SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

YU PRIDE ALLIANCE, *et al.*, Plaintiffs, v. YESHIVA UNIVERSITY, *et al.*, Defendants.	Index No. 154010/2021 (Kotler, J.)

DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION TO DISMISS THE COMPLAINT

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REPLY

The New York City Human Rights Law ("NYCHRL") expressly exempts a "religious corporation incorporated under the education law" from liability as a public accommodation. That exempts Yeshiva. Consistent with New York law, Yeshiva is incorporated under the Education Law, and as conceded by Plaintiffs, is a religious organization with the purpose of passing Torah values on to each new generation of undergraduate students, the overwhelming majority of whom are Orthodox Jews. That is enough to dismiss this case.

In response to this simple conclusion, Plaintiffs offer a grab bag of arguments, ranging from the misguided to the absurd. Plaintiffs first argue that Yeshiva is not exempt because it is not a "house of worship" under New York's Religious Corporations Law. But this conflicts with the NYCHRL's plain text, which exempts any religious organization "incorporated under the education law ***or*** the religious corporation law." N.Y.C. Admin. Code § 8-102 (emphasis added). Plainly then, incorporation under the Religious Corporations Law is not required for a corporation to be "religious" under the NYCHRL.

Plaintiffs likewise provide no textual support for their argument that a "religious corporation" under the City law is the same as a "religious or denominational educational institution" under the State Education Law. In fact, on the very next page of their brief (footnote 5), they concede that the Education Law's language is "very different" and should not be interpreted as the same. Nor do Plaintiffs bother to explain which of their two proposed interpretations is correct, or why. It cannot be that a "religious corporation" under the NYCHRL must be *both* "a house of worship" under the State Religious Corporations Law *and* an "educational institution … controlled by a religious denominational organization" under the State Education Law.

Besides being anti-textual and mutually exclusive, Plaintiffs' proposed readings would be severely disruptive. Even RIETS—Yeshiva's rabbinical seminary—would become a public accommodation, along with every other religious school in New York City. And because the public-accommodations provision also prohibits religious "creed" discrimination, any of these

schools' religious requirements—including RIETS's requirements for rabbinical ordination—could be called into question under Plaintiffs' impossible argument.

As confirmed by the US Supreme Court's decision last week in *Fulton v City of Philadelphia*, Plaintiffs' constrained reading of the religious exemption would also violate the First Amendment. *Fulton* makes at least three points clear, all of which are fatal here. First, courts must construe "public accommodations" narrowly to avoid entangling church and state. (2021 WL 2459253, *7 [June 17, 2021, No. 19-123]). Second, laws with either categorical exemptions or a system for making individualized exemptions (regardless of whether such exemptions are ever granted) require strict scrutiny. *Id.* As detailed below, the NYCHRL has both, thus triggering the "strictest scrutiny." *Id.* at *8. Finally, as *Fulton* just held, satisfying that demanding test requires a government policy that "precise[ly]" "advances 'interests of the highest order' and is narrowly tailored to achieve those interests. Put another way, so long as the government can achieve its interests in a manner that does not burden religion, it must do so." *Id.* (cleaned up). Here, the fact that some exemptions from the public accommodations provision are already allowed fatally undermines any strict scrutiny defense. *Id.*

The same is true regarding Yeshiva's other constitutional defenses. Plaintiffs' efforts to interfere with Yeshiva's religious speech and freedom of assembly trigger—and fail—strict scrutiny too.

Ultimately, the Court need not engage all of Plaintiffs' sound and fury. Applying the NYCHRL's exemption for "religious corporations incorporated under the education law" as written produces a straightforward conclusion: The motion to dismiss must be granted.

ARGUMENT

I. Yeshiva is exempt from the NYCHRL's public accommodations provisions.

Plaintiffs' arguments ignore the NYCHRL's plain terms, which categorically exempt Yeshiva as a "religious organization incorporated under the education law."

A. The NYCHRL exempts religious colleges and universities.

The NYCHRL's public accommodation provision expressly exempts "religious corporation[s] incorporated under" ***either*** "the education law ***or*** the religious corporation law." N.Y.C. Admin. Code § 8-102 (emphasis added); Doc. 71 at 8-9. This exemption "is absolute and not subject to limitation." (*Gifford v Guilderland Lodge, No. 2480, B.P.O.E. Inc.*, 707 NYS2d 722, 722-723 [3d Dept 2000]).

Yet for nearly ten pages, Plaintiffs ignore the plain meaning of this exemption—arguing instead that, because neither the NYCHRL nor the Education Law expressly defines "religious corporation," its meaning "is found in the RCL [Religious Corporations Law]." Doc. 105 at 11. Arguing further that "places of worship only" qualify under the RCL, they conclude that Yeshiva cannot be exempt because it is not a house of worship. *Id.* at 10-13. Plaintiffs further claim that this convoluted reasoning is supported by the NYCHRL's "legislative history" and by the text of the Education Law, because its definition of an unrelated term ("religious or denominational educational institution") "accords with the RCL." *Id.* at 13-15, 11. Every part of this argument is mistaken.

As the New York Court of Appeals has repeatedly held, "[a] court must … give effect and meaning to the entire statute and every part and word thereof." (*Friedman v Connecticut Gen. Life Ins. Co.*, 9 NY3d 105, 115 [2007]) (cleaned up). Statutory interpretations that "inevitably create superfluity if not a downright conflict within [a statutory section]" must be rejected. *Id.* Plaintiffs' interpretations here do just that, creating a conflict between what the NYCHRL says (*i.e.*, exempting two kinds of religious corporations) and what their claims require (*i.e.*, that the NYCHRL exempt only one kind: houses of worship).

Plaintiffs' radical reinterpretation would effectively strike from the NYCHRL the phrase "religious corporation under the education law." As a matter of law, this is wrong. "These words cannot be meaningless, else they would not have been used." (*United States v Butler*, 297 US 1, 65 [1936]). Applying the similarly worded New York State Human Rights Law, the New York Court of Appeals already rejected a similar attempt to limit "status as a religious organization" to

"only an entity organized pursuant to the Religious Corporations Law." (*Scheiber v St. John's Univ.*, 84 NY2d 120, 126 [1994]) ("Although conceived with the intent of fulfilling a secular educational role, [St. John's University] has not abandoned its religious heritage and plainly falls within the exemption ….").[1] This Court should do likewise here.

Plaintiffs also err in claiming that the US Supreme Court "recognized that the meaning of 'religious corporation' in Section 8-102 is found in the RCL." Doc. 105 at 11 (citing *N.Y. State Club Assn., Inc. v City of New York*, 487 US 1 [1988]). Rather, the Court held only that the RCL gave New York City a "rational basis" for considering religious corporations "unique" from private clubs. (*See* 487 US at 16-17). Rational basis review does not purport to define a policy's full scope—it simply inquires whether there is any "plausibl[e] relat[ionship]" between the government's "policy" and its "stated objective." (*E.g., Trump v Hawaii*, 138 S Ct 2392, 2420 [2018]). While the existence of the RCL does provide a plausible basis to distinguish religious corporations from private clubs, that does not mean the universe of religious corporations is found in the RCL. This point is confirmed by the NYCHRL's plain language—which identifies "religious corporation[s] incorporated under the education law," in addition to religious corporations under "the religious corporation law. N.Y.C. Admin. Code § 8-102. And statutes should be read to harmonize, not conflict. (*See, e.g.*, *People v Iverson*, 2021 WL 2144103, at *2 [NY May 27, 2021, Nos. 36 & 37]).

If Plaintiffs' stance—that "places of worship only" are exempt from the NYCHRL—is adopted, there would be severe repercussions. Under Plaintiffs' interpretation, countless religious schools in New York City will immediately be transformed into public accommodations simply because they incorporated under the Education Law. Even RIETS—Yeshiva's *rabbinical*

[1] Nothing in the NYCHRL legislative history Plaintiffs cite (Doc. 105 at 13-15) requires a different result. Setting aside the dubiousness of relying on legislative history, descriptions of Yeshiva's size, or what "advantages" and "privileges" it offers to students say nothing about whether Yeshiva qualifies as a religious corporation under the Education Law.

seminary—would be deemed a public accommodation because it, too, is an education corporation. This is an absurd result.

The NYCHRL's plain terms exempt two different forms of religious corporations: those incorporated under the Education Law and those incorporated under the Religious Corporations Law. Plaintiffs' attempted excise of the Education Law provision must be rejected. [2]

B. Yeshiva's religious status is based on its functions.

Plaintiffs are wrong to characterize the functional analysis of "religious corporation" from New York common law as "novel." Doc. 105 at 9. Whenever a statute does not define a particular term, the "words will be interpreted as taking their ordinary, contemporary, common meaning." (*Perrin v United States*, 444 US 37, 42 [1979]). Similarly, when a statute "uses terms that have accumulated settled meaning under the common law, a court must infer, unless the statute otherwise dictates, that [the legislature] means to incorporate the established meaning of these terms." (*Community for Creative Non-Violence v Reid*, 490 US 730, 739 [1989]) (cleaned up). Plaintiffs simply ignore this well-established rule, despite it already being applied to identify "religious organizations" under the NYCHRL. (*See Jing Zhang v Jenzabar, Inc.*, 2015 WL 1475793, at *8-9 [ED NY Mar. 30, 2015, No. 12-cv-2988]).[3]

Plaintiffs purport to distinguish several New York cases establishing that the common law method for determining whether a corporation is religious is to evaluate whether "its substance is secular or that its religious activities can be differentiated from its non-religious objectives." (*Watt Samakki Dhammikaram, Inc. v Thenjitto*, 631 NYS2d 229, 231 [Sup Ct, Kings County 1995],

[2] Plaintiffs' allegation that Yeshiva's religious status should be determined based on whether it is "non-sectarian," Doc. 105 at 4, is flatly unconstitutional. The Supreme Court has already rejected that argument and held that conditioning state funds on religious status violates the First Amendment. (*See Espinoza v Montana Dept. of Revenue*, 140 S Ct 2246 [2020]; *Mitchell v Helms*, 530 US 793, 828-829 [2000].)

[3] In a footnote, Plaintiffs try waving *Jing Zhang* away because it construed "religious organization" under a separate exception to the NYCHRL. *See* Doc. 105 at 12 n 5. But regardless of the exception, *Jing Zhang* correctly directs courts—in the absence of a specific NYCHRL definition—toward the ordinary and common law meaning of "religious organization." That is the correct way to interpret a statute.

citing *Kittinger v Churchill*, 292 NYS 35, 46-47 [Sup Ct, Erie County 1936], *affd*, 292 NYS 51 [4th Dept 1936]; *see also Kroth v Congregation Kadisha, Sons of Israel*, 105 Misc 2d 904, 910 [Sup Ct, N.Y. County 1980]) ("A religious corporation may exist in fact without being legally constituted.") (cleaned up). In Plaintiffs' view, all these cases are inapposite because they evaluate whether the corporation at issue would, despite its form, be a "place[] of worship or religious observance" under the RCL. Doc. 105 at 12. Wrong. These cases identify what it means to function as a religious corporation, no matter the corporate form. And as *Kittinger* demonstrates, a religious corporation can exist at common law without being a place of worship. (*See* 292 NYS at 40, 47) (stock corporation was "at all times" a "religious society," even when its work "was confined … principally, to the evangelistic efforts of" a clergyman, despite initially having no house of worship).

Plaintiffs additionally argue that an entirely different phrase ("religious or denominational educational institution")—found in the Education Law, *not* the NYCHRL, and dealing with "unfair educational practices," *not* incorporation—should be conflated with "religious corporation." Doc. 105 at 11; *see* N.Y. Educ. Law § 313(2)(b). Yet Plaintiffs contradict themselves one page later—where in a footnote they concede that "religious corporation" is language "very different" from "religious or denominational educational institution" and that the two definitions are not synonymous. Doc. 105 at 12 n 5. As the Court of Appeals has long recognized, "if a statute uses a word which has a definite and well-known meaning at common law, it will be construed with the aid of common-law definitions, unless it clearly appears that it was not so intended." (*People v King*, 61 NY2d 550, 554-555 [1984]). Plaintiffs cite nothing that explains their abrogation of the common law in favor of importing an irrelevant section from a separate law—as they acknowledge a page later, the terms are "very different." Moreover, Plaintiffs' interpretation of "religious corporation" would, like the rest of their NYCHRL interpretation, violate the canon of constitutional avoidance. The First Amendment prohibits cramping the definition of religious schools to those "controlled by" another religious organization, N.Y. Educ. Law § 313(2)(b), as that would violate the tenets of decentralized, non-hierarchical faiths (like Judaism).

At common law in New York, the meaning of "religious corporation" is clear: it is an organization that has religious functions, regardless of form. The NYCHRL does not define that term otherwise. Accordingly, it must incorporate the common law definition.

C. Yeshiva's functions show it is religious.

Applying New York's common law functional analysis to Yeshiva confirms that it is a religious corporation. A mountain of undisputed evidence proves Yeshiva's deeply religious character:[4] over 80% of undergraduates begin their Yeshiva experience with a year of intensive religious studies in Israel for University credit; on campus, students are required to spend one to nearly six hours a day in Torah study; consistent with Torah law and tradition, all campuses, dorms, and prayers are sex-segregated; Shabbat is strictly observed on campus; and all student activities are subject to University approval for religious compliance. Doc. 71 at 10. And Yeshiva is closely intertwined with RIETS.

Given this evidence, labeling Yeshiva—a university for which Judaism is the very core of its existence—a secular organization presents an avoidable constitutional conflict. (*Cf. United States ex rel. Attorney Gen. v Del. & Hudson Co.*, 213 US 366, 408 [1909] (courts have a judicial "duty" to "avoid[]" "grave and doubtful constitutional questions"); *see also Gomez v United States*, 490 US 858, 864 [1989] (judiciary's "settled policy [is] to avoid an interpretation of a federal statute that engenders constitutional issues if a reasonable alternative interpretation poses no constitutional question"); *accord Airtan N.Y., LLC v Midwest Air Group, Inc.*, 844 NYS2d 233, 240 [1st Dept 2007])). Indeed, courts regularly hold that secular laws cannot uniformly be applied to organizations with religious functions, even when they engage in some secular activity. (*See,*

[4] Plaintiffs' claims about needing to convert Yeshiva's motion into one for summary judgment ring hollow. As they admit, external evidence can be used to "conclusively establish[] that Plaintiff[s] ha[ve] no cause of action." Doc. 105 at 20. And for cases like this one that risk court entanglement with religious governance, "[t]he First Amendment requires resolving claims that impact internal religious affairs at the outset." Doc. 71 at 8 n 2. Furthermore, Plaintiffs' *own evidence* demonstrates Yeshiva's religiosity. *See, e.g.*, Doc. 88 at 85 (Yeshiva's IRS 990 Schedule O: "[R]ooted in Jewish thought and tradition, [Yeshiva] sits at the educational, spiritual, and intellectual epicenter of a robust global movement that is dedicated to advancing the moral and material betterment of the Jewish community and broader society, in the service of God.").

e.g., *Our Lady of Guadalupe Sch. v Morrissey-Berru*, 140 S Ct 2049, 2066 [2020] (dismissing employment lawsuits by former teachers against Catholic primary schools); *Shaliehsabou v Hebrew Home of Greater Washington, Inc.*, 363 F3d 299, 310 [4th Cir 2004] (shielding senior living facility from wages lawsuit because it provided elder care "in accordance with the precepts of Jewish law and customs"); *Scharon v St. Luke's Episcopal Presbyt. Hosps.*, 929 F2d 360, 362 [8th Cir 1991] (holding a "church-affiliated hospital" had a "substantial religious character" and could not be sued for firing its chaplain); *InterVarsity Christian Fellowship/USA v Bd. of Governors of Wayne State Univ.*, 2021 WL 1387787 [ED Mich, Apr. 13, 2021, No. 19-10375] (holding a school could not apply its nondiscrimination policy to prevent a Christian club from selecting Christian leaders)).

Simply applying New York's common law avoids any constitutional concern. New York common law requires that the meaning of "religious corporation" in the NYCHRL be determined through a functional test. And as Plaintiffs agree, Judaism is "celebrated" and "part of life at" Yeshiva. Doc. 105 at 1. In fact, Yeshiva's religious character is the basis for Plaintiffs' goals for this lawsuit: not just to change Yeshiva, but to change all of Modern Orthodox Judaism. *See* Molly Meisels, *I Shouldn't Have to Choose Between My Judaism and My Queerness*, New York Times (June 10, 2021, 3:00 PM), https://perma.cc/KE3Y-HJEZ. Yeshiva's *Torah Umadda* mission inherently intertwines Torah values with secular engagement. *See* Doc. 71 at 2-4, 10-14. Yeshiva thus has a religious function and, per the NYCHRL and New York common law, is exempt from the NYCHRL.

II. Accepting Plaintiffs' NYCHRL construction violates Yeshiva's First Amendment rights.

While the constitutional avoidance canon militates against statutory constructions "that engender[] constitutional issues" (*Gomez*, 490 US at 864), Plaintiffs' claims must also be rejected because their claims would affirmatively violate Yeshiva's First Amendment rights.

A. Religious autonomy.

As Yeshiva explained (Doc. 71 at 15), its religious "autonomy" to make "internal management decisions that are essential to the institution's central mission" would be violated if Plaintiffs'

claims proceed. (*See Our Lady*, 140 S Ct at 2066). The substance of Plaintiffs claims made this obvious already (*see* Doc. 71 at 15; *see also, e.g.*, Complaint ¶¶ 58, 80, 98, 101-102), but the violation has only become clearer since this lawsuit was filed. As Plaintiff Meisels said in the *New York Times*, she hopes to force Yeshiva to "evolve[]" and "adapt[]" based on *her* understanding of the Torah—not *Yeshiva's*, and then—she hopes—"the rest of the [Modern Orthodox] community will follow". As in a similar intra-religious dispute over New York corporate law, it is harder to imagine a clearer "intru[sion] for the benefit of one segment of a [religion]" by "the power of the state into the forbidden area of religious freedom." (*Kedroff v St. Nicholas Cathedral of Russian Orthodox Church*, 344 US 94, 119 [1952]).

Plaintiffs have no response other than to claim that "[t]he United States Constitution does not prove an independent right to 'religious autonomy.'" Doc. 105 at 18. That is simply wrong as a matter of law. (*See Our Lady*, 140 S Ct at 2060 (stating that the ministerial exception is but one "component" of the larger doctrine of religious "autonomy with respect to internal management decisions"); *Kedroff*, 344 US at 116 ("religious organizations" are free "to decide for themselves, free from state interference, matters of [religious] government as well as those of faith and doctrine")). The First Amendment requires dismissing their claims.

B. Free Exercise Clause.

As two recent Supreme Court cases confirm, Plaintiffs' claims violate the Free Exercise Clause because the NYCHRL is not generally applicable toward religion. Doc. 71 at 15-16. First, under *Tandon v Newsom*, if a statute provides preferential treatment to "*any* comparable secular activity," but not to religion, it is not generally applicable and strict scrutiny applies. (141 S Ct 1294, 1296 [2021]). The NYCHRL includes exemptions for "private clubs" and "benevolent societies" (among others)—both which are secular categories of organizations that would receive better treatment than Yeshiva under Plaintiffs' reinterpretation of the statute. (*Gifford*, 707 NYS2d at 723-724). This subjects the NYCHRL to strict scrutiny. *Supra* 2.

Plaintiffs try to distinguish *Tandon* by arguing essentially that the exemptions for private clubs and benevolent societies could include—and thus protect—some religious organizations. But the state in *Tandon* also protected *some* religious activity. Still, the Court applied strict scrutiny because "religious exercise at home" was treated worse than *both* secular *and* religious activities in "public buildings." (*Tandon*, 141 S Ct at 1297 (citing *Tandon v Newsom*, 992 F3d 916, 919-920 [9th Cir 2021])). Plaintiffs' reading of the NYCHRL is similarly discriminatory in that it would treat religious activity by a religious university worse than religious activity by a secular *or* religious "private club" or "benevolent society." Doc. 71 at 16. Strict scrutiny thus applies, and dismissal is required.

Second, the NYCHRL's public accommodations prohibitions are also not generally applicable under the Supreme Court's recent decision in *Fulton*. Plaintiffs completely ignored *Fulton*'s fatal impact, despite filing their opposition after *Fulton* was published—and four days before their brief was even due.

There, the Supreme Court confirmed that a law is not generally applicable whenever there is "a formal mechanism for granting exceptions … regardless whether any exceptions have been given." (*Fulton*, 2021 WL 2459253, at *7). Here, that's undeniable. Plaintiffs allege that Yeshiva violated the NYCHRL's prohibition on public accommodations discriminating on the bases of "gender and sexual orientation." (*See generally* Complaint Counts I-IV). The NYCHRL expressly allows "the [Human Rights] commission" to "grant[] an exemption based on bona fide considerations of public policy" "with respect to … gender" based claims. N.Y.C. Admin. Code § 8-107(4)(b). Under *Fulton*, the existence of this exemption scheme automatically triggers strict scrutiny.

Having confirmed that strict scrutiny applies, *Fulton* also confirms that Plaintiffs would fail it. Plaintiffs don't dispute that Yeshiva's religious exercise is burdened, which is the threshold question under the Free Exercise Clause. (*See* 2021 WL 2459253, at *4-5). And Plaintiffs have not put forth a "compelling interest" in "denying an exception to [Yeshiva]" from the NYCHRL. *Id.* at *8-9. As *Fulton* explains, interests like "equal treatment" for LGBTQ individuals are at too

"high [a] level of generality" to overcome strict scrutiny, because "the First Amendment demands a more precise analysis." *Id.* at *8. Indeed, the mere existence of an exemption scheme for the NYCHRL "undermines [Plaintiffs'] contention that its non-discrimination policies can brook no departures." *Id.* at *9. Further, "so long as the government can achieve its interests in a manner that does not burden religion, it must do so." *Id.* at *8. Here, that manner would be simply following the NYCHRL's plain terms and exempting Yeshiva as a religious corporation from the statute's public accommodations prohibitions.[5] If that exemption is not made, Plaintiffs' claims fail strict scrutiny, violate the Free Exercise Clause, and must be dismissed.

C. Assembly Clause.

Plaintiffs' claims violate Yeshiva's Assembly Clause freedom to form the next generation in its Torah values. *See* Doc. 71 at 16-17. In response, Plaintiffs claim that "Defendants do not identify any legal basis for their [claim]." Doc. 105 at 18. But Plaintiffs completely ignore the first Assembly Clause case Yeshiva cited, which makes clear that Yeshiva has an Assembly Clause right to transmit ways of life "'indispensable to the effective and intelligent use of the processes of popular government.'" Doc. 71 at 16-17 (quoting *Thomas v Collins*, 323 US 516, 532 [1945]). The lack of response is telling. Plaintiffs' claims run afoul of the Assembly Clause.

D. Free Speech Clause.

Forcing a religious organization to make statements in violation of its religious convictions violates the freedom of speech. Doc. 71 at 16. Plaintiffs contest this with mentions of access rights to non-religious private clubs and claiming that their litigation media statements "are irrelevant." Doc. 105 at 17-18. But plaintiffs' media statements simply admit the obvious: they and Yeshiva know that *recognition* of an LGBTQ group would be a "statement" by Yeshiva. The First Amendment precludes the government from coercing such a statement. Moreover, established

[5] *Fulton* also explained that there is "incongruity in deeming a private religious foster agency a public accommodation" when it conducts "a customized and selective assessment that bears little resemblance to" traditional public accommodations. (2021 WL 2459253, at *8). The Court's reasoning eviscerates Plaintiffs' argument that Yeshiva is a public accommodation when it evaluates student clubs according to its Torah values.

judicial notice principles prevent Plaintiffs from claiming that they can shield from this Court what they tell the world about this case on *YouTube* (and now, the *New York Times*, *supra* 8). (*See, e.g.*, *Pamela H. v Cordell W., Jr.*, 819 NYS2d 211 [Fam Ct, Monroe County 2006] [table; text at 2006 WL 1417856, at *2 [2006]) (taking judicial notice of what "local news media has reported" about mother's neighborhood "within the last 30 days"). Yeshiva should not have to "stultify" itself in an effort to achieve "[c]ompulsory unification of opinion." (*W. Va. State Bd. of Educ. v Barnette*, 319 US 624, 635 n 15, 641 [1943]).

III. Dr. Nissel had no decision-making authority and must be dismissed.

Because Yeshiva is not a public accommodation under the NYCHRL, Dr. Nissel and President Berman must be dismissed along with Yeshiva. Doc. 71 at 1, 17. Even so, there is an additional reason to dismiss Dr. Nissel—he had no authority to deny Plaintiffs their desired club. *Id.* at 17-19.

All the case law surrounding the NYCHRL makes clear that his lack of authority warrants dismissal. Doc 71 at 17-18. Those cases interpret *virtually identical* language in the NYCHRL's employment discrimination provisions, which must be interpreted the same throughout the NYCHRL. (*See, e.g.*, *Petro, Inc. v Serio*, 804 NYS2d 598, 604 [Sup Ct, N.Y. County 2005]) ("in the absence of statutory language indicating that a contrary treatment should govern, the same terms are presumed to carry the same meanings throughout a statute"). Plaintiffs' claims against Dr. Nissel should be dismissed.

CONCLUSION

Accordingly, Yeshiva's motion to dismiss should be granted.

Respectfully submitted,

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CERTIFICATION

Pursuant to Rule 202-8-b(c) of the Uniform Civil Rules for the Supreme Court, undersigned counsel hereby certifies that the above Defendants' Motion to Dismiss Complaint has 4,198 words, exclusive of the caption, table of contents, table of authorities, and signature block, and thus complies with the word limit set forth in Civil Rule 202-8-b(a).

/s/ Brian M. Sher