COURT OF APPEALS OF NEW YORK

YU PRIDE ALLIANCE, et al., Plaintiffs-Respondents, -against- YESHIVA UNIVERSITY, et al., Defendants-Appellants.	Appellate Division Case/Docket No.: 2022-02726 Originating Court Index No.: 154010/2021

AFFIRMATION OF KATHERINE ROSENFELD IN OPPOSITION TO APPELLANTS' ORDER TO SHOW CAUSE FOR LEAVE TO APPEAL AND AN INTERIM STAY

I, KATHERINE ROSENFELD, an attorney duly admitted to practice before the courts of the State of New York, declare under penalty of perjury:

1. I am a partner at the law firm of Emery Celli Brinckerhoff Abady Ward & Maazel LLP, attorneys for Plaintiffs-Respondents in this action. I submit this affirmation in opposition to Defendants-Appellants' motion for an Order to Show Cause for leave to appeal pursuant to CPLR 5602(b)(1).

APPELLANTS' MOTION FOR LEAVE TO APPEAL SHOULD BE DENIED BECAUSE (1) THIS COURT LACKS JURISDICTION TO ENTERTAIN AN APPEAL OF THE APPELLATE DIVISION'S NON-FINAL ORDER; (2) THE APPELLATE DIVISION CORRECTLY DENIED THE STAY MOTION; AND (3) THERE IS NO EMERGENCY

2. Appellants' Order to Show Cause must be denied in total.

3. First, under CPLR 5602(b)(1), the provision Appellants invoke, they may only appeal the First Department's August 23, 2022 order denying their motion to stay pending appeal by **first** receiving permission from the First Department. They cannot seek to leapfrog over the First Department to this Court and bypass obtaining leave to appeal from the Appellate Division, since the order they seek to appeal is a non-final order. This Court therefore lacks any jurisdiction to entertain Appellants' application.

4. Second, Appellate Term was correct to reject Appellants' request for a stay pending appeal because they have no likelihood of success on the merits on their appeal and face no irreparable harm. Under the New York City Human Rights Law ("NYCHRL"), universities—religiously affiliated or not—are places of public accommodation that may not discriminate against their students. Appellant Yeshiva University ("YU") admittedly denied Plaintiff YU Pride Alliance, an LGBTQ student club, equal access to facilities and resources like campus meeting space for club activities solely because *of* its LGBTQ status. Both Supreme Court in its carefully-reasoned, 18-page June 14, 2022 Order ("the Order") directing YU to stop discriminating and "immediately recognize" Plaintiff as a student club, and the unanimous Appellate Division with four judges present declining to stay the Order pending appeal, rejected Appellants' arguments that YU can deny Plaintiffs

equal access to campus facilities provided to all other students. *See* Dkt. 20.[1] Appellants face no irreparable harm if a group of college students can meet as student club while this appeal is pending. There is no emergency justifying a stay. It is Plaintiffs who will be irreparably harmed if they face continued discrimination and second-class status for another year.

RELEVANT FACTS AND PROCEDURAL HISTORY

5. YU is a large research university in New York City that every year educates 5,000 students of myriad religious denominations. It contains seven graduate schools and four colleges, and grants exclusively secular degrees in 23 disciplines ranging from law to social work. It is incorporated as an educational corporation under the New York Education law. And it was founded with an Orthodox Jewish affiliation which continues to date. Religiously affiliated or not, YU is a place of public accommodation.

6. Respondent YU Pride Alliance is an unofficial undergraduate student group formed in 2018 whose goal is to offer a safe, supportive space on campus for LGBTQ+ students. For years, Appellants refused to recognize the Pride Alliance (and its predecessors) as an official club solely because of the sexual orientation and gender identity of the club's members and its mission.

[1] All references to "Dkt." refer to the First Department docket, No. 2022-02726.

7. Respondents filed this action on April 27, 2021, bringing claims for sexual orientation and gender discrimination under Section 8-107(4) of the NYCHRL. The parties cross-moved for summary judgment to determine if YU was (or was not) a "religious corporation" exempt from the NYCHRL.

8. Supreme Court issued its Decision and Order on June 14, 2022, concluding that YU is a covered public accommodation, not an exempt "religious corporation," and that complying with the NYCHRL does not violate its First Amendment rights. Supreme Court issued a permanent injunction "permanently restrain[ing] [Appellants] from continuing their refusal to officially recognize the YU Pride Alliance as an official student organization because of [] sexual orientation or gender" and "direct[ing] [Appellants] to immediately grant plaintiff YU Pride Alliance the full and equal accommodations, advantages, facilities, and privileges afforded to all other student groups at Yeshiva University." R. 22.[2]

9. Appellants filed a Notice of Appeal on June 24, 2022. Appellants perfected their appeal on August 8, 2022. The appeal will be argued in the October term. Appellants filed a motion to the First Department for a stay pending appeal on July 5, 2022, which the parties briefed over the course of the next month. With four judges present, the First Department unanimously denied Appellants' motion for a stay pending appeal on August 23, 2022. Dkt. 20.

[2] All "R." citations refer to the Record on Appeal.

10. Also on August 23, 2022, Appellants filed a motion by Order to Show Cause to the First Department seeking leave to appeal to the denial of the stay to this Court. Dkt. 21. That motion is pending. The next day, on August 24, 2022, Appellants then filed a second motion with this Court by Order to Show Cause, requesting the same relief they sought from the First Department in the motion they filed the day before.

ARGUMENT

I. THIS COURT LACKS JURISDICTION TO ENTERTAIN APPELLANTS' ORDER TO SHOW CAUSE

11. CPLR 5602(b)(1)—the stated basis of Appellants' Order to Show Cause—provides that "[a]n appeal may be taken to the court of appeals by permission of the appellate division 1. From an order of the appellate division which does not finally determine an action." CPLR 5602(b)(1). CPLR 5602(b)(1)'s requirement that a party must receive the Appellate Division's permission to appeal a non-final order to the Court of Appeals is also enshrined in the New York State Constitution. *See* N.Y. Const. Art VI § 3(b)(4).

12. The First Department's August 23, 2022 order denying Appellants' motion to stay pending appeal is "an order of the appellate division which does not finally determine an action." CPLR 5602(b)(1). Appellants must therefore receive permission from the First Department to appeal its non-final order denying their

motion to stay. The CPLR gives them no right to seek leave to appeal from this Court, which must deny their motion.

13. This Court routinely dismisses motions for leave to appeal non-final orders in circumstances like this because "the Court of Appeals does not have jurisdiction to entertain a motion for leave to appeal from [a] nonfinal Appellate Division order." *Waheed v. Keit*, 89 N.Y.2d, 1072, 1072 (1997); *see also Gandolfo v. White*, 88 N.Y.2d 1013, 1013 (1996) (dismissing leave to appeal Appellate Division order affirming the trial court's grant of a preliminary injunction—which, like a stay pending appeal, rests on a showing of likelihood of success and irreparable harm—because "such order does not finally determine the proceeding within the meaning of the Constitution").

14. The leading treatises on New York appellate practice agree: For "[n]onfinal orders of the Appellate Division . . . , permission to appeal to the Court of Appeals may be granted only by the Appellate Division." 8 N.Y. Civil Appellate Practice § 3.11 (3d ed. May 2022). Thus, "the Appellate Division becomes the Court of last resort, unless the Appellate Division decides otherwise." *Id.*; *see also* Siegel's N.Y. Practice § 528 (Appellate Division "holds the power alone" to grant leave to appeal under CPLR 5602(b)(1)).

15. Appellants are aware that they need the Appellate Division's permission to appeal to this Court. On August 23, 2022, one day before filing this

Order to Show Cause, they filed a separate Order to Show Cause in the First Department seeking permission to appeal the same order (denying their motion to stay pending appeal) that they now also seek leave to appeal here. *See* Dkt. 21.

16. Appellants are simultaneously seeking leave to appeal the same non-final order from this Court (in the instant, jurisdictionally defective application) and leave to appeal from the First Department (in a procedurally proper manner). This Court must deny Appellants' motion in full because it has no jurisdiction to hear it under CPLR 5602(b)(1).

II. APPELLATE DIVISION CORRECTLY DENIED APPELLANTS' MOTION FOR A STAY PENDING APPEAL

A. Appellants Have No Likelihood of Success on the Merits of Their First Amendment Defenses

17. Appellants' grab bag of First Amendment "defenses" of religious autonomy, Free Exercise, and Free Speech will not succeed on appeal. No matter of first impression is before this Court, notwithstanding Appellants' rhetoric. The United States Supreme Court has already held that the challenged NYCHRL exemption provision is valid. *See New York State Club Ass'n, Inc. v. City of New York*, 487 U.S. 1, 16 (1988) (Section 8-102 valid as written); *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos*., 515 U.S. 557, 580 (1995) (citing NYCHRL as an anti-discrimination statute that does not violate First Amendment). For decades, courts have recognized that religious-affiliated or identified universities

must provide equal public accommodations in accordance with state and local law. *See*, *e.g.*, *Gay Rights Coal. Of Georgetown Univ. Law Ctr. v. Georgetown University*, 536 A.2d 1, 8 (1987) (D.C.'s public accommodations law required Georgetown University, a Jesuit institution, to provide equal access to its facilities to LGBTQ student group).[3] Within YU, at the law school, an LGBTQ student group *already* exists and has for decades. Appellants' parade of horribles have not come to pass. *Contra* Bloom Aff. ¶ 6. No First Amendment disaster awaits YU, whose obligation to provide equal access to public accommodations under the NYCHRL is unchanged.

1. Appellants' "Religious Autonomy" Defense Has No Merit and Will Fail on Appeal

18. Appellants' invocation of the "religious autonomy" doctrine must be rejected. A doctrine of extremely limited applicability, it protects only those disputes that are "purely ecclesiastical" in character, such as a religious body's internal governance decisions. *Serbian E. Orthodox Diocese for U. S. of Am. & Can. v. Milivojevich*, 426 U.S. 696, 713-14, 720 (1976) (characterizing a church's discipline of its bishop as a "quintessentially religious controversy" that should be left to the "highest ecclesiastical tribunal[]"). The doctrine has been narrowly applied to a church's disciplinary proceedings against a bishop, a church's internal

[3] Other large, religiously affiliated research universities in New York City like St. John's and Fordham also have LGBTQ undergraduate student groups on campus.

reorganization into two sub-groups, and a church's interpretation of its own theology. *See, e.g.*, *id.* at 709. In this case, the Order below does not tread on a "purely ecclesiastical" dispute or dictate Appellants' acceptance of LGBTQ relationships as a matter of religious doctrine. This case is solely about equal access to the facilities, benefits, and advantages of a public accommodation.

19. The religious autonomy doctrine does not unilaterally exempt religious-affiliated organizations, such as YU, from all public accommodations laws. Such a broad use of the doctrine would swallow all public accommodations laws whole. Appellants cite a cluster of religious *employment* cases about the "ministerial exception" for religious institutions allowing otherwise prohibited employment decisions based on an employee's non-adherence to the institution's religion. *See, e.g., Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049, 2066 (2020). None involve a religiously-affiliated organization's refusal to follow a public accommodations law. This distinction makes sense: while a religious employer can decide that only co-religionists may teach its religious doctrine, a religiously-affiliated public accommodation such as a university or hospital may not deny equal access to its facilities because of sexual orientation, race, or any other protected category. Appellants' radical and novel expansion of the "religious autonomy" doctrine will fail on appeal.

2. Appellants' "Free Exercise" Defense Has No Merit

20. Supreme Court correctly concluded that the NYCHRL's public accommodations protections for LGBTQ people do not violate Appellants' Free Exercise rights, even if the law has "the incidental effect" of "burdening a particular religious practice." *See Emp. Div., Dep't of Hum. Res. of Ore. v. Smith*, 494 U.S. 872, 879 (1990); *Catholic Charities of Diocese of Albany v. Serio*, 7 N.Y.3d 510, 521 (2006). Neutral and generally applicable public accommodations laws barring discrimination do not violate the First Amendment, even when such laws incidentally burden stated religious beliefs.

21. This Court in *Serio* held that "the right of free exercise does not relieve an individual of the obligation to comply with a 'valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes).'" 7 N.Y.3d at 521 (quoting *Smith*, 494 U.S. at 879). The Court upheld a state health law mandating contraception coverage of as part of prescription drug benefits violated the Free Exercise Clause, as the law was valid and neutral, and of general applicability.

22. Consistent with *Serio*, Supreme Court found the NYCHRL public accommodation provisions are neutral laws of general applicability. Therefore, YU must comply with the NYCHRL, even if it arguably has the incidental effect of burdening its religious exercise, or in this case what Appellants describe as their

"religious environment" (a burden for which there is little to no support in the record). *See Gifford v. McCarthy*, 137 A.D.3d 30, 37, 39-40 (3d Dep't 2016) (requiring wedding venue to provide equal access to same-sex couples who wish to marry under the neutral and generally applicable provisions of the New York State Human Rights Law).

3. Appellants Mischaracterize Fulton, Which Does Not Apply

23. Appellants attempt to cast doubt on *Serio* following *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021). But *Fulton* "did not revisit or overturn the existing rule [on neutral and generally applicable laws]. It was that standard that formed the basis for the Court of Appeals' decision in [*Serio*], and that standard remains good law." *Roman Cath. Diocese of Albany v. Vullo*, 168 N.Y.S.3d 598, 599 (Mem) (3d Dep't 2022) (cleaned up).[4] Indeed, in *Vullo*, the Third Department rejected the *precise claim* that Appellants make here, *advanced by the same counsel*—that any exemptions to an anti-discrimination statute require strict scrutiny after *Fulton*—finding that it "is not compelled by the language of *Fulton* and is not shared by subsequent cases interpreting it." *Id.* at 600. While Appellants' counsel make much out of their current appeal of *Vullo* to this Court, the Court has never held that it is "reconsidering its free exercise jurisprudence" on that appeal.

[4] Post-*Fulton* decisions have rejected the same mischaracterizations of *Fulton* that Appellants urge here. *See Kane v. De Blasio*, 19 F.4th 152, 165-66 (2d Cir. 2021) (rejecting argument that exemptions render a statute not generally applicable under *Fulton*); *We The Patriots USA, Inc. v. Hochul*, 17 F.4th 266, 288-89 (2d Cir. 2021) (same).

Contra Bloom Aff. ¶ 40. The decisions below should not be disturbed simply because Appellants' counsel *hope* that this Court will reconsider *Vullo*'s holding on *Serio* in an appeal that is not yet fully briefed.

24. In any event, the NYCHRL's three exemptions in the public accommodations section—for small private clubs, masonic lodges, and houses of worship, protecting the associational rights of membership groups meeting for private activities—fully accord with *Fulton* because these exemptions do not depend on any government official's discretionary evaluation.

B. Appellants' "Free Speech" Defense Has No Merit and Will Fail

25. Supreme Court correctly found that "Yeshiva's Free Speech rights will not be violated by application of the NYCHRL" because "[f]ormal recognition of a student group does not equate to endorsement with that group's message." R. 19 (citing *Bd. of Educ. Of Westside Cnty. Schools v. Mergens By and Through Mergens*, 496 U.S. 226, 250 (1990)). It is settled law that providing student clubs equal access to facilities does not mean a college endorses any club's particular mission and does not implicate the First Amendment.

26. Requiring schools to permit a club to exist on equal terms with other student clubs—all that Supreme Court required here—does not convey a message that the club's beliefs are favored or imply the institution's endorsement of the club's mission. *See, e.g.*, *Mergens*, 496 U.S. at 250 ("We think that secondary

school students are mature enough and are likely to understand that a school does not endorse or support student speech that it merely permits on a non-discriminatory basis."). New York courts have similarly recognized that equal accommodation does not equate to endorsement of a particular message. In *Gifford*, the Third Department held that requiring wedding venue owners to give same-sex couples equal access to their facilities did not violate the First Amendment rights because such access "did not require them to participate in the marriage of a same-sex couple and left them free to adhere to and profess their religious beliefs that same-sex couples should not marry."137 A.D.3d at 31.

27. So too here. "Yeshiva need not make a statement endorsing a particular viewpoint" in recognizing its student clubs. R. 19. And YU knows this. Back in 1995, when Appellants last publicly discussed its position on campus LGBTQ clubs, YU publicly stated that it *could* comply with the law without "endorsing homosexual behavior or organizations involved with gay issues." R. 489. YU is also free to explicitly state that any one of its student clubs, including the Pride Alliance, does *not* represent YU's views or beliefs.[5] *See Hsu By & Through Hsu v. Roslyn Union Free Sch. Dist. No. 3*, 85 F.3d 839 (2d Cir. 1996) (school's disclaimer on official materials that it was statutorily required to allow

[5] For example, Abilene Christian University formally recognizes an LGBTQ club and publicly notes that the school respectfully disagrees with LGBTQ relationships. *See* Dkt. 11 Ex. 23. YU is more than capable of doing the same.

religious club activities was "sufficient disassociation from club's religious speech to avoid appearance of endorsement").

28. Appellants are "free to adhere to and profess their religious beliefs," *Gifford*, 137 A.D.3d at 40. But under the NYCHRL, they must provide the Pride Alliance with "equal access to the tangible benefits that Yeshiva affords other student groups on its campus." R. 19.

III. APPELLANTS' CLAIM THAT YU IS NOW A "RELIGOIUS CORPORATION" WILL FAIL ON APPEAL

29. YU is not a religious corporation. Rather, "Yeshiva organized itself as an 'educational corporation' and for educational purposes, exclusively." R. 11. It is therefore a covered public accommodation under the NYCHRL.

A. New York Law Forecloses YU's Claim to Be a Religious Corporation

30. New York courts are in lockstep with Supreme Court's analysis in this case: Religious corporation is a legal status under New York law based on (1) whether a religious purpose is "expressed in a corporation's organizing documents" like its Certificate of Incorporation; and (2) whether its organizing purpose is to "enabl[e] people to meet for divine worship or religious purpose," consistent with the definition of a "religious corporation" in the Religious

Corporations Law ("RCL").[6] *Id.* at 10-11; RCL § 2. *See, e.g.*, *Temple-Ashram v. Satyanandji*, 84 A.D.3d 1158, 1160 (2d Dep't 2011) (Hindu Temple incorporated under Not-for-Profit Corporations Law ("N-CPL") is a "'de facto' religious corporation in accordance with the Religious Corporations Law" because it is a "place of worship" whose certificate of incorporation meets "a hybrid of the relevant criteria of both the Religious Corporations Law and the N-PCL."); *Agudist Council of Greater N.Y. v. Imperial Sales Co.*, 158 A.D.2d 683, 683 (2d Dep't 1990 ("In light of the petitioner's valid certificate of incorporation which indicates that its purposes are to provide religious services and services to senior citizens, the Supreme Court properly determined that the petitioner is a religious corporation.").[7]

31. YU fails to qualify as a religious corporation based on these well-settled legal principles. Its organizing documents state no religious purpose and it

[6] The RCL lays out the "[legal] rules for the governance of religious bodies. *Venigalla v. Nori*, 11 N.Y.3d 55, 61 (2008). It is the only place in New York law that defines the term "religious corporation," making it the appropriate place to look for the definition of "religious corporation" under the NYCHRL or any other statute. *See People v. Carroll*, 93 N.Y.2d 564, 568-69 (1999) (using definition of term in Family Court Act to supply definition of undefined term in Penal Law).

[7] *See also Badesha v. Soch*, 136 A.D.3d 1415, 1416 (4th Dep't 2016) (Sikh place of worship incorporated under N-CPL is "de facto religious corporation" because "the type of governance intended and effectuated by the founders . . . was a self-perpetuating board . . . under article 9 of the Religious Corporations Law"); *Watt Samakki Dhammikaram, Inc. v. Thenjitto*, 631 N.Y.S.2d 229, 231 (Sup. Ct. Kings Cnty. 1995) ("*temple*/residence" established under its certificate of incorporation as N-CPL corporation "for the study of Buddhism . . . falls within the ambit of the Religious Corporations Law" (emphasis in original)).

is not a place of divine worship or religious observance.[8] YU is incorporated as an "educational corporation" under the Education Law. R. 473 at ¶ 1. Its Certificate of Incorporation states that it is "organized and operated *exclusively* for educational purposes"; states no purpose to meet for worship or religious observance; and provides that "[p]ersons of every religious denomination shall be equally eligible to offices and appointments." *Id.* at ¶¶ 8-9 (emphasis added).

32. Accepting that YU has a Jewish identity, it still is not a "religious corporation." *See Naarim v. Kunda*, 801 N.Y.S.2d 237 (Table), 2005 WL 1355143, at *2 (N.Y. Sup. Ct. Kings Cnty. 2005) (summer camp providing "boys with a summer vacation in a religious, spiritual atmosphere" is not a religious corporation) (cleaned up)).

B. YU Admitted It Is Not Subject to the NYCHRL in 1995

33. "Yeshiva itself has long acknowledged that it was subject to the NYCHRL," R. 12, confirming that YU is not an exempt "religious corporation." In 1995, YU's *own attorneys* from Weil Gotshal & Manges, "special counsel

[8] Appellants also rely on cases that affirm that religious corporation status begins and ends with these two factors. See *In re Religious Corps. & Ass'n Divestment of Property*, 784 N.Y.S.2d 923 (Table), 2003 WL 23329273, at *1-2 (N.Y. Sup. Ct. N.Y. Cnty. 2003) (a "'model synagogue' prayer group" incorporated under the N-CPL whose enabling legislation explicitly states its religious purpose is "a religious corporation under the Religious Corporations Law and that law applies to its activities"); Kroth v. Congregation Kadisha, Sons of Israel, 105 Misc. 2d 904, 910 (Sup. Ct. N.Y. Cnty. 1980 ("[S]ince, if unincorporated, [the synagogue] could now only be incorporated under the Religious Corporations Law, that statute is applicable to its governance.").

engaged to review this issue," examined whether YU could claim an exemption from the NYCHRL to avoid recognizing LGBTQ student groups and concluded it could not: "The attorneys firmly believe that YU would not qualify for a religious exemption, based on its charter and its actions over the course of decades, including representations that have been made concerning the YU's legal status as a nondenominational institution." R. 490.

IV. APPELLANTS DO NOT FACE ANY IRREPARABLE HARM

34. Appellants' claim that they will face irreparable First Amendment harm if an official LGBTQ student club starts meeting this semester —the only harm at issue here—must be rejected. Requiring an institution to provide equal accommodations to a student group on a nondiscriminatory basis does not cause irreparable First Amendment harm. *Mergens* and its progeny establish that "a school does not endorse or support student speech that it merely permits on a nondiscriminatory basis." 496 U.S. at 250; *see Gifford*, 137 A.D.3d at 40; *supra* ¶¶ 26-27 (collecting cases). Nor does giving equal status to the club does not change the religious environment. An LGBTQ student group *already exists* at YU's law school, same-sex couples have the right to live together in married housing, and YU has acknowledged that club recognition does not equate to endorsement, to name just a few examples.

a. **An LGBTQ student group operates at YU's law school:** YU's Cardozo School of Law recognizes OUTLaw, an official LGBTQ

student group, on equal terms as all other student groups, without compromising YU's Jewish environment and character. Cardozo Law School shares the Jewish environment that Appellants describe. "As part of Yeshiva University, Cardozo is closed from Friday evening . . . through Saturday in observance of the Sabbath"; it observes all Jewish holidays; its cafeteria and food service "is a kosher operation, under [] rabbinical supervision"; mezuzahs hang on every door; and it offers a "concentration in Jewish law." Dkt. 11 Ex. 17.

b. **Same-Sex Couples won the right to live together at YU over 20 years ago:** In *Levin v. Yeshiva Univ.*, 96 N.Y.2d 484, 491 (2001), "Yeshiva concede[d] that it is subject to the City Human Rights Law" in a case holding that YU's policy preferring housing for married couples had a disparate impact on same-sex couples who, by law at the time, were not permitted to marry. It raised no First Amendment challenge to the application of the NYCHRL. Since then, same-sex couples have had the right to live together in campus housing.

c. **YU has acknowledged club recognition does not reflect endorsement of a club's activities or mission:** In the same 1995 Fact Sheet where YU admitted it could not claim an NYCHRL exemption to avoid recognizing an LGBTQ student group, it wrote: "institutions acting in compliance with the law are not thereby endorsing homosexual behavior or organizations involved with gay issues." R. 489.

V. PLAINTIFFS WILL SUFFER FURTHER IRREPARABLE HARM IF A STAY IS IMPOSED

35. Appellees should not be forced to wait a minute longer for the legal protections to which they are entitled. Forcing Plaintiffs to wait for club recognition while this appeal is resolved over the coming year(s) will perpetuate the harms they are suffering and delay their equal participation in campus public life. The deleterious effects of discrimination against LGBTQ student clubs are

well known. *See Gay-Straight All. of Okeechobee High Sch. v. Sch. Bd. of Okeechobee Cnty*., 483 F. Supp. 2d 1224, 1228, 1231 (S.D. Fla. 2007) (collecting federal cases holding that refusal to recognize LGBTQ affinity groups exacts irreparable harm on the groups). Appellees also submitted evidence to Supreme Court about how affinity groups play a critical role for LGBTQ students, who may otherwise face increased mental health and other risks. R. 1265. LGBTQ campus affinity groups have enormous benefits to students, "foster[ing] positive self-esteem, sense of purpose, and adjustment," which "have positive impacts on . . . student retention and success." R. 1269. Appellees face irreparable harm from YU's refusal to recognize the Pride Alliance.

VI. A STAY WOULD BE CONTRARY TO THE PUBLIC INTEREST

36. The New York City Council enacted the public accommodation provisions of the NYCHRL because "prejudice, intolerance, bigotry, and discrimination . . . threaten[] the rights and proper privileges of [the City's] inhabitants." N.Y.C. Admin Code § 8-101. Allowing Appellants to continue their discrimination against Respondents while this appeal is pending would undermine the very interest the City Council sought to protect. YU has not identified any countervailing harm that would outweigh its legal obligation to provide all students with equal access to school facilities and resources. The public's interest in equal treatment of its citizens also requires that Appellants' motion to stay be denied.

37. I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 25, 2022
New York, New York

/s
KATHERINE ROSENFELD