MENASHI, *Circuit Judge*, concurring:

The court correctly notes that FASORP has failed to establish associational standing because associations asserting such standing must "identify members who have suffered the requisite harm." *Summers v. Earth Island Inst.*, 555 U.S. 488, 499 (2009). FASORP has not identified a member who has, or will, submit articles to the Law Review or seek teaching positions at the law school. Accordingly, FASORP has failed to establish that it has standing as an association to bring suit on behalf of its unidentified members. *Accord ante* at 12-14. That conclusion is enough to resolve this appeal. The court, however, proceeds to consider whether, if FASORP had adequately identified members, those hypothetical members would have been able to allege an injury in fact. *Ante* at 15. I do not understand this discussion to break new ground in our standing doctrine, and I write separately to clarify the applicable principles with respect to the alleged discrimination in article selection and faculty hiring.

A plaintiff association challenging an unlawfully discriminatory process needs to allege that its members are "able and ready" to participate in the process—in this case, by submitting articles or seeking teaching positions—"and that a discriminatory policy prevents [those members] from doing so on an equal basis." *Gratz v. Bollinger*, 539 U.S. 244, 262 (2003) (quoting *Ne. Fla. Chapter of Associated Gen. Contractors of Am. v. City of Jacksonville*, 508 U.S. 656, 666 (1993)); *see also id.* (holding that a plaintiff established standing by showing "that he was 'able and ready' to apply as a transfer student should the University cease to use race in undergraduate admissions"); *Carney v. Adams*, 141 S. Ct. 493, 501 (2020) (reiterating that a plaintiff challenging an allegedly discriminatory process must show that he "was 'able and ready' to apply … in the reasonably foreseeable future").

A plaintiff who alleges harm from a discriminatory barrier to equal treatment "need not allege that he would have obtained the benefit but for the barrier in order to establish standing." *Ne. Fla. Chapter*, 508 U.S. at 666; *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 211 (1995). Rather, the "injury in fact" in such a case "is the denial of equal treatment resulting from the imposition of the barrier, not the ultimate inability to obtain the benefit." *Ne. Fla. Chapter*, 508 U.S. at 666; *Adarand*, 515 U.S. at 211 ("The injury in cases of this kind is that a discriminatory classification prevents the plaintiff from competing on an equal footing.") (internal quotation marks and alteration omitted); *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 281 n.14 (1978) (identifying "an injury, apart from failure to be admitted, in the University's decision not to permit Bakke to compete for all 100 places in the class, simply because of his race").[1]

FASORP therefore needed only to identify members who are "able and ready" to submit articles or to seek faculty positions, not members who have already done so. *Gratz*, 539 U.S. at 262. Because FASORP does not identify members, however, it necessarily cannot allege the sort of "concrete plans" necessary to "support a finding of … 'actual or imminent' injury," *Summers*, 555 U.S. at 496, and whether

[1] These cases involved constitutional claims in addition to claims under Title VI. *See Gratz*, 539 U.S. at 276 & n.23; *Bakke*, 438 U.S. at 284. That does not affect the standing analysis. "Title VI's protections are coextensive with the Equal Protection Clause of the Fourteenth Amendment." *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 980 F.3d 157, 185 (1st Cir. 2020); *see also Bakke*, 438 U.S. at 287 ("Title VI must be held to proscribe only those racial classifications that would violate the Equal Protection Clause or the Fifth Amendment.").

its hypothetical members are able and ready to act is necessarily a speculative question. Accordingly, I concur in the court's opinion.