implementing regulations. AC ¶¶ 415–424. Seventh, Plaintiffs alleged discriminatory methods of administration in violation of the Rehabilitation Act, 29 U.S.C. § 794. AC ¶¶ 425–431. Eighth, Plaintiffs alleged that they have a constitutionally protected interest in Medicaid-funded community residences and HSBC Waiver services and that Defendants were denying Plaintiffs a hearing on the denial of those benefits in violation of the Due Process Clause of the Fourteenth Amendment. AC ¶¶ 432–438. Ninth, Plaintiffs alleged that, because they lived in institutions while they awaited placements in community residences, Defendants were violating Plaintiffs’ constitutional rights to be free from bodily restraint. AC ¶¶ 439–445.

**C. Plaintiff’s Motion for Emergency Relief**

Four months after they initiated this action, Plaintiffs filed a motion for a preliminary injunction [ECF Nos. 37, 38, 39, 40]. Plaintiffs requested “an order requiring Defendants promptly to secure placement in a community-based certified residential opportunity for Plaintiffs” [ECF No. 37]. In opposing Plaintiffs’ motion for a preliminary injunction, Defendants explained that they were working diligently to place each individual plaintiff in an appropriate community-based residence. They explained, however, that each individual plaintiff presented a unique and complex set of behavioral challenges, clinical needs, and geographical preferences. Defendants explained that, in many instances, residential providers had concluded that they could not safely serve



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the individual plaintiffs alongside their other residents. Defendants included detailed affidavits setting forth their efforts to place each of the individual plaintiffs named in the Amended Complaint [ECF No. 46, 47, 48, 49, 50, 51, 52, 53, 54].

The Court held a hearing on Plaintiffs' motion for a preliminary injunction [ECF No. 97-1 ("Tr.")]. On the record at the hearing, Plaintiffs acknowledged that two of the plaintiffs named in the original complaint were removed from the lawsuit because "they were placed in suitable community-based residences." Tr. at 11:7–18. Plaintiffs also acknowledged that, as of the date of the hearing, one of the plaintiffs named in the Amended Complaint had been accepted for placement in a CRO. Tr. at 11:24–12:2. Furthermore, Plaintiffs acknowledged that "the defendants [were] endeavoring to meet their obligations" to place each individual plaintiff in a CRO but stated that Plaintiffs' "position [was] that the law requires outcomes and not merely efforts." Tr. at 12:18–22.

At the hearing, the Court repeatedly pressed Plaintiffs on what relief they sought. Plaintiffs ultimately requested an order directing Defendants to place each individual plaintiff in a CRO within 14 days, or, if Defendants were unable to do so, to "come back to this Court to detail their efforts to try to obtain such a placement for them and to detail why" each plaintiff was "not appropriate for any of the" residential providers operated directly by the State. Tr. at 17:9–19; see Tr. at 10:7–17; 15:13–25; 17:6–8). Plaintiffs argued that "OPWDD has to be the provider of last resort." Tr. at 22:8–9. In other words, Plaintiffs

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contended that if no voluntary provider of residential services would agree to accept a particular individual, one of the State-operated residential providers should be compelled to accept the individual, even if that facility represented that it could not safely serve the individual together with its other residents. Tr. at 22:8–9.

The Court denied Plaintiffs’ motion for a preliminary injunction [ECF No. 71 (“Op.”)]. The Court concluded that Plaintiffs had failed to show a likelihood of success on the merits of any of their claims. *See Op.* at 12. Nevertheless, the Court set a deadline for Defendants to file a status report further detailing their efforts to place the remaining individual plaintiffs in community residences. *See Op.* at 1, 21. In response to the Court’s Order, Defendants reported that: two more plaintiffs had accepted placements; one plaintiff had declined a placement he was offered but was pursuing another potential placement; two plaintiffs were in the process of being screened for potentially appropriate placements; Defendants’ ongoing efforts to find a potential placement for one plaintiff had been unsuccessful; and one plaintiff had been deemed too unstable for discharge from a hospital environment [ECF No. 72-1].

**D. Defendants’ Motion To Dismiss**

Defendants filed a motion partially to dismiss the Amended Complaint [ECF Nos. 67, 68 (“Def. MTD”), 70]. Specifically, the motion seeks dismissal of DRNY for lack of standing. The motion also seeks dismissal of most of the claims in the Amended Complaint for various reasons. Plaintiffs opposed the motion to dismiss [ECF No. 69].

*Appendix B***E. The Motion of Plaintiffs' Counsel To Add Intervenor**

Thereafter, approximately thirteen months after they initiated this case, Plaintiffs' counsel filed the pending motion to intervene [ECF No. 77, 78 ("Pl. Mot."), 79, 80]. When Plaintiffs' counsel filed the motion to intervene, Defendants had secured community-based placements for nine of the ten individual plaintiffs who have appeared in this action since it began (all but one of the individual plaintiffs named in the Amended Complaint). *See* Pl. Mot. at 1; Def. Opp. at 2. Plaintiffs' counsel proposed to allow intervention as plaintiffs by eight new individuals who were, at the time Plaintiffs' counsel filed the motion to intervene, living in institutions and awaiting placements in community residences.

Plaintiffs' counsel seeks intervention as of right and, in the alternative, by permission. Plaintiffs' counsel argues that "[i]ntervention is necessary to protect the interests of the Proposed Plaintiffs and the class because Defendants are systematically seeking to moot the claims of the original named plaintiffs." Pl. Mot. at 2. Although the premise of the motion to intervene is that this matter will proceed as a class action, Plaintiffs have not filed a motion for class certification. Like the individual plaintiffs named in the original complaint and the Amended Complaint, the proposed intervenors have different and complex diagnoses, clinical needs, behavioral challenges, staffing requirements, and placement preferences. Defendants ask the Court to deny intervention as of right and by permission [ECF No. 84 ("Def. Opp.")].

*Appendix B***F. The Placement of All Individual Plaintiffs and Many Proposed Intervenors**

After the motion to intervene was fully submitted, Defendants placed in a community residence the last individual plaintiff named in the Amended Complaint. Defendants therefore filed a letter requesting dismissal of this entire action for lack of subject matter jurisdiction [ECF No. 96 (“Def. January 2024 Letter”)]. They argue that DRNY has lacked standing from the outset and, now, the claims of all of the individual plaintiffs are moot.

Plaintiffs filed a letter in opposition to Defendants’ request [ECF No. 97 (“Pl. January 2024 Letter”)]. Plaintiffs’ counsel acknowledged that Defendants have “successfully placed” in an appropriate community residence every individual plaintiff who has appeared in this action. Pl. January 2024 Letter at 2. Indeed, Plaintiffs’ counsel acknowledged that “many of the proposed intervenor Plaintiffs also have been placed or have been offered placement in the community.” *Id.* According to Plaintiffs’ counsel, however, these placements reflect Defendants’ efforts to moot Plaintiffs’ claims. *Id.* Plaintiffs’ counsel seeks to proceed with the lawsuit via the claims of the remaining, unplaced proposed intervenors. *Id.* at 3.

Defendants filed a letter in response to Plaintiffs’ opposition [ECF No. 98 (“Def. February 2024 Letter”)]. Defendants object to Plaintiffs’ characterization of their motives for placing the individual plaintiffs and proposed intervenors in community residences. *See* Def. February 2024 Letter at 1 n.1. Defendants maintain that they have

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followed their normal processes, continuing efforts to find appropriate placements that were ongoing before Plaintiffs brought this suit. *See* Def. Opp. at 2 (“Named Plaintiffs have received exactly the relief they requested through the normal OPWDD placement process”); Def. February 2024 Letter at 1 n.1.

**G. The Discovery Process**

The Court specifically directed the parties to proceed expeditiously with the discovery in this case. *See* Tr. at 43:13–18. In one instance, approximately six months ago, the parties raised a dispute about the scope of the discovery [ECF No. 74]. The Court ruled: “since Plaintiffs assert putative class claims, Plaintiffs are entitled to non-burdensome discovery on Defendants’ general practices relating to individuals in institutional settings who have been deemed eligible for placements in residential settings insofar as that information will illuminate whether Plaintiffs can satisfy the prerequisites of Rule 23 of the Federal Rules of Civil Procedure” [ECF No. 83]. In other words, the Court long ago instructed Defendants to produce the discovery necessary for Plaintiffs to file a motion for class certification.

Plaintiffs never thereafter suggested that Defendants were not complying with the Court’s Order or raised another discovery dispute with the Court. Then, only after Defendants informed the Court that they had placed all of the remaining individual plaintiffs and many of the proposed intervenors, Plaintiffs asserted that Defendants have failed to produce adequate policy-related discovery.

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Pl. January 2024 Letter at 2. Defendants maintain that they have complied with the Court's Order and produced all required discovery. Def. February 2024 Letter at 3–4.

**II. LEGAL STANDARDS****A. Subject Matter Jurisdiction**

Subject matter jurisdiction is a threshold question, rooted in the case or controversy requirement of Article III. *See All. For Env't Renewal, Inc. v. Pyramid Crossgates Co.*, 436 F.3d 82, 85 (2d Cir. 2006). Indeed, “federal courts have an independent obligation to ensure that they do not exceed the scope of their jurisdiction, and therefore they must raise and decide jurisdictional questions that the parties either overlook or elect not to press.” *Henderson v. Shinseki*, 562 U.S. 428, 434, 131 S. Ct. 1197, 179 L. Ed. 2d 159 (2011). Moreover, “objections to subject-matter jurisdiction [] may be raised at any time.” *Id.* at 434–35; *Biener v. Credit Control Services, Inc.*, No. 21-cv-2809 (KMK), 2023 U.S. Dist. LEXIS 42954, 2023 WL 2504733, \*3 (S.D.N.Y. 2023) (“[F]ailure of subject matter jurisdiction is not waivable and may be raised at any time by a party or by the court *sua sponte*. If subject matter jurisdiction is lacking, the action must be dismissed.”).

Mootness destroys subject matter jurisdiction because, when claims are moot, there is no longer a case or controversy between the parties for the Court to resolve. *Dark Storm Indus. LLC v. Hochul*, 2021 U.S. App. LEXIS 29863, 2021 WL 4538640, \*1 (2d Cir. 2021)

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(“A case becomes moot—and therefore no longer a ‘Case’ or ‘Controversy’ for purposes of Article III—when the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome.”). “[T]he condition of mootness [] is a condition that deprives the court of subject matter jurisdiction.” *Muhammad v. City of New York*, 126 F.3d 119, 122–23 (2d Cir. 1997); *see also Allen v. Wright*, 468 U.S. 737, 750, 104 S. Ct. 3315, 82 L. Ed. 2d 556 (1984) (mootness, like standing, operates as “fundamental limits on federal judicial power in our system of government”). “If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.” Fed. R. Civ. P. 12(h)(3).

“[I]n general, if the claims of the named plaintiffs become moot prior to class certification, the entire action becomes moot.” *Comer v. Cisneros*, 37 F.3d 775, 798 (2d Cir. 1994); *see Bank v. Alliance Health*, 669 Fed. Appx. 584, 586 (2d Cir. 2016); *Decastro v. City of New York*, No. 16-cv-3850 (RA), 2020 U.S. Dist. LEXIS 153037, 2020 WL 4932778, at \*9 & nn. 15–16 (S.D.N.Y. 2020) (collecting cases on class action standing and mootness); *LaVoice v. UBS Fin. Servs.*, 2013 U.S. Dist. LEXIS 138607, 2013 WL 5380759, at \*3 n.6 (S.D.N.Y. 2013). Narrow exceptions to this general mootness rule may apply where a motion for class-certification is already pending, or the plaintiff has not yet had a reasonable opportunity to move for class certification. *In re Nat’l Austl. Bank Sec. Litig.*, 2006 U.S. Dist. LEXIS 94163, 2006 WL 3844463, at \*2 (S.D.N.Y. Nov. 8, 2006).

*Appendix B***B. Intervention**

Rule 24(a) of the Federal Rules of Civil Procedure provides that a court “must” permit intervention “[o]n timely motion” by anyone who “claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant’s ability to protect its interest, unless existing parties adequately represent that interest.” Fed. R. Civ. P. 24(a) (2). Interpreting this Rule, the Second Circuit has held: “To prevail on a motion for intervention as of right, a movant must ‘(1) timely file an application, (2) show an interest in the action, (3) demonstrate that the interest may be impaired by the disposition of the action, and (4) show that the interest is not protected adequately by the parties to the action.’” *In re New York City Policing During Summer 2020 Demonstrations*, 27 F.4th 792, 799 (2d Cir. 2022) (quoting “*R*” *Best Produce, Inc. v. Shulman-Rabin Mktg. Corp.*, 467 F.3d 238, 240 (2d Cir. 2006)). The Second Circuit has “underscored that a ‘[f]ailure to satisfy *any one* of these four requirements is a sufficient ground to deny the application.” *Floyd v. City of New York*, 770 F.3d 1051, 1057 (2d Cir. 2014) (emphasis in original).

Pursuant to Rule 24(b), a court may in its discretion permit intervention on a timely motion by anyone who “has a claim or defense that shares with the main action a common question of law or fact.” Fed. R. Civ. P. 24(b)(1)(B). Permissive intervention is wholly discretionary. Indeed, as the Second Circuit has pointed out, a “denial of permissive intervention has virtually never been reversed.” *AT&T*



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*Corp. v. Sprint Corp.*, 407 F.3d 560, 561 (2d Cir. 2005). Moreover, the Second Circuit has specifically condoned a district court denying permissive intervention based on the same reasons it denied intervention as of right. *See Floyd*, 770 F.3d at 1057; *Kamdem-Ouaffo v. Pepsico, Inc.*, 314 F.R.D. 130, 134 & n.3 (S.D.N.Y. 2016).

**III. DISCUSSION**

The Court must dismiss this case for lack of subject matter jurisdiction. The claims of the individual plaintiffs are moot, and DRNY lacks standing. Contrary to Plaintiffs' contentions, the Court is not required to resuscitate this case via intervention. Plaintiffs' counsel insists that "[i]n the class action context" intervention should be used in response to "pre-certification mooting." Pl. Mot. at 6 (quoting *In re Nat'l Austl. Bank Sec. Litig.*, 2006 U.S. Dist. LEXIS 94163, 2006 WL 3844463, at \*3 (S.D.N.Y. Nov. 8, 2006)). But Plaintiffs' counsel has not moved for class certification, even though they filed this case as a putative class action in 2022, and the Court long ago ordered Defendants to produce discovery relevant to such a motion [ECF Nos. 1, 83]. Furthermore, it appears unlikely that the proposed intervenors' claims are capable of classwide resolution. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350, 131 S. Ct. 2541, 180 L. Ed. 2d 374 (2011). This lawsuit cannot be a moving target in which Plaintiffs' counsel add new plaintiffs as "Named Plaintiffs . . . receive[] exactly the relief they requested through the normal OPWDD placement process." Def. Opp. at 2.

*Appendix B***A. DRNY Lacks Standing.**

DRNY alleges that, under federal law, it is a “Protection and Advocacy System” with the authority to “bring[] claims on behalf of individuals with disabilities.” AC ¶ 19–21. Plaintiffs expressly disclaim reliance on the doctrine of “associational” standing.”<sup>2</sup> Pl. Opp. at 23 & n.15. Rather, Plaintiffs contend that “DRNY has standing to participate as a plaintiff based on standing conferred directly by Congress.” Pl. Opp. at 23.

The great weight of precedent, however, makes clear that DRNY lacks standing. “[T]he ‘irreducible constitutional minimum’ of standing” requires a plaintiff to show that it “(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338, 136

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2. An organization may have Article III standing in one of two ways: (1) it may have associational standing to sue on behalf of its members if one member of the organization has standing, *see NY Civil Liberties Union v. NYC Transit Auth.*, 684 F.3d 286, 294 (2d Cir. 2014); or (2) the organization “may have standing in its own right to seek judicial relief from injury to itself and to vindicate whatever rights and immunities the association itself may enjoy,” *Warth v. Seldin*, 422 U.S. 490, 511, 95 S. Ct. 2197, 45 L. Ed. 2d 343 (1975). If an organization is not relying on associational standing, it must satisfy the test for standing in the same way as any other person. *See Irish Lesbian & Gay Org. v. Giuliani*, 143 F.3d 638, 649 (2d Cir. 1998); *Fam. Equal. v. Becerra*, 2022 U.S. Dist. LEXIS 59066, 2022 WL 956256, at \*3 (S.D.N.Y. Mar. 30, 2022), *aff’d sub nom.* 2024 U.S. App. LEXIS 3417, 2024 WL 618760 (2d Cir. Feb. 14, 2024).

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S. Ct. 1540, 194 L. Ed. 2d 635 (2016) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559–560, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992)); see *W.R. Huff Asset Mgmt. Co. v. Deloitte & Touche LLP*, 549 F.3d 100, 106–107 (2d Cir. 2008). There is, moreover, a “general prohibition on a litigant’s raising another person’s legal rights.” *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 126, 134 S. Ct. 1377, 188 L. Ed. 2d 392 (2014).

Drawing on these principles, a court in the Eastern District of New York recently concluded that DRNY lacked standing in a case similar to this one. *Disability Rights New York v. New York State et al.*, 2019 U.S. Dist. LEXIS 102609, 2019 WL 2497907, at \*5 (E.D.N.Y. June 14, 2019) (“DRNY, even though authorized under statute to bring claims on behalf of others, is asserting injuries that it did not suffer, but were suffered by third-parties. In this Circuit, there is a bar on such third-party standing.”), *report and recommendation adopted*, 2023 U.S. Dist. LEXIS 231466, 2024 WL 20753 (E.D.N.Y. Jan. 2, 2024); see also *Woods Servs. v. Disability Advocates, Inc.*, 342 F. Supp. 3d 592, 603–605 (E.D. Pa. 2018) (dismissing DRNY’s claims for lack of standing). This Court agrees. Plaintiffs cite their statutory authority to vindicate the rights of the disabled, but “[i]t is settled that Congress cannot erase Article III’s standing requirements by statutorily granting the right to sue to a plaintiff who would not otherwise have standing.” *Spokeo*, 578 U.S. at 339 (quoting *Raines v. Byrd*, 521 U.S. 811, 820 n.3, 117 S. Ct. 2312, 138 L. Ed. 2d 849 (1997)). Plaintiffs do not attempt to show that DRNY has suffered an injury itself. As such, Plaintiffs have not shown that DRNY has standing in its own right.

*Appendix B***B. The Individual Plaintiffs' Claims Are Moot.**

There is no question that the claims of the individual plaintiffs are moot. Plaintiffs admit that Defendants have “successfully placed” in a community residence every individual plaintiff who has appeared in this action, in the original complaint and the Amended Complaint. Pl. January 2024 Letter at 2. Indeed, Plaintiffs acknowledge that “many of the proposed intervenor Plaintiffs also have been placed or have been offered placement in the community.” Pl. January 2024 Letter at 2. In other words, all of the individual plaintiffs have received precisely the outcome they sought when they brought this lawsuit, and there is no longer a live case or controversy between the individual plaintiffs and the defendants in this action. *See Dark Storm Indus.*, 2021 U.S. App. LEXIS 29863, 2021 WL 4538640, \*1; *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91, 133 S. Ct. 721, 184 L. Ed. 2d 553 (2013).

Plaintiffs cannot and do not contest that individual plaintiffs' claims become moot when those individuals are placed in community residences. Plaintiffs recognized this point when they filed the Amended Complaint and removed two of the original plaintiffs because they had been placed. *See* Tr. at 11:7–18. As further confirmation, Plaintiffs' counsel accuse Defendants of systematically mooted the individual plaintiffs' claims by placing them in community residences. *See* Pl. Mot. at 2; Pl. January 2024 Letter at 2; *see also* Def. Opp. (“Named Plaintiffs have received *exactly* the relief they requested through the normal OPWDD placement process,” but Plaintiffs' attorneys merely “complain that this result

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has adversely affected their litigation posture.”). Indeed, Plaintiffs’ counsel urge the Court to grant their motion for intervention in response to the “pre-certification mooting” of the individual plaintiffs’ claims. Pl. Mot. at 6 (quoting *In re Nat’l Austl. Bank Sec. Litig.*, 2006 U.S. Dist. LEXIS 94163, 2006 WL 3844463, at \*3).

The case or controversy requirement of Article III dictates that “at least one plaintiff must have standing to sue.” *Dep’t of Commerce v. New York*, 588 U.S. 752, 139 S. Ct. 2551, 2565, 204 L. Ed. 2d 978 (2019); U.S. Const. art. III, § 2. Here, DRNY lacks standing, and all of the individual plaintiffs’ claims are moot. As such, the Court must dismiss this case for lack of jurisdiction.

**C. Plaintiffs’ Counsel Cannot Resuscitate this Case Via Intervention.**

The motion to intervene was not brought by independent third parties who learned of this lawsuit and filed the motion in an effort to protect their potential interest. Rather, the motion to intervene is brought by Plaintiffs’ counsel in an effort to save their purported class action. By their own account, Plaintiffs’ counsel started “pursuing adequate class substitutions” when they “became aware of the potential need to fill a class representative gap after OPWDD placed several of the Plaintiffs into community residences.” Pl. Mot. at 8. In these circumstances, the motion is not timely, and the proposed intervenors do not have an interest in this action that may be impaired by its disposition. For these reasons, the Court denies intervention “as of right *and* by permission.” *Floyd*, 770 F.3d at 1058 (emphasis in original).

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In further support of the Court’s discretionary decision to deny permissive intervention, the Court observes that this case is unlikely to meet the requirements for class certification. The proposed intervenors, like the plaintiffs, have different sets of diagnoses, behavioral challenges, staffing requirements, and preferences. They are screened by different sets of decisionmakers. All of these factors bear on the time it takes to place individuals in residential facilities. There is likely no “classwide resolution” available.<sup>3</sup> *Wal-Mart Stores*, 564 U.S. at 350.

Plaintiffs’ counsel insist that the Court must grant their motion to intervene simply because they assert putative class claims, but Plaintiffs’ counsel are wrong. Plaintiffs rely on cases in which a class had already been

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3. As noted above and explained in detail in the Court’s earlier Opinion [ECF No. 71], Plaintiffs have suggested that a form of classwide relief would be for Defendants to compel State-operated providers of residential services to accept any hard-to-place individual, even if the State-operated facility represents that it cannot safely serve that individual alongside its other residents. Op. at 8, 21–22; *see* Tr. at 22:8–9. But the “integration mandate” that Plaintiffs claim Defendants are violating by failing to place these hard-to-place individuals requires only reasonable modifications that do not “fundamentally alter the nature of the . . . program.” *See* Op. at 21–22 (citing *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 119 S. Ct. 2176, 144 L. Ed. 2d 540 (1999) and quoting 28 C.F.R. § 35.130(b)(7)). As the Court previously explained, ordering Defendants to override the clinical judgment of residential facilities and compelling them to accept residents those facilities represent they cannot safely serve clearly “would require fundamentally altering the nature of the State program.” Op. at 22.

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certified or a motion for class certification was pending when the claims of the named plaintiffs became moot and new named plaintiffs intervened. *See* Pl. Mot. at 6 (citing *In re Currency Conversion Fee Antitrust Litig.*, 2005 U.S. Dist. LEXIS 31251, 2005 WL 3304605, at \*1 (S.D.N.Y. Dec. 7, 2005) (certified); *Diduck v. Kaszycki & Sons Contractors, Inc.*, 149 F.R.D. 55, 57 (S.D.N.Y. 1993) (certified)). Plaintiffs have not filed a motion for class certification.

Plaintiffs' counsel also cite cases in which no motion for class certification had yet been filed because the litigation was in an early stage, and little or no discovery had taken place. *See In re Nat'l Austl. Bank Sec. Litig.*, 2006 U.S. Dist. LEXIS 94163, 2006 WL 3844463, at \*3. This case is not remotely similar. The Court directed the parties to begin discovery six months before Plaintiffs' counsel filed the motion to intervene. *See* Tr. at 43:13–18. Moreover, the Court specifically ordered Defendants to produce discovery to “illuminate whether Plaintiffs can satisfy the prerequisites of Rule 23 of the Federal Rules of Civil Procedure” [ECF No. 83]. Plaintiffs never suggested that Defendants were failing to comply with that Order until after this case became moot, and Defendants maintain that they have complied. *See* Def. February 2024 Letter at 3–4.

Plaintiffs also place enormous weight on a footnote in *Elisa W. v City of New York*, 82 F.4th 115 (2d Cir. 2023). *See* Pl. January 2024 Letter at 2–3. A putative class of children in foster care alleged “systemic failures” in the oversight of “agencies responsible for the day-today care

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of children.” *Elisa W. v. City of New York*, No. 15-cv-5273 (KMW), 2021 U.S. Dist. LEXIS 167910, 2021 WL 4027013, at \*1 (S.D.N.Y. Sept. 3, 2021), *vacated and remanded*, 82 F.4th 115 (2d Cir. 2023). The plaintiffs in that case filed motions for class certification at the same time they filed the complaint and again four months later. *See* 2021 U.S. Dist. LEXIS 167910, [WL] at \*4; 15-cv-5273, ECF Nos. 1, 9, 75, 87. Having denied those motions for class certification without prejudice, the district court later refused to dismiss the case as moot, concluding that “the Court [would have] the power” to “relate” a renewed motion for certification “back to the date of the original complaint,” since the population of children in foster care is inherently transitory. *Elisa W. by Barricelli v. City of New York*, No. 15-cv-5273 (LTS), 2017 U.S. Dist. LEXIS 141715, 2017 WL 3841868, at \*2 (S.D.N.Y. Sept. 1, 2017). In an opinion vacating a later denial of class certification, the Second Circuit agreed that “class certification *may* relate back to the filing of the complaint, where . . . the putative class . . . are ‘so inherently transitory that the trial court will not have even enough time to rule on a motion for class certification before the proposed representative’s individual interest expires.’” *Elisa W.*, 82 F.4th at 122 n.2. (emphasis added) (quoting *Comer v. Cisneros*, 37 F.3d 775, 799 (2d Cir. 1994)).

Again, this case is not remotely similar. As the Court has already stated, Plaintiffs’ counsel have never filed a motion for class certification. Contrary to the suggestion of Plaintiffs’ counsel, the Second Circuit has never held—in *Elisa W.* or elsewhere—that purported class claims *must* relate back to the filing of a complaint, and dismissal for



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mootness is “barred” by the mere assertion of purported class claims in a complaint. Pl. January 2024 Letter at 2; *See Comer*, 37 F.3d at 798 (“[I]n general, if the claims of the named plaintiffs become moot prior to class certification, the entire action becomes moot.”).

Moreover, *Elisa W.* involved an inherently transitory population of children in foster care who were complaining about oversight of their “day-to-day care” before they aged out. *Elisa W.*, 2021 U.S. Dist. LEXIS 167910, 2021 WL 4027013, at \*1. Here, the premise of Plaintiffs’ case is that developmentally disabled individuals remain in institutions for extremely long periods of time. Although Plaintiffs’ counsel now accuse Defendants of strategically expediting the placement of the individual plaintiffs to moot their claims, Pl. January 2024 Letter at 2, Defendants have documented their longstanding efforts to place these individuals, which efforts predate the filing of the original complaint [ECF No. 46, 47, 48, 49, 50, 51, 52, 53, 54]. Indeed, at the hearing on their motion for a preliminary injunction, Plaintiffs credited Defendants for “endeavoring to meet their obligations” to place each plaintiff in a community residence. Tr. at 12:18–22. Notwithstanding the insistence of Plaintiffs’ counsel, the Court is not required to permit intervention by new plaintiffs merely because Plaintiffs assert putative class claims in their pleading.

The Court thus turns to the ordinary requirements for intervention. In the circumstances of this case, the motion to intervene is not timely. *See MasterCard Int’l Inc. v. Visa Int’l Serv. Ass’n, Inc.*, 471 F.3d 377, 390 (2d Cir. 2006);

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*United States v. Yonkers Bd. of Educ.*, 801 F.2d 593, 595 (2d Cir. 1986) (the district court should base its timeliness “determination upon all of the circumstances of the case”). Timeliness is a prerequisite for both intervention as of right and permissive intervention, and the untimeliness of the motion, alone, is sufficient reason to deny it. *See Floyd*, 770 F.3d at 1057; *Kamdem-Ouaffo*, 314 F.R.D. at 134.

Plaintiffs’ counsel filed the motion to intervene more than a year after they initiated this lawsuit. More importantly, Plaintiffs’ counsel waited long after it was apparent that Defendants would continue their efforts to place plaintiffs, and, as such, plaintiffs would receive the very relief they sought, and their claims would become moot. *See Catanzano v. Wing*, 103 F.3d 223, 233 (2d Cir. 1996) (the length of time the movant knew or should have known that the intervention motion would be necessary is “among the most important factors”). More than a year ago, Plaintiffs filed the Amended Complaint and removed two of the original plaintiffs because they had been placed in community residences, even before Plaintiffs filed their motion for a preliminary injunction requesting prompt placement for each individual plaintiff. *See* AC; Tr. at 11:7–18. Shortly after the Court denied the motion for a preliminary injunction, Defendants reported finding placements for several more plaintiffs [ECF No. 72-1]. Yet Plaintiffs’ counsel waited five months after that status report to seek intervention. The motion is not timely.

Furthermore, the proposed intervenors cannot show that they have an interest in this action that may be impaired by its disposition. *See In re New York City Policing During Summer 2020 Demonstrations*, 27 F.4th at 799. “An interest that is . . . contingent upon the

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occurrence of a sequence of events before it becomes colorable, will not satisfy the rule.” *Dubarry v. Annucci*, No. 21-cv-5487 (KMK), 2022 U.S. Dist. LEXIS 230767, 2022 WL 17850435, at \*1 (S.D.N.Y. Dec. 22, 2022). Nor will “interests of a general or indefinite character.” *H.L. Hayden Co. of NY, Inc. v. Siemens Medical Sys., Inc.*, 797 F.2d 85, 88 (2d Cir. 1986).

The proposed intervenors do not have direct, legally cognizable interests in the claims of the individual plaintiffs named in the Amended Complaint. Each individual plaintiff and proposed intervenor is a person, with a unique set of disabilities, requirements, and preferences, who wishes to live in the appropriate community residence for his or her own needs. It makes no difference to E.B., one of the proposed intervenors, that Plaintiff A.H. has been placed and her claims are moot. Rather, any interest of the proposed intervenors in this action is contingent on the filing of a motion for class certification and the granting of such motion.

Relatedly, the Court denying the motion to intervene and dismissing this action will not impair the proposed intervenors’ ability to protect their interests. They simply must file their own lawsuits to vindicate their own rights. Plaintiffs asserts that the proposed intervenors face a “significant risk of prejudice” if they are required to file new actions. Pl. Mot. at 9. However, Plaintiffs fail to substantiate that assertion. They say only that the proposed intervenors would have to file a new lawsuit, and a new court would have to “familiarize itself with the issues here.” Pl. Mot. at 9 & n.3. “This is not the sort of adverse practical effect contemplated by Rule 24(a) (2).” *SEC & Exch. Comm’n v. Everest Mgmt. Corp.*, 475

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F.2d 1236, 1239 (2d Cir. 1972). For all of these reasons, the proposed intervenors are not entitled to intervene as of right.

The Court also declines to grant permissive intervention because the motion to intervene is not timely and because the Court's decisions to deny intervention and dismiss this case will not impair the proposed intervenors' ability to protect their interests. In addition, as Defendants point out, the arguments in favor of intervention are all premised on the assumption that this case should and will proceed as a class action, but Plaintiffs are unlikely to satisfy the requirements of Rule 23. *See* Def. Opp. at 2–3, 12–13.

According to Plaintiffs' counsel, this case is about “a crises of needless and widespread institutionalization” caused by Defendants' failures to promptly place individuals in community residences. AC ¶ 6. But the individual plaintiffs and proposed intervenors all present different and complex diagnoses, behavioral challenges, clinical needs, and preferences that factor into their placements. They have faced different very lengths of delays in their placements. They have been evaluated by different decisionmakers. In many instances, several different residential providers independently refused to accept these individuals.

As the Supreme Court explained in *Wal-Mart Stores, Inc. v. Dukes*, it is not enough for class certification that a purported class raise common questions (*e.g.* why are these placements taking so long?); rather, the “class-wide proceeding” must be able “to generate common *answers*

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apt to drive the resolution of the litigation.” *Wal-Mart*, 564 U.S. at 350 (emphasis in original). As became evident in connection with Plaintiffs’ motion for a preliminary injunction, when these individuals are grouped together, the only relief they can seek is an order instructing Defendants to “promptly” find an appropriate placement for each individual [ECF No. 37]. As the Court explained in its decision denying preliminary relief, such an order “arguably is tantamount to ‘a simple command that the defendant obey the law,’ which would violate the specificity and clarity requirements for injunctions set forth in Rule 65(d) of the Federal Rules of Civil Procedure.” Op. at 14 (quoting *S.C. Johnson & Son, Inc. v. Clorox Co.*, 241 F.3d 232, 240 (2d Cir. 2001)). Thus, far from being prejudiced by the denial of the motion to intervene and dismissal of this purported class action, the proposed intervenors who have not yet been placed might be better served by filing individual lawsuits.

**IV. CONCLUSION**

For the reasons set forth above, Plaintiffs’ motion to intervene [ECF No. 77] is DENIED, and this case is dismissed. The Clerk of Court respectfully is requested to terminate all pending motions and close this case.

**SO ORDERED.**

**Date: February 20, 2024  
New York, NY**

**/s/ Mary Kay Vyskocil  
MARY KAY VYSKOCIL  
United States District Judge**

**APPENDIX C — ORDER DENYING REHEARING  
EN BANC OF THE UNITED STATES COURT OF  
APPEALS FOR THE SECOND CIRCUIT,  
FILED OCTOBER 14, 2025**

**UNITED STATES COURT OF APPEALS  
FOR THE  
SECOND CIRCUIT**

Docket No: 24-725, 24-728

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 14th day of October, two thousand twenty-five.

A.H., BY HER NEXT FRIEND E.H., R.D., BY HER  
NEXT FRIEND M.D., J.D., BY HIS NEXT FRIEND  
D.D., H.L., ON BEHALF OF THEMSELVES AND  
ALL OTHERS SIMILARLY SITUATED, A.B., ON  
BEHALF OF THEMSELVES AND ALL OTHERS  
SIMILARLY SITUATED, J.S., ON BEHALF OF  
THEMSELVES AND ALL OTHERS  
SIMILARLY SITUATED, J.C.M., ON BEHALF  
OF THEMSELVES AND ALL OTHERS  
SIMILARLY SITUATED, L.P., BY HER NEXT  
FRIEND C.P., DISABILITY RIGHTS NEW YORK,

*Plaintiffs-Appellants,*

E.B., M.W., BY HIS NEXT FRIEND T.D., J.D.C.,  
J.P.S., BY HIS NEXT FRIEND S.S., M.F., O.A., M.Y.,  
BY HIS NEXT FRIEND B.L., C.H.,

*Intervenor-Plaintiffs-Appellants,*

v.

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*Appendix C*

NEW YORK STATE DEPARTMENT OF HEALTH,  
JAMES V. MCDONALD, IN HIS OFFICIAL  
CAPACITY AS COMMISSIONER OF THE NEW  
YORK STATE DEPARTMENT OF HEALTH,  
NEW YORK STATE DEPARTMENT OF HEALTH,  
NEW YORK STATE OFFICE FOR PEOPLE WITH  
DEVELOPMENTAL DISABILITIES, WILLOW  
BAER, IN HER OFFICIAL CAPACITY AS  
COMMISSIONER OF THE NEW YORK  
STATE OFFICE FOR PEOPLE WITH  
DEVELOPMENTAL DISABILITIES,

*Defendants-Appellees.*

Filed October 14, 2025

**ORDER**

Appellants have filed a petition for rehearing *en banc*.  
The active members of the Court have considered the  
request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is  
denied.

FOR THE COURT:  
Catherine O'Hagan Wolfe, Clerk

/s/ Catherine O'Hagan Wolfe